

## Product Recall Insurance for Consumer Goods & Products

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This Product Recall Insurance Policy for Consumer Goods & Products is made between the *Insured* and Crum & Forster (hereafter “*Insurer*”). This Policy is effective during the policy period set forth on the Declarations page.

In consideration of the premium paid and in reliance upon the statements made to the *Insurer* in the application form, its attachments, all underwriting information submitted and the material incorporated therein forming a part thereof, the *Insurer* agrees as follows.

Words and phrases that appear here in bold and italic have special meaning. Refer to the Definitions section of this policy.

### 1. INSURANCE COVER

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The *Insurer* will reimburse the *Insured(s)* for its *Loss* in excess of the *Self Insured Retention* and applicable *Co-Insurance*, but not exceeding the Limits of Insurance, caused by or resulting from an *Insured Event* first discovered during the *Policy Period* and reported to the *Insurer* in writing during the *Policy Period* or up to thirty (30) days after expiration, pursuant to the terms of this Policy.

### 2. DEFINITIONS

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- 2.1 *Bodily Injury* means death, or clear, identifiable internal or external visible physical symptoms of injury, sickness or disease sustained by a person.
- 2.2 *Claim* means an oral or written demand against an *Insured* for any *Loss*, other than *Defense Costs*, and includes the threat or initiation of any *Suit* or arbitration proceeding or a request for a tolling agreement.
- 2.3 *Consultant Costs* means the reasonable cost and fees of Stericycle ExpertRECALL and Levick Strategic Communications to assist the *Insured* in responding to an *Insured Event*, whether such costs are incurred before or after recall and/or withdrawal is initiated.
- 2.4 *Co-Insurance* means the percentage set forth in the “Co-Insurance” section of the Declarations.
- 2.5 *Defect* means a defect, deficiency or inadequacy that creates a dangerous condition.
- 2.6 *Defense Costs* means legal costs and other expenses incurred by or on behalf of the *Insured* in connection with the defense of any actual or anticipated *Claim*, including attorneys’ fees and disbursement, law costs, premiums on attachment or appeal bonds, pre-judgment and post-judgment interest, expenses for experts and for investigation, adjustment, appraisal and settlement, excluding salaries, wages and benefits of the *Insured*(’s) employees and the *Insured*(’s) administrative expenses.
- 2.7 *Insured(s)* means the sole proprietorship, partnership, limited liability company or corporation stated in the Declarations.
- 2.8 *Insured Event* means the recall, removal, recovery of possession or control, withdrawal or disposal of, or purposeful destruction of an *Insured Product(s)* from or by a distributor, purchaser, retailer, wholesaler or user of an *Insured Product(s)* because of known or suspected *Defects* in the *Insured Product(s)* provided that the use of the *Insured Product(s)* has resulted or would result in *Bodily Injury* or *Property Damage*.

- 2.9 **Insured Products** means all finished goods or product(s) that have been:
- i. manufactured, packaged or distributed by the **Insured**.
  - ii. manufactured by a contract manufacturer for the **Insured**.
  - iii. sold or marketed by the **Insured**.
- 2.10 **Loss** means the following expenses or costs incurred by the **Insured** directly and solely in connection with a covered **Insured Event**:
- i. **Recall Costs**
  - ii. **Consultant Costs**
- Loss** is limited to expenses or costs incurred within twelve (12) months of the **Insured Event** first becoming known to the **Insured**.
- 2.11 **Policy Period** means the period set forth in the Declarations or any shorter period arising as a result of cancellation of the Policy.
- 2.12 **Property Damage** means physical damage to or destruction of tangible property other than to **Insured Product(s)**.
- 2.13 **Recall Costs** means the reasonable costs incurred by the **Insured** for the recall, removal, recovery of possession or control, or disposal of such affected **Insured Product(s)** pursuant to an **Insured Event**. These costs are limited to the following:
- i. 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 regarding or concerning the recall.
  - ii. The cost of shipping the **Insured Product** from any purchaser, distributor or user to the place or places the **Insured** designates.
  - iii. The cost to rent additional warehouse or storage space.
  - iv. The cost of disposal of the **Insured Product**, to the extent that specific methods of disposal other than those usually employed for trash discarding or disposal, are required to avoid **Bodily Injury** or **Property Damage** as a result of such disposal.
  - v. The cost of hiring additional person(s), other than regular employees of the **Insured**, to assist with the recall of the **Insured Product(s)**.
  - vi. Overtime paid to regular employees, other than salaried employees, of the **Insured** for work devoted exclusively to the recall of the **Insured Product(s)**.
  - vii. Expenses (incl. transportation and accommodation costs) incurred by employees directly attributable to the recall of the **Insured Product(s)**.
  - viii. Expenses incurred to properly dispose of the unused packaging and point of purchasing marketing material of recalled **Insured Product(s)** if such packaging or material cannot be reused.
  - ix. The actual cost to redistribute any recalled **Insured Product(s)**.
  - x. Retailers' and other third party Recall Costs incurred during the recall of the **Insured Product(s)**.
- 2.14 **Retroactive Date** means the date set forth in the "Retroactive Date" section of the Declarations.
- 2.15 **Self Insured Retention** means the amount(s) set forth in the "**Self Insured Retention**" section of the Declarations.
- 2.16 **Sub-limit** means the maximum amount the **Insured(s)** can collect under a specified section of the Policy.
- 2.17 **Suit** means a civil proceeding seeking **Loss** damages, other than **Defense Costs**, arising out of an **Insured Event** to which this insurance applies. **Suit** includes:
- i. An arbitration proceeding in which such **Loss** damages are claimed and to which the **Insured(s)** must submit or does submit with the **Insurer(s)** consent;

