



This is your ACE Recall Plus<sup>SM</sup> Insurance Policy, providing insurance for covered product recalls of your component parts. Certain provisions in this policy restrict coverage. Please read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the organization named in the Declarations as the Named Insured. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section II Definitions.

## SECTION I. INSURING AGREEMENT

In consideration of your payment of premium and in reliance upon your statements made in the application form for this policy, as well as the information and material you submitted as part of such application, we agree with you as follows:

We will reimburse you for:

1. "Loss", to which this insurance applies, in excess of the applicable "self-insured retention" and any applicable "co-insurance", up to the Limits of Insurance stated in the Declarations, that is caused by an "insured event" that is first discovered by you during the "policy period" and reported to us in compliance with the provisions of Condition R. (Notice of Loss); and
2. "Consultant Costs" to which this insurance applies.

## SECTION II. DEFINITIONS

- A. "Bodily injury" means death, physical or mental injury, sickness, disease, or emotional or mental anguish.
- B. "Consultant costs" means the fees and expenses incurred by you for the advisory services of the Crisis Consultants referred to in **First Steps in a Crisis** attached to this policy to assist you (1) in responding to events or incidents that have the potential to lead to an "insured event" or (2) in response to an actual "insured event". "Consultant costs" do not include any of the costs defined in Definition M.
- C. "Co-insurance" means your percentage share of "loss", in excess of the applicable "self-insured retention", as stated in the Co-Insurance Section of the Declarations.
- D. "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, court 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 your employees and administrative expenses incurred by you.
- E. "Impaired property" means tangible property of others, that cannot be used; or is less useful because it incorporates your "insured product(s)" that is known to be defective, deficient, inadequate or dangerous provided that such tangible property can be restored to use by the repair, replacement, adjustment or removal of your "insured product(s)".



F. "Insured" means:

1. The organization identified as the Named Insured in the Declarations of this policy;
2. Any subsidiary of the Named Insured and any other organization under the active management and control of the Named Insured as of the inception date of the policy, provided that such subsidiary or organization was made known to us prior to the inception date of the policy;
3. If the Named Insured is a partnership, limited liability company or joint venture, its partners or members, but only with respect to the conduct of the Named Insured's business.

G. "Insured event" means a voluntary, involuntary or mandatory "stock recovery", market withdrawal or recall, of an "insured product(s)" by or on behalf of its manufacturer, producer, processor, distributor, purchaser, retailer, wholesaler, importer, exporter, a regularly constituted federal, state or local regulatory or administrative body or user of the "insured product(s)" because:

1. The use of the "insured product(s)" has resulted in "bodily injury", "property damage" or would result in "bodily injury", "property damage"; or
2. The "insured product(s)" has resulted or would result in "impaired property".

H. "Insured product(s)", unless otherwise specified in the Declarations or in a document referred to in the Declarations, means:

Any good or product(s) that:

- a. are in production by the "insured(s)";
- b. have been manufactured, handled, packaged, or distributed by the "insured(s)" or by any contract manufacturer for the "insured(s)"; or
- c. are available for sale by the "insured(s)" or are sold by, or on behalf of the "insured" by any distributor, wholesaler or retailer.

"Insured product(s)" does not include newly introduced or newly developed products described below:

Any product(s) which are newly introduced or newly developed by the "insured(s)" after the inception of this policy, provided, however, that if written notice is given to us no less than (90) days prior to the introduction for sale and we have given written acceptance of such new product(s) within 30 days of written receipt of the request to cover the new product then the new product will be an "Insured Product". Notwithstanding, such acceptance by us may be conditioned upon changes in one or more of the terms, conditions or premium of the policy.

Variations of existing products and/or new blends are not considered a newly developed product.

