



Restaurant Contamination Insurance

Form SJCRestPCI-112009

Restaurant Contamination Insurance

Policy

IMPORTANT NOTICE TO THE PROPOSER

To apply for Restaurant Contamination Insurance coverage, please fully complete the following Proposal Form. If there is insufficient space to provide answers, additional information should be provided on the Proposer's letter headed paper.

If the Proposer is aware of any material facts that may affect the Insurer's decision in providing this insurance, please disclose them to your broker.

If you are in any doubt as to what to tell Insurers, tell them anyway. Not doing so, may affect how they settle claims under the policy, or may render any policy issued invalid.

Upon receipt of your completed Proposal Form your broker will submit the details to the Insurer for approval. Once approved, and upon receipt of the premium, taxes and fees, a Policy will be issued to your broker. Insurance coverage will not commence until your proposal has been accepted by the Insurer.

Similar to other professional insurances the Restaurant Contamination Insurance Policy, is underwritten on what is known as a '*claims made basis*'.

This means that the policy will only provide cover for claims or circumstances discovered and notified to the Insurer during the period of insurance.

The nature and type of insurance cover offered can vary from policy to policy and insurer to insurer therefore, it is important to ensure that you have the cover that is right for you.

If you have any questions about this type of insurance, would like to see a specimen of the full policy terms and conditions, or would like further advice about completing the Proposal or any other related matter, please contact your broker.

Policy

Restaurant Contamination Insurance

- 1 Insured** As on file with the company

- 2 Address of the Insured** As on file with the company

- 3 Policy Period:** From: _____ To: _____ Both days at 12.01 am Local Standard Time at the principle place of business of the Insured as stated under 2. above

- 4 Limits of Liability**

Section 1.1- Accidental Contamination:
 _____ Each Insured Event and in the aggregate

Section 1.2 – Malicious Contamination:
 _____ Each Insured Event and in the aggregate

Section 1.3 – Products Extortion:
 _____ Each Insured Event and in the aggregate

Section 1.4 – Adverse Publicity
 25% of the limit in Section 1.1 Each Insured Event and in the aggregate

Policy aggregate:
 _____ overall aggregate irrespective of the number of Insured Events and

- 5 Self Insured Retention**

5.1 Section 1.1 and 1.4 _____ per Insured Event

5.2 Section 1.2 _____ per Insured Event

5.3 Section 1.3 _____ per Insured Event

No Self Insured Retention applies to any Consultant fees.

- 6 Co-insurance** NIL

- 7 Premium:**

- 8 Policy Territory** World-wide

- 9 Insured's Products** All retail restaurant offerings served during the policy period at any time at any of the Insured's owned or franchised restaurants in the manner prescribed in the Application form signed and dated -- / -- / ---- and held on file with the Insurer.

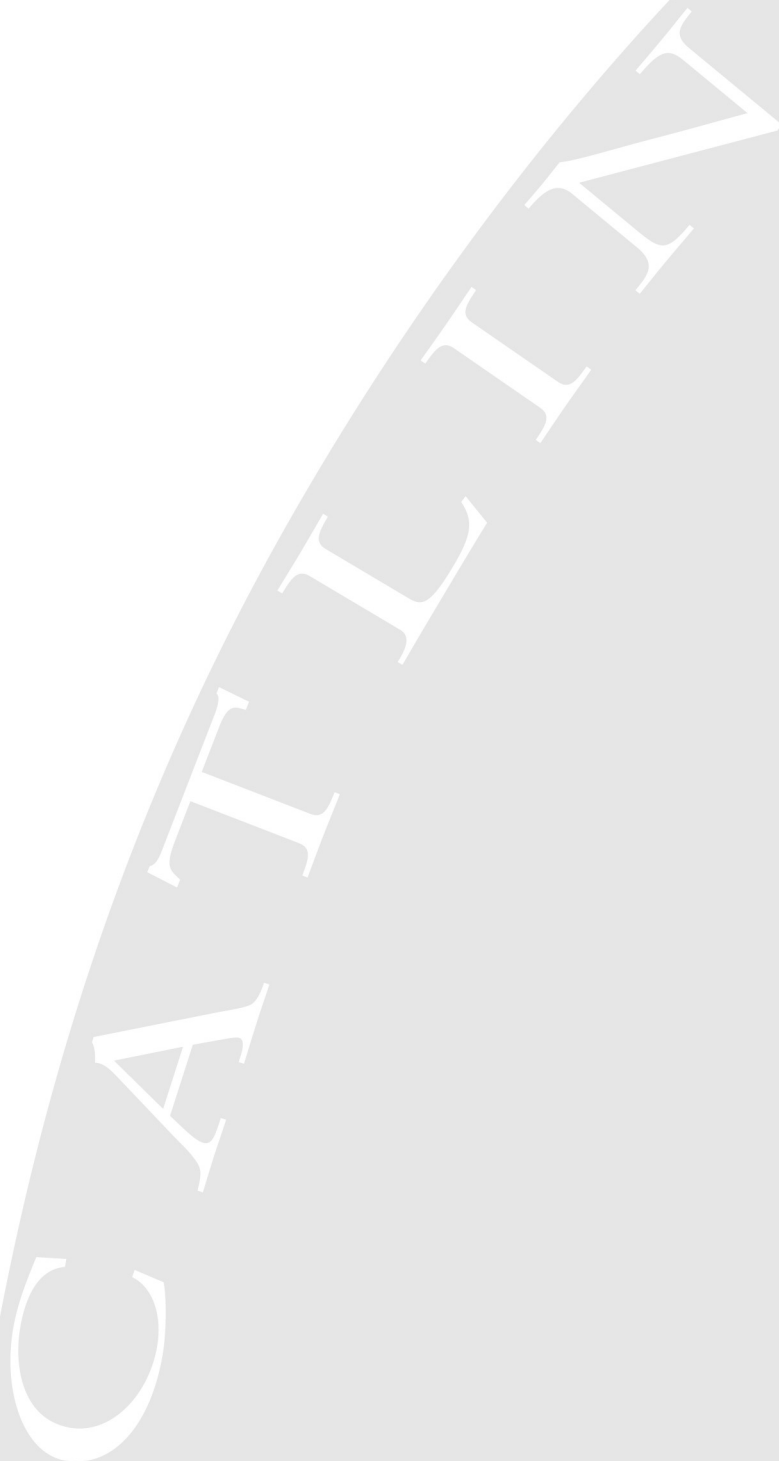
- 10 Recall Costs** Sub-limited to 25% of the limit in Section 1.1