- ii. Any other alternative dispute resolution proceeding in which such **Loss** damages are claimed and to which the **Insured(s)** submits with the **Insurer(s)** consent.

2.18 **Terrorism** means an act, including the use of force or violence, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s), committed for political, religious or ideological purposes including the intention to influence any government and/or to put the public in fear for such purposes.

### 3. EXCLUSIONS

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

- 3.1 Any **Bodily Injury** or **Property Damage Claim** made by a third party arising out of or in connection with the use of the **Insured Product(s)**, including any **Defense Costs** related to a third party lawsuit.
- 3.2 Any product(s) manufactured, designed, sold, distributed or handled by the **Insured** that is/are incorporated as a component or constituent part of any third party's product(s) or goods.
- 3.3 Changes in population, customer tastes, economic conditions, seasonal sales variations, or competitive environment.
- 3.4 The failure by any party other than the **Insured** to adhere to procedures prescribed by the **Insured** regarding the storage or use on an **Insured Product(s)**.
- 3.5 Any product of a competitor similar to an **Insured Product(s)**.
- 3.6 Any recall of the **Insured Product(s)** initiated by the **Insured**, a third party or at request of a third party for reasons unrelated to an **Insured Event**.
- 3.7 Any costs associated with the expense to design or redesign, engineer or re-engineer any **Insured Product(s)**.
- 3.8 Any intentional act or omission that the **Insured(s)** knew or should have known could reasonably lead to an **Insured Event**.
- 3.9 The natural deterioration, decomposition or transformation of chemical structure except as a result of error or omission in the manufacture of the **Insured Product(s)**.
- 3.10 Any dishonest, willful, wanton, fraudulent, criminal or malicious act, error or omission from the **Insured(s)**.
- 3.11 Any fines or penalties imposed by third parties, courts or governmental organizations or agencies.
- 3.12 Any Illegal act(s) of any of the **Insured(s)** directors, officers, members, partners or trustees.
- 3.13 Any financial, economic or consequential **Loss** which you are legally obligated to pay or is incurred by any third party even if this arises out of an **Insured Event**.
- 3.14 The failure by the **Insured** to adhere to any governmental agency's, industry or similarly recognized body's regulations and requirements (including but not limited to the complete testing of the **Insured Product(s)**) for the design and manufacture of the **Insured Product(s)**.

- 3.15 Any **Insured Event** which occurred, or which the **Insured(s)** was aware or should have been aware of, prior to the inception of this Policy
- 3.16 Any pre-existing conditions, circumstances or situations the **Insured(s)**, prior to the inception of this Policy, knew of or should have known could reasonably be expected to cause, lead to or result in an **Insured Event**.
- 3.17 Any decrease in product sales realized subsequent to the announcement of the **Insured Event**.
- 3.18 The sale of any **Insured Product(s)** after the **Insured(s)** knew or should have known that the **Insured Product(s)** or the use of materials or substances had been banned or declared unsafe by any United States governmental authority.
- 3.19 The presence, ingestion, inhalation or absorption of or exposure to lead in any form or products containing lead or leaded materials.
- 3.20 The failure of any **Insured Product(s)** to accomplish their intended purpose, including any breach of warranty of fitness, quality, efficacy or efficiency.
- 3.21 Any **Insured Product(s)** manufactured prior to the **Retroactive Date** shown in the Declarations.
- 3.22 Any actual or alleged act of **Terrorism**.

#### 4. GENERAL CONDITIONS

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- 4.1. ACTION AGAINST THE INSURER: 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 **Insurer** by the **Insured(s)**.
- 4.2. ADDITIONAL EXPOSURES: The **Insured(s)** will give the **Insurer** written notice within ninety (90) days of any additional exposure arising from:
  - i. consolidation or merger with
  - ii. acquisition of the majority stock ownership
  - iii. acquisition of the assets
  - iv. creation

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

The **Insurer** may elect to accept or reject such additional exposure. If the additional exposure is rejected, it will remain covered only until the **Insured(s)** is notified in writing of the rejection. If the **Insurer** accepts the additional exposure, the **Insured(s)** will pay the **Insurer** 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(s)**, at the time it gave notice thereof to the **Insurer**, did not know nor could reasonably have been expected to know of the **Insured Event** giving rise to the **Loss**.

