



First Party Product Recall Insurance

POLICY WORDING



First Party Product Recall Insurance

Policy Schedule

Chartis Australia Insurance Limited, ABN 93 004 727 753, AFSL 381686

Policy Number:

1. Insured	AS SHOWN ON FILE AND AS AGREED WITH UNDERWRITERS
2. Policy Period	From: To:
3. Limit of Liability	\$ in the aggregate all Losses during the Policy Period
4. Deductible	\$ each and every loss
5. Coinsurance	
6. Premium	\$ plus Stamp Duty plus GST
7. First Inception Date	
8. Company	Chartis Australia Insurance Limited ABN 93 004 727 753 AFSL 381686

Words in bold have special meaning – see the Schedule and Definitions section of the Policy.

Signed for **Chartis Australia Insurance Limited**

Signature

Issue Date:

APPENDIX I - Notification Procedures & Consultants

WHAT TO DO IN A CRISIS

In the event of an incident, situation or occurrence which may give rise to or constitute an **Insured Event**, then as part of the Policy coverage and under a special arrangement with the **Company**, we will:

- (a) make available on a priority basis, specialist crisis management and/or crisis communications consultants nominated by the **Company** or, if requested by an **Insured**, consultants of an **Insured's** choice who we provide our prior written consent to use, to advise, inform and assist an **Insured**; and
- (b) pay the reasonable and necessary fees and expenses of the said consultant/s.

<u>INTERNATIONAL ACCESS CODE</u>	<u>COUNTRY CODE</u>	<u>AREA CODE</u>	<u>LOCAL NUMBER</u>
From Australia	0011	1	713 260 5500

The number above is a dedicated crisis response contact and should only be used for notification of an incident, situation or occurrence which may give rise to or constitute an **Insured Event**. Callers will speak directly to or receive an immediate call back from our experienced consultants who are available to nominate specialist external crisis management or crisis communications consultants or consider any request (to be confirmed in writing) by an **Insured** concerning the use of an **Insured's** preferred consultants. Following notification of an incident, situation or occurrence which may give rise to an **Insured Event**, the consultants will be available to be with the **Insured** as soon as travel time permits.

It is understood and agreed that:

- (a) the consultants have no authority on behalf of the **Company** to make any admissions which may prejudice our rights or to deal with matters concerning policy coverage or the application of any facts and circumstances of any crisis incident, situation or occurrence which has been notified and which may give rise to or constitute an **Insured Event** to the policy terms, conditions and exclusions;
- (b) the provision and/or the use of these services is not, is not intended to be and shall not be regarded as an admission of or an acceptance by the **Company** of any liability to indemnify an **Insured** under the Policy and is without prejudice to all of our rights under the terms, conditions and exclusions of the Policy;
- (c) notification to the dedicated crisis response contact number of an incident, situation or occurrence which may give rise to an **Insured Event** does not constitute a notification under the Policy and an **Insured** must comply with the policy terms and conditions.
- (d) upon notification to the **Insured** by the **Company** that liability to indemnify is not accepted, we will no longer have any liability under this endorsement and we will not pay any fees or expenses of the said consultant/s which are incurred after such notification is given



Notice: Code of Practice

The **Company** is a signatory to the General Insurance Code of Practice. This aims to raise the standards of practice and service in the insurance industry, improve the way that claims and complaints are handled and help people better understand how general insurance works. Information brochures on the Code are available upon request.

In consideration of the payment of the premium and in reliance upon the **Application**, the **Company** and the **Insured** agree as follows:

I. Insuring Clause

The **Company** will reimburse the **Insured** for its Loss in excess of the deductible, but not exceeding the Limit of Liability, caused by or resulting from any Insured Event first discovered during the **Policy Period** and reported to the **Company** in writing during the **Policy Period** or up to thirty (30) days after expiry, pursuant to the terms of this Policy:

Insured Event means any **Product Recall** resulting from any:

- A. **Defect**
- B. **Malicious Product Tampering**
- C. **Product Extortion**
- D. **Government Recall**

As provided for under the Limit of Liability section of the Schedule.

II. Loss

Loss under this Policy includes only the following reasonable and necessary expenses or costs incurred by the **Insured** directly and solely as the result of an Insured Event:

- A. **Product Recall Costs;**
- B. **Business Interruption;**
- C. **Replacement Costs;**
- D. **Rehabilitation Expenses;**
- E. **Consultant and Advisor Costs;**
- F. **Product Extortion Costs;**

Except as otherwise provided with respect to **Business Interruption** and **Product Extortion Costs**, Loss is limited to expenses or costs incurred within twelve (12) months after the Insured Event first became known to the **Insured**. In no event will any amounts claimed and paid under one Insured Event be recoverable under another Insured Event.