- I. "Loss" means "pre-incident costs", "recall costs", and "defense costs" that you have incurred directly and solely in connection with a covered "insured event".
- J. "Policy period" means the time between the inception date of this policy shown in the Declarations and the expiration date shown or earlier termination date of this policy.
- K. "Pre-incident costs" means the costs incurred by you for chemical analysis and/or physical examination necessary to determine whether the use of the "insured product(s)" causes "bodily injury", "property damage" or "impaired property".
- L. "Property damage" means any physical damage to, destruction of or loss of use of tangible property other than the "insured product(s)".



- M. "Recall costs" means the following costs and expenses listed below incurred by you or your retailers or other third parties arising out of an "insured event":
1. 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.
  2. The cost of shipping the "insured product(s)" from any purchaser, distributor or user to the place or places that you designate.
  3. The cost to rent additional warehouse or storage space.
  4. The cost of hiring additional persons other than regular employees to assist with the recall of the "insured product(s)".
  5. Overtime paid to non-salaried employees and additional compensation paid to other than non-salaried employees for work devoted exclusively to the recall of the "insured product(s)".
  6. Employees' travel, transportation and lodging expenses directly attributable to the recall of the "insured product(s)".
  7. The cost of disposal of the "insured product(s)", 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.
  8. Expenses incurred for the proper disposal of the unused packaging and point-of-purchase marketing material of a recalled "insured product(s)" if such packaging or material cannot reasonably be reused.
- N. "Retroactive date" means the date stated in the Retroactive Date section of the Declarations.
- O. "Self-insured retention" means the amount stated the Self-Insured Retention section of the Declarations.
- P. "Stock recovery" means the removal of that portion of the lot, batch, production run or other relevant unit of an "insured product(s)" that has not left the direct control of the "insured(s)" or been released for sale or use.
- Q. "Sub-limit" means the maximum amount you are entitled to collect under a specified section of the Declarations.
- R. "Suit" means a civil proceeding seeking damages for "loss", other than "defense costs", arising out of an "insured event" to which this insurance applies. "Suit" includes arbitration or other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.
- S. "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.

### SECTION III. EXCLUSIONS

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This insurance does not apply to any "loss", cost or expense arising out of, based upon, attributable to or involving, directly or indirectly:

- A. Any "insured event" resulting from or related to the natural gradual deterioration, decomposition or transformation of the chemical structure of any "insured" product(s), including but not limited to any combination or interaction among components or packaging, caused in whole or in part by the "insured product(s)" having passed its specified or reasonably expected expiration date for use.
- B. Any dishonest, illegal, willful, wanton, fraudulent, criminal or malicious act, error or omission by any director, officer, member, partner or trustee of any "insured".
- C. Any violation of a governmental regulation by any director, officer, partner or trustee of an "insured" in connection with the manufacture, sale or distribution of any "insured product(s)".



- D. Any use of materials or substances in the manufacturing process which have been banned or declared unsafe by any governmental entity.
- E. Any "insured event" where "loss" arises out of a change in governmental regulations with respect to the safety of any "insured product(s)".
- F. Any fines, fees or penalties imposed by third parties, courts or governmental organizations or agencies.
- G. Any "insured event" arising out of a failure by any party other than you to adhere to procedures prescribed by you regarding the storage or use of any "insured product(s)".
- H. Any "insured event" that occurs after any of your directors, officers, partners or trustees has knowledge of (1) a defect or deviation in the production, preparation or manufacture of the "insured product(s)" or (2) circumstances which have or are likely to result in such deviation or defect, and fails to take corrective action regarding such defect, deviation or circumstances.
- I. Any pre-existing condition, circumstance or situation which any of your directors, officers, partners or trustees knew of or should have known of, prior to the inception of this policy, that caused or could reasonably have been expected to cause, lead to or result in an "insured event".
- J. Any third party claim, demand or "suit" alleging "bodily injury" or "property damage" liability.
- K. Any costs associated with the expense to design or redesign, engineer or re-engineer any "insured product(s)".
- L. Any "suit" made or brought by or on behalf of any "insured" against any other "insured".
- M. Any "Consultant costs" incurred after we have determined and communicated to you that no "insured event" resulted from an actual or threatened incident.
- N. Any failure of the "insured product(s)" arising out of its design or specifications unless the failure is due to an unintended mistake, error or flaw in the manufacturing process.
- O. Any monetary obligation of an "insured" by reason of an assumption of liability in a contract or agreement or that the "insured" would not have in the absence of the contract or agreement.
- P. Any unqualified, contractually obligated acceptance of any "insured product(s)" by or on behalf of your customers.
- Q. Any "insured event" arising out of the actual, alleged or threatened presence of asbestos in any form whatsoever, or any material or product containing, or alleged to contain, asbestos.
- R. Any "insured product(s)" manufactured prior to the "retroactive date" shown in the Declarations.
- S. Any "insured event" arising out of the presence, ingestion, inhalation or absorption of or exposure to lead in any form or products containing lead or leaded materials.
- T. Any actual or alleged act of "terrorism".
- U. Any nuclear reaction or nuclear radiation or radioactive contamination (except a radioactive tampering specifically aimed at the "insured product(s)", whether such reaction, radiation or contamination is controlled or uncontrolled or results from any act or condition incident to any of the foregoing.
- V. War, invasion, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, or military or usurped power.