- 11 Rehabilitation Expenses** Sub-limited to 25% of the limit in Section 1.1
- 12 Law** New York
- 13 Jurisdiction:** As per NMA 1998 as attached

Any sub limit stated above does not increase the Limit of Liability as stated in section 4

Endorsements Effective Inception and Forming Part of the Policy:

SJCPCICrisis112009 - What to do in a Crisis?
LMA3333 – (Re)insurers liability clause
SJCSRCC – Short Rate Cancellation Table
SJC 45 day



Restaurant Contamination Insurance

In consideration of the premium paid and in reliance on the warranties and representations made by the Insured in the application for this insurance, which is incorporated into and forms a part of this insurance, Syndicate 2003, S.J. Catlin and others, per Catlin Underwriting Agencies Limited, herein called the Insurer agrees as follows:-

1 INSURED EVENTS

The *Insurer* will reimburse the *Insured* for its Loss in excess of the Self Insured Retention, but not exceeding the limits of liability stated in the Schedule, caused by or resulting from any of the following *Insured Events* first discovered during the Policy Period and reported to the *Insurer*, in accordance with 6.21 Notice of Loss, during the Policy Period or up to thirty (30) days after expiry, provided that as of inception of this insurance the Insured were not aware and could not reasonably have been aware of circumstances which could produce a Loss under this insurance.

1.1 ACCIDENTAL CONTAMINATION

Any accidental or unintentional contamination, impairment or mislabelling of an *Insured Product(s)*, including any subsequent *Adverse Publicity*, which occurs during or as a result of its production, preparation, manufacture, packaging or distribution; provided that the use or consumption of such *Insured Product(s)*:

- a. has resulted in or would result in clear, identifiable, internal or external visible physical symptoms of bodily injury, sickness, disease or death of any person(s), within ninety (90) days following such consumption or use, or
- b. has caused or would cause physical damage to (or destruction of) tangible property.

1.2 MALICIOUS TAMPERING

Any actual, alleged or threatened, intentional, malicious, and wrongful alteration or contamination of the *Insured's Product(s)*, whether or not by an employee of the *Insured*, so as to render it unfit or dangerous for its intended use or consumption or to create such impression to the public.

1.3 PRODUCT EXTORTION

Any threat or connected series of threats to commit a *Malicious Tampering*, for the purpose of demanding *Ransom Monies*, communicated to the *Insured*.

1.4 ADVERSE PUBLICITY

Any *Adverse Publicity* specifically naming an Insured's Product(s) where the said *Adverse Publicity* is subsequently found to be baseless and where no *Adverse Publicity* claim is being made under sections 1.1, 1.2 or 1.3

2 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 a covered *Insured Event* at any insured *location* and subject to the limits of liability of each *Insured Event*. Except as otherwise provided with respect to *Business Interruption* and *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*.