The expenses or costs of the **Insured** shall be the net amount of the cost or expense incurred by the **Insured** after subtracting the amount of any input tax credit to which the **Insured** is or shall become entitled to after incurring the cost or expense.

III. Policy Definitions

- A. **Application** means each and every signed proposal form, including the declarations, statements and representations therein together with its attachments and all other information which is either submitted by the **Insured** to the **Company** or incorporated in the proposal form by reference.
- B. **Bodily Injury** means:
- a) death;
 - b) clear, identifiable, internal or external visible physical symptoms of injury, sickness or disease sustained by a person.
- Bodily Injury** does not include emotional distress or mental anguish unless due to physical injury, sickness or disease.
- C. **Business Interruption** means the **Loss of Gross Profit** and **Extra Expense** as a result of an Insured Event.
- D. **Consultant and Advisor Costs** means fees and costs of product safety, security or public relations consultants or advisors hired with the **Company's** prior written consent to assist the **Insured** in responding to an Insured Event. These fees and costs are part of and are not payable in addition to the **Limit of Liability** stated in the Schedule. The **Deductible** stated in the Schedule will not apply to these fees and costs.
- E. **Defect** means a defect, deficiency or inadequacy of the **Insured Product** that creates a dangerous condition when used that would or has resulted in **Bodily Injury** or **Property Damage**.
- F. **Extra Expense** means the excess of the total cost of conducting business activities during the period of time necessary to clean or repair the location (owned or operated by the **Insured**) where the Insured Event occurred for the sole purpose of reducing the Loss. This Policy only covers those **Extra Expenses** which are over and above the cost of such activities during the same period of time had no Insured Event occurred. This may include but is not limited to the following:
- a) Clean up costs paid to restore an environment to a level in which products can be safely manufactured or handled;
 - b) Salary costs required to maintain the workforce to the extent required by statute or union or other work contract for a maximum period of 6 months, as well as the salary costs required to maintain a minimum work force at a minimal percentage of salary in order to be able to open the plant without delay as soon as possible after a shutdown imposed by the authorized national or local governmental organisation or body;
 - c) The increased cost of subcontracting some or all of the manufacturing process to a contract manufacturer for a period of time necessary to restore the **Insured's** facilities to a state in which products can be safely manufactured or handled.
- G. **First Inception Date** means the date specified in the Schedule.
- H. **Government Recall** means any **Defect** which has:
- a) resulted in an official recall order issued by any authorized governmental or regulatory body; or
 - b) satisfied all governmental or regulatory recall criteria and the official recall order is imminent.
- I. **Informant** means any person providing information not otherwise obtainable, in return for a **Reward** offered by the **Insured**.
- J. **Insured** means the sole proprietorship, partnership, or corporation stated in Item 1 of the Schedule.
- K. **Insured Product(s)** means
- a) Any finished product(s) and component parts that have been reported to the **Company** in the **Application** on file with the **Company** for the effective dates of this Policy or by addendum to such **Application**, provided such products have been:
 - i. manufactured, handled or distributed by the **Insured**; or
 - ii. manufactured by any contract manufacturer for the **Insured**; or
 - iii. sold or marketed by the **Insured**

- b) Any finished product(s) and component parts outside the existing product line(s) provided that:
 - i. written notice is given to the **Company** no less than ninety (90) days prior to its introduction for sale; and
 - ii. the **Insured** did not know nor could reasonably have been expected to know, as of the date of the written notice to the **Company**, that an Insured Event affecting the new product(s) had occurred; and
 - iii. the **Company** has given written acceptance of such new product(s). Such acceptance will not be unreasonably withheld and will be given or refused within thirty (30) days of receipt of written notice. At the option of the **Company**, such acceptance by the **Company** may be accompanied by changes in one or more of the terms, conditions or premium of the Policy.

L. **Legal Proceedings** means litigation, arbitration, adjudication or any other process of dispute resolution.

M. **Loss of Gross Profit** Loss will be calculated applying the Rate of Gross Profit to the reduction in **Turnover** which is:

- a) Decrease of **Turnover**, during the twelve (12) months beginning after the decrease in sales attributable to and caused directly by the Insured Event with regards to the Standard Turnover

Less

- b) Any sum saved during the twelve (12) months beginning after the decrease in sales in respect of such of the charges and expenses payable out of Gross Profit as may cease or be reduced in consequence of the Insured Event.

If during such twelve (12) month period the **Loss of Gross Profit** of the **Insured Product(s)** is offset by increased sales of another **Insured Product(s)** within the same product line as the affected product(s) claimed in the Loss as a result of an Insured Event such offset will be considered to reduce the actual Loss sustained.

Gross Profit shall be the difference between:

- 1) The sum of the **Turnover** and the amounts of the Closing Stock and Work in Progress

And

- 2) The sum of the amounts of the Opening Stock and Work in Progress and the amount of the Uninsured Working Expenses.