## SECTION IV. CONDITIONS

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### A. APPRAISALS

If there is a covered "loss" concerning which you and we fail to agree as to the monetary value of the "loss", and we reject of your final statement of "loss", the "loss" will be submitted for an independent appraisal. Either party may make a written demand for an independent appraisal within sixty (60) days the rejection. Upon such demand, each party will select a competent and disinterested appraiser and notify the other party of the name of the appraiser selected within 20 days of such demand. These appraisers will first select a competent and disinterested umpire. If they cannot agree on the selection of an umpire within 15 days, such umpire will be selected by the then current President of the Chartered Institute of Loss Adjusters. The parties will submit their cases to the appraisers and the umpire within 30 days of the appointment of the umpire. A majority of the panel may make an award stating the amount of the covered "loss" along with details and itemization of the elements of the "loss". Each party will be responsible for payment of fees to its chosen appraiser and will share equally other expenses of the appraisal, including the umpire's fees. The appraisal is not binding and neither party will be deemed to have waived any rights by participating in the appraisal.

### B. ASSIGNMENT

You may not assign this policy or any rights you may have under the policy without our prior written consent.

### C. AUTHORIZATION OF THE FIRST NAMED INSURED

You agree that the first named "insured" listed on the Schedule of Insureds is authorized to and does in fact act on behalf of any and all organizations qualifying as "insured(s)" with respect to any rights, duties and obligations they may have under the policy; and any and all such other insureds assign all rights and delegate all duties they may have under the policy to first named insured listed in the Declarations.

### D. CALCULATION OF LOSS

In the event of any covered "loss", you must provide to us a written request for payment as soon as practicable, accompanied by a computation of the "loss" setting forth in detail how the "loss" has been calculated and what assumptions have been made. You must provide to us any documentary evidence, including true copies of your books of account, bills, invoices, vouchers and other relevant documents that we or our representatives (including forensic accountants) may require. You must cooperate and afford our designates every assistance in their investigations, including reasonable access to any premises, personnel and documents we deem necessary for the purpose of the computation of "loss".

We will determine the amount of any "loss", taking into account any savings or recoveries or offsetting or make-up of "loss" which you have made or could reasonably have been expected to make and your ability to resume operations. We will apply standard accounting principles as recognized by the relevant regulatory authorities in your home jurisdiction. If you do business in more than one jurisdiction the relevant accounting principles to be applied will be those of the jurisdiction in which the subsidiary, division or other organizational unit that sustained the "loss" is based.

Limits of insurance, premiums and other amounts as expressed in this policy, and "loss" and "consultant costs" payable under the policy are in U.S. currency. If we pay for "loss" or "consultant costs" calculated in currency other than U.S. currency, the rate of exchange will be based on the published wholesale exchange rate on the date we receive written notice of the "insured event". However, if there is no "insured event", the exchange rate for "consultant costs" will be based on the published wholesale exchange rate on the date the "consultant costs" are first submitted to us in writing.