2.1 PRE-RECALL EXPENSES:-

- i) Fees and expenses for Security Exchange Ltd, RQA Inc., Global Quality Consultants and Fleishman Hillard in responding to an *Insured Event* before recall and / or withdrawal is initiated. The Self Insured Retention will not apply to Security Exchange Ltd and RQA Inc. and Global Quality Consultants and Fleishman Hillard in responding to an *Insured Event* before recall and / or withdrawal is initiated;
- ii) Chemical analysis and / or physical examination in order to ascertain whether the *Insured Products* have been contaminated and / or to ascertain the potential effect of *Malicious Tampering, Accidental Contamination or Products Extortion*.

2.2 RECALL COSTS

The Sub-limit of liability for all such *Recall Costs* will be the amount stated in Item 10 of the Schedule. This does not increase the Limit of Liability as stated in the Schedule nor impose any additional Self Insured Retention on the *Insured*.

2.3 BUSINESS INTERRUPTION

Loss of *Gross Revenue* and *Extra Expense*.

2.4 REHABILITATION EXPENSE

Reasonable and necessary expenses actually incurred directly by the *Insured* as a direct result of an *Insured Event* to re-establish the Insured's Product(s) to the reasonably projected level of sales or market share anticipated prior to the *Insured Event*. Rehabilitation Expense is limited to expenses incurred within six (6) months after the *Insured Event* first became known to the *Insured*.

The Sub-limit of liability for all such *Rehabilitation Expense* will be the amount stated in Item 11 of the Schedule. This does not increase the Limit of Liability as stated in the Schedule nor impose any additional Self Insured Retention on the *Insured*.

2.5 CONSULTANT AND ADVISOR COSTS

Fees and costs of Security Exchange Ltd. or its subsidiaries; RQA Inc. and/or Global Quality Consultants, and/or Fleishman Hillard; and or other independent security or public relations consultants or advisors hired to assist the Insured in responding to an *Insured Event*, provided that the Insurer has given its prior consent to the use of such independent companies. This section has no maximum limit. The stated policy Self Insured Retention will not apply to these expenses.

2.6 EXTORTION COSTS

Extortion Costs paid in response to a demand made upon the *Insured* under threat to commit a *Malicious Tampering*.

3 DEFINITIONS

3.1 EXTORTION COSTS

- (i) *Ransom Monies* paid by the *Insured* as a direct result of a *Product Extortion* discovered during the Policy Period.
- (ii) In transit/delivery loss due to the destruction, disappearance, confiscation or wrongful appropriation of *Ransom 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 insured hereunder.

- (iii) Extortion expenses, which include any expenses incurred and paid by the Insured solely as a direct result of a Product Extortion provided that such *Product Extortion* is insured hereunder, including but not limited to:
- a. the amount paid by the *Insured* as a *Reward* to an *Informant* for information relevant to an *Insured Event*;
 - b. interest costs for a loan from a financial institution made to the *Insured* for the purpose of paying *Ransom Monies*;
 - c. costs of travel and accommodations incurred by or on behalf of the *Insured* while attempting to negotiate a *Product Extortion*;
 - d. medical services and hospitalisation costs incurred by any person(s) directly involved in the handling or negotiating of a *Product Extortion* and/or the handling of *Ransom Monies*, and paid by the *Insured* as the direct result of a *Product Extortion* within thirty six (36) months following the last credible 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;
 - e. fees and expenses of independent forensic analysts engaged by the *Insured*;
 - f. fees and expenses of a qualified interpreter assisting the *Insured* in connection with a *Product Extortion*;
 - g. 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 ninety (90) days, provided however that Security Exchange Ltd. or other specialist consultant approved by the Insurer in writing has specifically recommended such security measures.

3.2 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 incident 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 incident occurred. This may include but is not limited to the following:

- (i) The *Extra Expense* necessary to clean the machinery or location involved in the contamination or handling of the contaminated product in order to recreate an environment in which safe products can be manufactured or handled.
- (ii) The *Extra Expense* that may be required to maintain the salaries of the workforce to the extent required by statute or union or other work contract for a maximum period of 6 months. The cost 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 HSE or Health Authority or other national or local governmental organisation or body.
- (iii) 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 manufactured or handled safely.

3.3 INFORMANT means any person, other than an *Insured* person(s), providing information not otherwise obtainable, in return for a *Reward* offered by the *Insured*.