The amounts of the Opening and Closing Stocks and Work in Progress shall be arrived at in accordance with the **Insured's** normal accountancy methods, due provision being made for depreciation.

Rate Of Gross Profit shall be the rate of Gross Profit earned on the **Turnover** during the financial year immediately before the date of the Insured Event.

Standard Turnover shall be the **Turnover** during the period in the twelve (12) months immediately before the date of the Insured Event.

Adjustments to the Rate of Gross Profit and to the Standard Turnover shall be made as may be necessary to provide for the trend of the **Insured** and for variations in or special circumstances affecting the **Insured** either before of after the Insured Event or which would have affected the **Insured** had the Insured Event not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Insured Event would have been obtained during the relative period after the Insured Event.

Uninsured Working Expenses shall be:

- Purchases of Raw Materials, Finished Goods Net of Discounts
- Tolling and Sub-contracting Costs
- Operating Supplies
- Variable Selling Expenses and Discounts Allowed
- Bad debts
- Variable Utility Costs
- Variable Transportation Expenses
- Packaging Costs

Note: The words and expressions used in this Definition shall have the meanings usually attached to them in the Books and Accounts of the **Insured**.

- N. **Malicious Product Tampering** means any actual, alleged or threatened, intentional, malicious, and wrongful alteration of the **Insured Product(s)**, by any person (including an employee of the **Insured**), so as to render the **Insured Product(s)** unfit or dangerous for its intended use or to create such impression to the public.
- O. **Policy Period** means the period set forth in the Schedule or any shorter period arising as a result of cancellation of the Policy.
- P. **Product Extortion** means any **Malicious Product Tampering** involving a demand for monies (monies include cash, monetary instruments, bullion, or the fair market value of any securities, tangible property or services) communicated to the **Insured**.
- Q. **Product Extortion Costs** means:
- a) **Product Extortion Monies** paid by the **Insured** in direct response to a **Product Extortion** made and reported during the **Policy Period**;
 - b) In transit/delivery loss due to the destruction, disappearance, confiscation or wrongful appropriation of **Product Extortion Monies** while being handled or conveyed by anyone who is authorised by the **Insured** to have custody thereof; provided, however, that the **Product Extortion** which gave rise to the delivery is covered hereunder;
 - c) Reasonable and necessary extortion expenses or fees which are incurred and paid by the **Insured** solely as a direct result of a **Product Extortion** including but not limited to:
 - i. the amount paid by the **Insured** as a **Reward** to an **Informant** for information relevant to a specific **Product Extortion**. Notwithstanding, no **Reward** will be paid by the **Company** to any director, officer, trustee of the **Insured** or to any individual holding similar responsibilities;
 - ii. interest costs for a loan from a financial institution made to the **Insured** for the purpose of paying **Product Extortion Monies**;
 - iii. costs of travel and accommodations incurred by or on behalf of the **Insured** while attempting to negotiate a **Product Extortion**;
 - iv. medical services and hospitalisation costs to the extent the following do not constitute "health insurance business" as defined in the *National Health Act, 1953* (Cth) incurred by any person(s) directly involved in the handling or negotiating of a **Product Extortion** and/or the handling of **Product Extortion Monies**, and paid by the **Insured** as the direct result of a **Product Extortion** within thirty six (36) months following the last
 - v. credible **Product Extortion** threat discovered during the **Policy Period**, including, but not limited to, any costs for treatment by a neurologist or psychiatrist, costs for cosmetic surgery, and expense of confinement for such treatment;
 - vi. costs of an independent forensic analysts engaged by the **Insured**;
 - vii. costs of a qualified interpreter assisting the **Insured** in connection with a **Product Extortion**;