- 4.3. APPRAISAL: If the **Insured(s)** and the **Insurer** 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 **Insurer**, the **Insurer** 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(s)** or the **Insurer** such umpire will be selected by the current President of the Chartered Institute of Loss Adjusters. The **Insured(s)** and the **Insurer** 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(s)** and the **Insurer** will each pay its chosen appraiser and will bear equally the other expenses of the appraisal and umpire. The **Insurer** will not be held to have waived any of its rights by any act relating to an appraisal.

- 4.4. ASSISTANCE AND CO-OPERATION: The **Insured(s)** will cooperate with the **Insurer** 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, and in conducting litigation, arbitration, or other proceedings.
- 4.5. ASSIGNMENT: This Policy and any rights hereunder cannot be assigned without written consent of the **Insurer**.
- 4.6. AUTHORIZATION CLAUSE: It is agreed that the first **Insured** listed on the Schedule acts on behalf of all **Insured(s)** with respect to the exercise of all their rights and the discharge of all their duties in respect of this Policy. All other **Insured(s)** agree that the first **Insured** listed on the Declarations will act on their behalf.
- 4.7. CANCELLATION: This Policy may be cancelled by the **Insured(s)** by the surrender of this Policy to the **Insurer** or by giving ten (10) days advance written notice to the **Insurer**, stating when thereafter such cancellation will be effective. This Policy may be cancelled by the **Insurer** by delivering to the **Insured** or by mailing to the **Insured** by registered or certified mail, at the **Insured(s)** address stated in the Declarations, written notice stating when, not less than sixty (60) days thereafter, the cancellation will be effective, except in the case of cancellation for non-payment of premium by the **Insured**, in which case the **Insurer** will provide at least ten (10) days written notice. The mailing of such notice will be sufficient proof of notice and this Policy will terminate at the date and hour specified in such notice.

If this Policy is cancelled by the **Insured**, the **Insurer** will retain or collect one hundred and ten percent (110%) of the pro rata earned premium provided no **Loss** has been previously reported to the **Insurer**. However, if any **Loss** has been notified to the **Insurer** during the relevant **Policy Period** and prior to the date of cancellation, the **Insurer** will retain or collect one hundred percent (100%) of the total policy premium.

If this Policy is cancelled by the **Insurer**, the **Insurer** will retain the pro-rata portion of the premium hereon. Payment or tender of any unearned premium by the **Insurer** will not be a condition precedent to the effectiveness of cancellation, but such payment will be made as soon as practicable.

- 4.8. CHANGES: This Policy contains all the agreements between the **Insured** and the **Insurer** concerning this insurance. Notice to any of the **Insurer(s)** representatives or knowledge possessed by any the **Insurer(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 **Insurer** 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 **Insurer** or the **Insurer's** authorized representative.
- 4.9. CHOICE OF LAW AND FORUM: The construction, validity and performance of this Policy will be governed by the laws of the United States of America. The **Insurer** and the **Insured** hereby expressly agree that all **Claim, Loss** and disputes will be litigated in the State of New York.