Whether or not any partial payments have been made, you must submit to us a final written statement of "loss" including all items of "loss" upon request after an "insured event" becomes known to you.

Nothing in the condition will be deemed to amend or supersede the provisions of Condition R. (Notice of Loss).

#### E. CANCELLATION

You may cancel the policy by (a) the surrender of this policy to us or (b) by giving ten (10) days advance written notice to us, stating when thereafter such cancellation will be effective. We may cancel this policy by mailing or delivering to you, at your address stated in the Declarations, written notice stating when, not less than 60 days thereafter, the cancellation will be effective, except in the case of cancellation for non-payment of premium by you, in which case we will provide at least 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 you cancel this policy, we will be entitled to retain or collect 110% of the *pro rata* earned premium, provided that no "loss" has been previously reported to us. However, if any "loss" has been reported to us during the relevant "policy period" and prior to the date of cancellation, we will be entitled to retain 100% of the total policy premium, not adjusted on a *pro rata* basis.

If we cancel this policy, we will be entitled to retain earned premium on a *pro-rata* basis. Payment or tender of any unearned premium by us will not be a condition precedent to the effectiveness of cancellation. Such payment will be made as soon as practicable, but any delay on our part will not extend the policy beyond the original cancellation date.

#### F. CHANGES:

This policy contains all the agreements between you and us concerning this insurance. Notice to any of our representatives or knowledge possessed by any of our representative(s) or by any other person will not constitute or operate as a waiver or a change in any part of the policy or prevent us 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 us in an endorsement annexed to the policy.

#### G. CHOICE OF LAW AND FORUM

The construction, validity and performance and any dispute under this policy will be governed by the laws of the State of New York. You and we hereby expressly agree that any and all disputes regarding any claim or "loss" will be brought and litigated in the State of New York.

#### H. CO-INSURANCE:

You will bear the "co-insurance" amount stated in the Declarations for "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. We 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". "Consultant costs" are not subject to "co-insurance".

#### I. CONCEALMENT, MISREPRESENTATION, NON-DISCLOSURE, OR FRAUD

Without prejudice to our other rights, however arising, this policy will be null and void if any "insured" engages in concealment, misrepresentation, non-disclosure, or fraud with respect to any fact that is material to this insurance or the procurement thereof; the "insured product(s)", the "insured's" interest in the "insured product(s)", any "insured event", or any "loss" or claim under this policy.



J. COOPERATION

You agree to cooperate with us in all matters relating to this policy. This may include, but is not limited to, providing information and documents, 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.

K. DUE DILIGENCE

You agree to exercise due diligence to take all reasonable and practical steps to avoid any happening or circumstances giving rise to an "insured event" and to make all reasonable efforts to mitigate any "loss" occurring as a result of an "insured event".

L. EXCESS INSURANCE

You may purchase other insurance over the Limit of Liability set forth in this policy without prejudice to this policy, provided that we are 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 our liability under this policy.

M. FRAUDULENT CLAIMS

If any material fact concerning a claim, an "insured event" or item of "loss" is in any respect fraudulent or intentionally concealed or misrepresented, this policy will become void and you will not be entitled to any coverage or proceeds.

N. INSPECTION AND AUDIT

We may examine and audit your business documents relating to the subject matter of this insurance until three years after this policy has expired or has been cancelled. Any premium due for exposures which existed but were not reported will be determined through audit by us and you will be liable for such audit premium.

O. LIMITS OF INSURANCE

The Limits of Insurance shown in the Declarations of this policy are the most we will pay for any and all "loss" regardless of the number of "insured events", "insured products" or "insured(s)". All "loss" resulting from and arising from the same, continuous, related or repeated conditions or incidents will be treated as arising out of one "insured event". In no event will any "loss" claimed and paid under one "insured event" be recoverable under any other "insured event". "Consultant costs" are in addition to and not subject to the Limits of Insurance.