- viii. increased costs of security due to a **Product Extortion** including, but not limited to, hiring of security guards, hiring of armoured vehicles, and overtime pay to existing security staff for a period of up to 90 days, provided, however, that the pre-approved security consultant has specifically recommended such security measures.
- R. **Product Extortion Monies** means any monies which the **Insured** has paid or were lost in transit subsequent to a **Product Extortion**. For purposes of this Policy, the term monies includes cash, monetary instruments, bullion, or the fair market value of any securities, tangible property or services.
- S. **Product Recall** means the withdrawal or recall from the stream of commerce of an **Insured Product** because of a known or suspected Insured Event directly related to the **Insured Product** which has caused or is reasonably expected to cause **Bodily Injury** or **Property Damage** provided that such **Insured Product**:
 - a) was first introduced into the stream of commerce after the **First Inception Date**; and
 - b) was no longer in the physical possession of the **Insured**, its agents or employees.
- T. **Product Recall Costs** means reasonable and necessary costs incurred by the **Insured** or by the **Insured's** distributor to withdraw or destroy such affected **Insured Product(s)** pursuant to an Insured Event. **Product Recall Costs** also include, but are not limited to:
 - a) The cost of newspaper, magazine or any printed advertising (whether electronic or otherwise), radio and television announcements or commercials, as well as the cost of correspondence, necessary to effect the recall of the **Insured Product(s)**;
 - b) Essential transportation and accommodation costs directly attributable to the recall of the **Insured Product(s)**;
 - c) The cost of hiring additional person(s), other than regular employees of the **Insured**, devoted exclusively to effect the recall of the **Insured Product(s)**;
 - d) Overtime paid to regular employees of the **Insured** for work devoted exclusively to the recall of the **Insured Product(s)**;
 - e) The necessary out-of-pocket expenses of personnel under paragraphs (c) and (d) above, including transportation, incurred exclusively for the purpose of such recall of the **Insured Product(s)**.
 - f) Expense of renting or hiring additional warehouse or storage space for the recall of the **Insured Product(s)** for a maximum period of twelve (12) months;
 - g) The cost of shipping the **Insured Product** from any purchaser, distributor or user to the place or places the **Insured** designates;
 - h) Expense incurred in properly disposing of the unused packaging and point of purchase marketing material of the recalled **Insured Product(s)** if they cannot be used or reused;
 - i) The actual cost of disposal of the **Insured Product**, but only to the extent that specific methods of destruction other than those usually employed for rubbish discarding or disposal are required to avoid **Bodily Injury** or **Property Damage**;
 - j) The actual cost of redistributing any recalled or restored **Insured Product(s)**;
- U. **Property Damage** means physical damage to, loss of or destruction of tangible property.
- V. **Rehabilitation Expense** means expenses actually incurred directly by the **Insured** as a direct result of an Insured Event to re-establish the **Insured Product(s)** to the reasonably projected level of sales or market share anticipated prior to the Insured Event. The **Sublimit** of liability for all such expenses will be 25% of the Limit of Liability stated in the Schedule. This limitation does not increase the Limit of Liability as stated in the Schedule nor impose any additional Deductible on the **Insured**.
- W. **Replacement Costs** means costs incurred by the **Insured** to restore any recalled **Insured Product(s)** to merchantable quality or replace any recalled **Insured Product(s)** that has been destroyed, is unfit for sale or for its original use, with product(s) of similar value.
- X. **Reward** means monies paid for information which results in **Product Extortion Costs** mitigation.
- Y. **Sublimit** means the maximum amount the **Insured** can collect under a specified section of the Policy.

- Z. **Terrorism** means an act of actual, alleged or threatened, intentional, malicious and wrongful alteration or contamination of any product(s), not limited to **Insured Products(s)**, undertaken by any person or group, whether or not acting on behalf of or in any connection with any organisation, government, power, authority or military force, when the effect is to intimidate, coerce, or harm a government, civilian population or any segment thereof, or to disrupt any segment of the economy. **Terrorism** shall also include any act which is verified or recognised by the Australian Government as an act of terrorism.
- AA. **Turnover** means the money paid or payable to the **Insured** for **Insured Product(s)**.
- AB. **Unsafe** means that the use or consumption of the **Insured Product(s)** would result in **Bodily Injury or Property Damage**.

IV. Exclusions

The Policy does not apply to any Loss, claim, circumstance arising out of, based upon, attributable to or involving, directly or indirectly any:

- A. Product of a competitor that is similar to an **Insured Product(s)** or arising out of a recall of any competitor's product that is similar to the **Insured Product(s)**;
- B. Change in customer tastes, competitive environment, economic conditions, population, or seasonal sales variations;
- C. Natural deterioration, decomposition, or transformation of the chemical structure of any **Insured Product(s)**, including, but not limited to, any combination or interaction among ingredients, components or packaging. Notwithstanding, this exclusion will not apply if the deterioration, decomposition or transformation is a direct result of an act, error or omission in the manufacturing of the **Insured Product**;
- D. Failure by any party to adhere to procedures prescribed by the **Insured** regarding the storage, consumption, or use of any **Insured Product(s)**;
- E. Connection with the use or consumption of the **Insured Product(s)** brought by any non- **Insured** except **Product Recall Costs**;
- F. Investigation brought by or on behalf of or instigated or continued with the solicitation, assistance, participation or intervention of any governmental or regulatory body whether directly or indirectly and whether brought in its capacity as a receiver, conservator, liquidator, securities holder or assignee of the **Insured**;
- G. a) Intentional violation by the **Insured** of any governmental or regulatory requirements in connection with the:
- i. testing, manufacturing, storage, distribution, or sale of any **Insured Product(s)**;
 - ii. use of any ingredients, components and/or packaging in the manufacturing process which have been previously banned or declared **Unsafe** by any governmental or regulatory body;
 - iii. maintenance of adequate documentation of the manufacturing process in compliance with any existing governmental or regulatory standards;
- b) Changes in governmental regulations or public perceptions with respect to the safety of any **Insured Product(s)**;
- c) Illegal act(s) of any of the **Insured's** directors, officers or trustees;