- 4.10. CO-INSURANCE: The **Insured** will bear the **Co-Insurance** amount stated in the Declarations for each **Loss** in excess of and in addition to the **Self Insured Retention** applicable to each **Insured Event**. The **Co-Insurance** amount will be calculated by multiplying the covered **Loss** in excess of the **Self Insured Retention** by the **Co-Insurance** amount. The **Insurer** will pay covered **Loss** in excess of the **Self Insured Retention** subject to the Limit of Liability stated in the Declarations after deduction of the **Co-Insurance** amount from the **Loss**.
- 4.11. CONCEALMENT, MISREPRESENTATION, NON-DISCLOSURE, OR FRAUD: Without prejudice to the **Insurer(s)** other rights, however arising, this Policy is null and void in case of concealment, misrepresentation, non-disclosure, or fraud by any **Insured** of a material fact concerning:
- i. this insurance or the procurement thereof; or
  - ii. the **Insured Product(s)**, or the **Insured(s)** interest in the **Insured Product(s)**; or
  - iii. any **Insured Event**, or any **Loss** or **Claim** under this Policy.
- 4.12. CONFIDENTIALITY: The **Insured** will use all reasonable efforts not to disclose the existence of this Policy, except insofar as it is required in order to comply with the terms of the policy or by law.
- 4.13. COMPUTATION OF LOSS:
- i. In the event of any **Loss**, detailed **Claim(s)** for payment by the **Insurer(s)** shall be made by the **Insured(s)** as soon as practicable and shall be accompanied by a computation of **Loss**, which sets out in detail how the **Loss** has been calculated and what assumptions have been made. The **Insured(s)** shall produce any documentary evidence, books of account, bill, invoices and other vouchers and copies of the same which **Insurer(s)** or their representatives, including forensic accountants, may require and the **Insured(s)** shall afford them every assistance in their investigations including reasonable access to the **Insured(s)** premises, personnel and necessary documents for the purpose of the computation of **Loss**.
  - ii. The **Insurer** shall determine the amount of any **Loss**, taking into account any savings or recoveries or offsetting or make-up of **Loss(es)** which have been made or which the **Insured(s)** could reasonably have been expected to make and the ability of the **Insured(s)** to resume operations.
  - iii. In determining the amount of any **Loss**, **Insurer(s)** shall apply standard accounting principles as recognized by the relevant regulatory authorities in the **Insured(s)** jurisdiction. Where an **Insured** is present in more than one jurisdiction the relevant principles to be applied will be those of the jurisdiction in which the entity that has suffered the **Loss** is based
  - iv. Where **Loss(es)** are paid by the **Insurer** in currency other than the currency in which the premium is paid, the rate of exchange for payment of **Loss** shall be based on the published wholesale exchange rate on the date written notice of the **Insured Event** is received by the **Insurer**.
  - v. Whether or not any partial payments have been made, a final statement of **Loss** with respect to all items of **Loss** must be submitted to the **Insurer** in writing no earlier than twelve (12) months and no later than twenty (24) months after an **Insured Event** becomes known to the **Insured(s)**.

Nothing in the clause shall be deemed to override the provisions of the Notice of **Loss** clause.

- 4.14. 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**.
- 4.15. FRAUDULENT CLAIMS: If any **Loss** under this Policy is in any respect fraudulent or intentionally concealed or misrepresented a material fact concerning an **Insured Event** all benefit under this Policy shall become void.
- 4.16. 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 **Insurer** 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 **Insurer(s)** liability under this Policy.

- 4.17. **INSPECTION AND AUDIT:** The **Insurer** 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 **Insurer**.
- 4.18. **LIMITS OF INSURANCE:** The **Insurer(s)** liability hereunder will be limited to the amounts stated in the Declarations of this Policy.
- 4.19. **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 **Insurer** 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 **Insurer** for **Loss(es)** sustained by any or all of them will not exceed the amount for which the **Insurer** would be liable if all **Loss(es)** were sustained by any one of them.
- 4.20. **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 **Insurer** under this Policy:
- i. provide written notice to the **Insurer**, or any of the **Insurer(s)** authorized representatives as soon as practicable containing particulars sufficient to identify the **Insured(s)**, and information with respect to the time, place and circumstances of the **Insured Event** and estimated **Loss** damages. The **Insured(s)** will promptly take all reasonable steps to minimize any expense or damages involved.
  - ii. cooperate with the **Insurer** and, at the **Insurer(s)** request, assist the **Insurer** in enforcing any right of contribution or indemnity against any person or organization other than a named **Insured** under this Policy who may be liable to the **Insured(s)** because of **Loss** damages incurred.
- 4.21. **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.
- 4.22. **OTHER INSURANCE:** The **Insured** may purchase other insurance written on the same terms and conditions as this Policy provided the **Self Insured Retention** and **Co-Insurance** as described herein remains uninsured. The insurance provided under this Policy will be primary in all instances except where a policy issued by other than a Crum & Forster **Insurer** exists, covering similar exposures. The insurance will co-insure all **Loss(es)** where coverage is also provided by such other **Insurer**. However, if this policy contains an endorsement providing that **Defense Costs** are included within the definition of **Loss**, then with respect to any such **Defense Costs**, this policy will apply as excess insurance over any other insurance that provides for the **Insured(s)** defense.
- 4.23. **SALVAGE:** Any salvage or other recovery, after expenses incurred in salvage or recovery is deducted, will accrue entirely to the benefit of the **Insurer** until the sum paid by the **Insurer** 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 **Insurer(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 **Insurer**.
- 4.24. **SELF INSURED RETENTION:** The **Self Insured Retention** stated in the Declarations will apply separately to each and every **Loss**. The **Self Insured Retention** is to be borne by the **Insured** and remain uninsured.

4.25. SEVERABILITY, CONSTRUCTION AND CONFORMANCE TO STATUTE:

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.

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.

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.

4.26. SUBROGATION: In the event of any payment under the Policy, the **Insurer** 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 executions of such documents necessary to enable the **Insurer** effectively to bring **Suit** in the name of the **Insured**.

4.27. TERRITORY: This Policy applies to an **Insured Event** anywhere in the world with the exception of any country or jurisdiction which is subject to trade or other economic sanction or embargo by the United States of America.