P. NEW EXPOSURES AFTER INCEPTION

If, after the inception of this policy, you newly acquire or form, whether by asset acquisition, stock acquisition, consolidation or merger, formation or any other means, an organization whose gross revenues are in excess of 10% of your gross revenues as of the effective date of the acquisition or formation, you must give us written notice within ninety (90) days of such effective date.

We reserve the right, to accept or decline the additional exposure created by the acquisition or formation, at our discretion. If we decline to accept the new exposure, the acquired or formed organization will be covered under this policy only until we notify you in writing that we have declined to accept the new exposure. In the event we agree to insure the new exposure, you agree to pay to us, promptly upon invoice, additional premium as billed. We will calculate the premium due from the date of acquisition or formation on a pro rata basis for the remainder of the policy period.



This insurance does not apply to any "loss" arising out of the newly acquired or formed organization if you, at the time you gave notice us of the acquisition or formation, knew or reasonably could have known of the "insured event" out of which the "loss" arose.

Q. NON-ACCUMULATION OF LIABILITY

Regardless of the number of years this policy may continue in force, and of the number or amount of premiums which may be payable or paid, or of any other circumstances whatsoever, our aggregate liability will not be cumulative from year to year or period to period. When there is more than one "insured", our aggregate Limit of Liability for "loss" sustained by any or all such "insured(s)" will not exceed the amount for which we would be liable if all "loss" were sustained by any one of them.

R. NOTICE OF LOSS:

In the event of discovery of a potential "insured event" that may be covered under the terms of this policy, you must, within 72 hours or as soon as practical, contact the 24-hour hotline described in **First Steps in a Crisis** attached to the policy, and provide written notice to us or any authorized representative we designate, containing particulars sufficient to identify the "insured" and information with respect to the time, place and circumstances of the "insured event" and estimated "loss". **SUCH WRITTEN NOTICE MUST BE PROVIDED AS SOON AS POSSIBLE BUT IN NO EVENT LATER THAN 30 DAYS AFTER DISCOVERY OF THE POTENTIAL "INSURED EVENT"**.

You must promptly take all reasonable steps to minimize any expense or damages involved, cooperate with us and, at our request, assist us 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 you.

S. 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.

T. OTHER INSURANCE

You may purchase other insurance written on the same terms and conditions as this policy provided the "self-insured retention" and "co-insurance" remains uninsured. You agree to co-insure all "loss" where coverage is also provided by such other insurance.

The insurance provided under this policy will be excess of and will not contribute with any insurance policy of any kind providing coverage for "loss" or "consultant costs", covered by this policy, by whatever name called.

U. SALVAGE

Any salvage or other recovery, after expenses incurred in salvage or recovery is deducted, will accrue entirely to our benefit until any sums we have paid 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 you.

Your good will and public image will be considered in determining whether any "insured product(s)" should be involved in salvage recovery. You agree not to unreasonably restrict our right to salvage. You will have full right to the possession of all goods involved in any "insured event" and will retain control of all damaged goods. You may not under any circumstances abandon any property to us.





V. SELF INSURED RETENTION

The self-insured retention stated in the Declarations will apply separately to each and every "insured event". The "self-insured retention" is to be borne by you and remain uninsured. "Consultant costs" are not subject to a self-insured retention.

W. 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 is or may 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 which are in conflict with the statutes or regulations of the state or country in which the policy is issued are amended to conform to such statutes or regulations.

X. SUBROGATION

In the event of any payment under the policy, we will be subrogated to the extent of such payment to all the "insured's" rights of recovery. In such case, you agree to execute all documents required and will do everything necessary to secure and preserve such rights including the execution of such documents necessary to enable us to bring "suit" in your the name.

Y. SUITS, ACTIONS OR PROCEEDINGS AGAINST US

No "suit", action, or proceeding 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 are commenced within 24 months after a final statement of "loss" has been submitted to us by you.

Z. 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.

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