- H. Asbestos;
- I. Matter which:
- a) an **Insured**, employee, officer or director of the **Insured** had actual or constructive knowledge of prior to the Policy inception date;
 - b) occurs after an **Insured**, employee, officer or director of the **Insured** has knowledge of a **Defect** or deviation in the production, preparation or manufacturing of **Insured Product(s)**, or circumstance(s) which have or are reasonably likely to result in such deviation or **Defect**, and the **Insured** fails to take reasonable corrective action;
 - c) an **Insured** could have reasonably expected to produce a Loss under this Policy;
- J. Nuclear reaction or nuclear radiation or radioactive contamination (except a radioactive tampering specifically aimed at the **Insured Product(s)**), all whether controlled or uncontrolled, or resulting from any act or condition incident to any of the foregoing, whether such Loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by an Insured Event or otherwise;
- K. Proximate or remote consequence, whether direct or indirect, of war, invasion, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, or military or usurped power;
- L. Costs associated with the expense to design, redesign, engineer, re-engineer, recalibrate or retool any **Insured Product**;
- M. **Product Recall**:
- a) that is initiated due to the failure of an **Insured Product** to accomplish its intended purpose, including any breach of warranty of fitness or quality, whether written or implied;
 - b) that is initiated due to the expiration of the designated life of the **Insured Product**;
 - c) of any **Insured Product** which has been banned from the market by any authorized governmental or regulatory body prior to the **Policy Period** or distributed or sold by the **Insured** subsequent to any governmental or regulatory ban;
- N. Matter or **Legal Proceedings** made or brought by or on behalf of any **Insured** against any other **Insured(s)**;
- O. Product withdrawal initiated due to copyright, patent, trade secret, trade dress or trademark infringements;
- P. Loss to land (including land on which property is located), water, or growing crops or lawns; crop failure; or livestock.
- Q.
 - a) civil or criminal fines or penalties imposed by law;
 - b) civil liabilities including damages;
 - c) punitive, aggravated, contractual penalties or exemplary damages;
 - d) the multiplied portion of multiplied damages;
 - e) costs and interest, except for interest as defined in
 - f) non-pecuniary damages;
 - g) matters that may be deemed uninsurable under the law pursuant to which this Policy is construed or which the **Company** is legally prohibited from paying.
- R. An actual or alleged act of **Terrorism**. This exclusion shall not apply when the **Insured** or an **Insured Product** is the direct target of the person or group described. For the purpose of this exclusion only, the term **Insured Product** is defined to mean:
- Insured Product(s)** means:
- c) Any finished product(s) and component parts that have been reported to the **Company** in the **Application** on file with the **Company** for the effective dates of this Policy or by addendum to such **Application**, provided such products have been:
 - i. manufactured, handled or distributed by the **Insured**; or
 - ii. manufactured by any contract manufacturer for the **Insured**; or
 - iii. sold or marketed by the **Insured**

- d) Any finished product(s) and component parts outside the existing product line(s) provided that:
 - i. written notice is given to the **Company** no less than ninety (90) days prior to its introduction for sale; and
 - ii. the **Insured** did not know nor could reasonably have been expected to know, as of the date of the written notice to the **Company**, that an Insured Event affecting the new product(s) had occurred; and
 - iii. the **Company** has given written acceptance of such new product(s). Such acceptance will not be unreasonably withheld and will be given or refused within thirty (30) days of receipt of written notice. At the option of the **Company**, such acceptance by the **Company** may be accompanied by changes in one or more of the terms, conditions or premium of the Policy.
- S. Arising out of any loss where the liability for such loss has been assumed by the Insured under any agreement or contract except to the extent that:
 - a) the liability would have been implied by law; or
 - b) the **Company** has given its written consent to the terms of any such agreement or contract prior to its execution
- T. Any **Property Damage** to:
 - a) Property owned by, leased or rented to the Insured; or
 - b) Property belonging to the **Insured** or in the care, custody or control of the **Insured**; or
 - c) an **Insured Product**.
- U. Any legal or defence costs related to any Loss, any Legal Proceeding or, governmental or regulator claim or investigation, Royal Commission or Commission of Inquiry.
- V. Any medical or ancillary expenses, the payment of which would constitute "health insurance business" as defined under the *National Health Act, 1953* (Cth).

V. Policy Conditions

A. Action Against the **Company**

No suit, action, or proceedings for recovery of any Loss under this Policy will be sustainable in any court of law, equity, or other tribunal unless all the requirements of this Policy are complied with and is commenced within twenty four (24) months after a final statement of Loss has been submitted to the **Company** by the **Insured**.

B. Additional Exposures

The **Insured** will give the **Company** written notice within ninety (90) days of any additional exposure arising from:

- a) consolidation or merger with; or
- b) acquisition of the majority stock ownership of; or
- c) acquisition of the assets of

any other entity whose revenues are in excess of 10% of the gross revenue of the **Insured** as of the date of consolidation, merger or acquisition.

The **Company** may elect to accept or reject such additional exposure. If the additional exposure is rejected, it will remain covered only until the **Insured** is notified in writing of the rejection. If the **Company** accepts the additional exposure, the **Insured** will pay the **Company** additional premium as may be required, computed from the date of consolidation, merger or acquisition to the end of the current period unless otherwise specifically requested.

No Loss arising out of the additional exposure will be covered unless the **Insured**, at the time it gave notice thereof to the **Company**, did not know nor could reasonably have been expected to know of the Insured Event giving rise to the Loss.

C. Appraisal

If the **Insured** and the **Company** fail to agree on the amount of Loss, then, on the written demand of either, made within sixty (60) days after rejection of the final statement of loss by the **Company**, the **Company** shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty (20) days of such demand. The appraisers shall first select a competent and disinterested umpire and failing for fifteen (15) days to agree on such umpire, then upon the request of the **Insured** or the **Company** such umpire will be selected by the current President of the Chartered Institute of Loss Adjusters. The **Insured** and the **Company** will submit their cases to the appraisers and the umpire within thirty (30) days of the appointment of the umpire. An award in writing, so itemized, of any two will determine the amount of Loss. The **Insured** and the **Company** will each pay its chosen appraiser and will bear equally the other expenses of the appraisal and umpire. The **Company** will not be held to have waived any of its rights by any act relating to an appraisal.

D. Assignment

This Policy and any rights hereunder cannot be assigned without written consent of the **Company**.

E. Assistance and Co-operation

The **Insured** will cooperate with the **Company** in all matters relating to this Policy. This may include, but is not limited to, attending hearings and trials, securing and giving evidence, obtaining the attendance of witnesses, assisting in effecting settlements.

F. Calculation of the Amount Payable Under a Sublimit

Any amount payable for Loss under the **Sublimit** under this Policy listed in the Schedule will be calculated as follows:

First, the apportioned deductible as calculated under Policy Condition M. will be subtracted from the Loss. Second, the applicable coinsurance will be applied to the balance. The amount payable thereafter will be the lesser of either the **Sublimit** or the product of the coinsurance and the balance. No amount of Loss will be paid in excess of the **Sublimit**. This does not increase the Limit of Liability as stated in the Schedule nor imposes any additional Deductible on the **Insured**.

G. Cancellation

The **Insured** may cancel this policy by providing written notice to the **Company** in which case the **Company** shall retain the customary short rate proportion of the premium. The **Company** may cancel this policy as and in the manner permitted by law and shall be entitled to retain the pro-rata proportion of the premium.

H. Changes

This Policy contains all the agreements between the **Insured** and the **Company** concerning this insurance. Notice to any of the **Company's** representatives or knowledge possessed by any the **Company's** representative(s) or by any other person will not effect a waiver or a change in any part of the Policy or prevent the **Company** from asserting any right under the terms of this Policy, nor can the terms of this Policy be waived or changed unless agreed to in writing by the **Company** or the **Company's** authorised representative.

I. Choice of Law and Forum

The construction, validity and performance of this Policy will be governed by the laws of Australia. The **Company** and the **Insured** hereby expressly agree that all claims, Losses and disputes will be litigated in the Courts of the State or Territory in Australia where the policy was issued.

J. Coinsurance

The **Insured** will bear the coinsurance amount stated in the Schedule for each Loss in excess of, and in addition to, the deductible applicable to each Insured Event. The coinsurance amount will be calculated by multiplying the covered Loss in excess of the deductible by the coinsurance amount. The **Company** will pay covered Loss in excess of the deductible subject to the Limit of Liability stated in the Schedule after deduction of the coinsurance amount from the Loss.

K. Concealment, Misrepresentation, Non-disclosure, or Fraud

In the event of any concealment, misrepresentation, non-disclosure or fraud, the Company's rights shall be as provided in the applicable provisions of the *Insurance Contracts Act 1984* (Cth) and all such rights and entitlements will be rigorously proved.

L. Confidentiality

The **Insured** will use all reasonable efforts not to disclose the existence of this Policy unless required by law to do so.

M. Deductible(s)

The deductible(s) stated in the Schedule will apply separately to each and every Loss, other than Consultant and Advisor Costs. The deductible(s) is to be borne by the **Insured** and remain uninsured. A portion of the deductible will apply to the section of Loss limited by a **Sublimit** calculated as follows:

The portion of the deductible applicable to the sub-limited section will be calculated by dividing the Loss attributable to a sub-limited section by the total amount of the Loss, under the Policy, multiplied by the deductible.

N. Due Diligence

The **Insured** will exercise due diligence to do all things reasonable and practical to avoid any happening or circumstances covered by this Policy and to make all reasonable efforts to mitigate any Loss arising as a result of an Insured Event.

O. Examination under Oath

The **Insured**, as often as may be reasonably be required, shall exhibit to any person designated by the **Company** all affected **Insured Product(s)** whether salvageable or otherwise, and shall submit to examinations under oath by any person named by the **Company**, and subscribe the same; and, as often as may reasonably be required, shall produce for examination all books of account, vouchers, bills, invoices, schedules, accounting information, and any documentation relating to the calculation of Loss, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the **Company** or its representative, and shall permit extracts and copies thereof to be made.

P. Excess Insurance

The **Insured** may purchase other insurance over the Limit of Liability set forth in this Policy without prejudice to this Policy, provided that the **Company** is notified in writing of the details of such other excess insurance at the time such other insurance is acquired. The existence of such other insurance, if any, will not reduce the **Company's** liability under this Policy.

Q. Inspection and Audit

The **Company** may examine and audit the **Insured's** business documents relating to the subject matter of this insurance until three (3) years after this Policy has expired or has been cancelled. Any premium due for exposures which exist but were not reported will be determined through audit by the **Company**.

R. Limits of Liability

The **Company's** liability hereunder will be limited to the amounts stated in the Schedule. The Limit of Liability is the total aggregate limit of the **Company's** liability for all Losses of all **Insureds** under this Policy combined discovered and reported during the **Policy Period** in accordance with the terms herein. Additionally, Losses reported, up to thirty (30) days after expiry of the Policy will also be considered reported during the **Policy Period** and will also be subject to the aggregate Limit of Liability. Sub-limits of liability and all fees, costs and expenses howsoever described are part of and are not payable in addition to the **Limit of Liability** stated in Schedule.

S. Non-Accumulation of Liability

Regardless of the number of years this Policy may continue in force, and of the number of premiums which may be payable or paid, or of any other circumstances whatsoever, the aggregate liability of the **Company** under this Policy with respect to any Insured Event(s) will not be cumulative from year to year or period to period. When there is more than one **Insured**, the aggregate Limit of Liability of the **Company** for Loss(es) sustained by any or all of them will not exceed the amount for which the **Company** would be liable if all Loss(es) were sustained by any one of them.

T. Notice of Loss

In the event of an incident that may be covered under the terms of this Policy, the **Insured** will as a condition precedent to the obligations of the **Company** under this Policy:

- (i) Send to the **Company** a written notice of a claim or Loss as soon as practicable within the **Policy Period** after the alleged Insured Event has occurred providing at their own expense all the detailed particulars and evidence regarding the cause of the Insured Event and the amount claimed under the Policy.
- (ii) Comply with Policy Condition Z. Statement of Loss
- (iii) In addition, the Insured must provide the **Company** with periodic and timely updates concurrent with activity occurring during the incident.

All notifications must be in writing and properly addressed to the **Company** at the following address:

Attention: Claims Manager
Chartis Australia
Level 19, 2 Park Street
Sydney NSW 2000
Telephone: 1300 030 886
Facsimile: 1300 634 940

- (iv) If it appears to be in the best interest of the Insured or to be required by law, notify law enforcement authorities or any other government agencies having jurisdiction over the matter.

U. Notice and Authority

It is agreed that the first **Insured** listed on the Schedule acts on behalf of all **Insureds** with respect to the exercise of all their rights and the discharge of all their duties in respect of this Policy, including but not limited to:

- a) negotiating the terms and conditions of cover;
- b) binding cover;
- c) the notification of a claim or Loss;
- d) the giving and receiving of any notice of cancellation;
- e) the payment of premium and the receipt of any refund of premium that may become due;
- f) the payment of the deductible;
- g) the negotiation and receipt of any endorsement;
- h) the appointment of lawyers to defend a claim, Loss or **Legal Proceeding**;
- i) the receipt of amounts payable by the **Company** under this Policy.

V. Notices

Except as indicated to the contrary herein, all notices, applications, demands or requests provided for in this Policy will be in writing and will be given to or made upon either party at its address shown in the declarations.

W. Other Insurance

The **Insured** may purchase other insurance written on the same terms and conditions as this Policy provided the Deductible and Coinsurance as described in Policy Conditions J and M herein remains uninsured. Before the inception of this Policy, the **Insured** shall inform the **Company** of all policies of insurance under which any Insured may be entitled to claim and which may provide primary coverage of a similar nature to that provided by this Policy. All such policies will be noted in the Schedule of Other Insurance Policies forming part of this policy. The insurance provided under this Policy will be primary in all instances except where a policy issued by a Non-CHARTIS **Company** exists covering similar exposures. The insurance provided under this Policy will co-insure all Losses where coverage is also provided by such other **Company**.

X. Salvage

Any salvage or other recovery, after expenses incurred in salvage or recovery are deducted, will accrue entirely to the benefit of the **Company** until the sum paid by the **Company** has been recovered. In case of damage to property bearing a brand or trademark, or which in any way carries or implies the guarantee or the responsibility of the **Insured**, the salvage value of such damaged property will be determined after removal in the customary manner of all such brands or trademarks or other identifying characteristics, the costs of which will be borne by the **Insured**.

The goodwill and public image of the **Insured** will be considered in determining whether any **Insured Product(s)** should be involved in salvage recovery. The **Company's** right to salvage will not be unreasonably restricted by the **Insured**. The **Insured** will have full right to the possession of all goods involved in any Loss under this Policy and will retain control of all damaged goods. There can be no abandonment of any property to the **Company**.

Y. Severability, Construction and Conformance to Statute

- a) If any provision contained in this Policy is, for any reason, held to be invalid, illegal or unenforceable in any respect, it is deemed to be severed and to have no effect on any other valid legal and enforceable provision of this Policy.
- b) If any provision contained in this Policy can be construed as being invalid, illegal or unenforceable for any reason, it will be construed by limiting it so as to be valid, legal, and enforceable to the extent compatible with applicable law.
- c) Any provisions of this Policy which are in conflict with the statutes or regulations of the state or country wherein this Policy is issued are hereby amended to conform to such statutes or regulations.

Z. Statement of Loss

- (i) Initial Statement of Loss: The **Insured** must submit to the **Company** within 10 days an initial written statement of loss, stating the full particulars of the Loss and its initial calculations and/or projections of the elements and composition of the Loss.
- (ii) Final Statement of Loss: Whether or not any partial payments have been made, a final statement of loss with respect to all items of Loss other than **Loss of Gross Profit** must be submitted to the **Company** in writing no earlier than twelve (12) months and no later than twenty four (24) months after an Insured Event first becomes known to the Insured. A final statement of loss with respect to **Loss of Gross Profit** must be submitted in writing no later than (24) months after the beginning of a reduction in sales of the **Insured Product(s)** caused by an Insured Event.

AA. Subrogation


In the event of any payment under the Policy, the **Company** will be subrogated to the extent of such payment to all the **Insured's** rights of recovery. In such case the **Insured** will execute all documents required and will do everything necessary to secure and preserve such rights including the execution of such documents necessary to enable the **Company** effectively to bring suit in the name of the **Insured**.

AB. Territory

This Policy applies to an Insured Event anywhere in the world unless specifically limited by the terms, conditions and exclusions of this policy, including but not limited to Condition "AE. Sanctions".

AC. Titles of Paragraphs

Titles of paragraphs are inserted solely for the convenience of reference and will not limit, expand, or otherwise affect the provisions to which they relate. Words and expressions in the singular include the plural and vice versa. Words in italics have special meaning and are defined. Words that are not specifically defined in this Policy have the meaning normally attributed to them.



AD. Valuation Clause

In determining the amount of **Loss of Gross Profit, Extra Expense** and other covered Loss, due consideration will be given to the experience of the business before the Insured Event and the probable experience thereafter, had the Insured Event not occurred. The probable level of sales and experience of the business had the Loss not occurred must be demonstrated with reasonable certainty by the **Insured**.

AE. Sanctions

The **Company** is not liable to make any payment for liability under this policy where doing so would violate applicable laws, regulations, or any other form of economic or trade sanctions. Further, no benefits or payments will be made to the **Insured** or any beneficiary (ies) who is/are declared unable to receive economic benefits under the laws or regulations governing this policy and/or the **Company**.

This Policy has been signed on behalf of the **Company**, but it shall not be binding upon the **Company** unless countersigned on the Schedule by an authorised representative of the **Company**.

Signed for **Chartis Australia Insurance Limited**

Signature

Date of Issue:



New South Wales
Head Office
Level 19
2 Park Street, Sydney
New South Wales 2000

Victoria
Level 12
717 Bourke Street, Docklands
Victoria 3008

Queensland
10 Eagle Street, Brisbane
Queensland 4000

Western Australia
77 St Georges Terrace, Perth
Western Australia 6000

Phone 1300 030 886 (Australia wide)
Phone +61 3 9522 4000 (International)

www.chartisinsurance.com.au