3.4 INSURED means the sole proprietorship, partnership, or corporation stated in Item 1 of the Schedule.

3.5 INSURED EVENT: as per Section 1 and as defined in the Schedule under Section 1.1, 1.2 and 1.3.

3.6 INSURER means Syndicate 2003, S.J. Catlin and others, per Catlin Underwriting Agencies Limited.

3.7 INSURED PRODUCT(S) means

- (i) **All ingestible products for human consumption**, or any of their ingredients or components, that have been reported to the Insurer on the application on file with the *Insurer* for the effective dates of this policy or by addendum to such application and that are:
 - a. in production; or
 - b. have been manufactured, handled or distributed by the *Insured*; or
 - c. manufactured by any contract manufacturer for the *Insured*; or
 - d. are being prepared for or are available for sale.
- (ii) Any product sold, distributed, or manufactured by a Franchisee under legal agreement of the Insured at the time of Loss

3.8 LOSS OF GROSS REVENUE means:

- a) the *Insured's* sales revenue as could have been reasonably projected immediately prior to the happening of an *Insured Event*, but which has been lost during a period not exceeding 12 months from the date of an *Insured Event* solely and directly as a result of that *Insured Event*, LESS
- b) the variable costs that would have been incurred during the same period, but which have been saved as a result of not making those sales (including the cost of raw materials, and all other saved costs).

If during such period the *Loss of Gross Revenue* 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.

Any loss of Gross Revenue shall be computed in accordance with clause 3.13 *Computation of Loss* below.

3.9 RANSOM MONIES means any monies which the Insured has paid or lost in transit under circumstances described in *Insured Event* 1.3. The term monies – as used herein – includes cash, monetary instruments, bullion, or the fair market value of any securities, property or services.

3.10 RECALL COSTS means any reasonable and necessary costs incurred by the Insured to inspect, withdraw, destroy or replace such affected *Insured Product(s)*. *Recall Costs* also include but are not limited to:

- (i) The cost of newspaper, magazine or any printed advertising, radio and television announcements or commercials, as well as the cost of correspondence, necessary to effect the recall.
- (ii) Essential transportation and accommodation costs directly attributable to the recall.
- (iii) 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)*.
- (iv) Overtime paid to regular employees of the Insured for work devoted exclusively to the recall.
- (v) The necessary out-of-pocket expenses of personnel under paragraphs (iii) and (iv) above, including transportation, incurred exclusively for the purpose of such recall.
- (vi) Expense of renting or hiring additional warehouse or storage space for the recall for a maximum period of twelve (12) months.

- (vii) Expense incurred in properly disposing of the unused packaging and point of purchase marketing material of recalled product if it cannot be used or reused.
- (viii) Inspection costs including the costs of chemical analysis or other such efforts to identify the cause(s) or potential effect of contamination.
- (ix) The actual cost of redistributing any recalled or restored product(s).
- (x) Cancellation fees for any advertising and/or promotion programs, which were scheduled but were unable to be executed solely because of an *Insured Event*.
- (xi) The cost of restoring the *Insured Product(s)* to merchantable quality or replacing any recalled *Insured Product(s)* that have been destroyed, are unsellable or are unfit for its original use, with product(s) of similar value.

3.11 REWARD means monies offered for information in an effort to mitigate the *Loss*.

3.12 SUB-LIMIT means the maximum amount the *Insured* can collect under a specified section of the Policy.

3.13 COMPUTATION OF LOSS.

- a) In the event of any insured losses, detailed claims for payment by the *Insurer* shall be made by the *Insured* 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* shall produce any documentary evidence, books of account, bills, invoices and other vouchers and copies of the same which *Insurer* or their representatives, including forensic accountants, may require, and the *Insured* shall afford them every assistance in their investigations including reasonable access to the *Insured* premises, personnel and necessary documents for the purpose of the computation of loss.
- b) The *Insurer* shall determine the amount of any insured losses, taking into account any savings or recoveries or offsetting or make-up of losses which have been made or which the *Insured* could reasonably have been expected to make, and the ability of the *Insured* to resume operations.
- c) Loss of *Gross Revenue* shall be assessed by the *Insurer* based on an analysis of the restaurant sales of affected *Insured Products*, and other *Insured Products* which lost sales as a direct result of the *Insured Event*, during each month of the twelve months prior to the *Insured Event*, and taking into account:-
 - i) the reasonable projection of the future profitability of such product(s) had no *Insured Event* occurred, and
 - ii) all material changes in market conditions of any nature whatsoever which would have affected the future marketing of and profits generated by the *Insured Products* or other affected *Insured Products*.
- d) In determining the amount of any insured losses *Insurers* shall apply standard accounting principles as recognised 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.
- e) Where insured losses 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*.

- f) 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 Revenue* must be submitted to the *Insurer* 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 Revenue* must be submitted no later than twenty four (24) months after the beginning of a reduction in sales of the *Insured Product(s)* caused by an *Insured Event*.

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

- 3.14 FRANCHISEE means an entity legally authorised by the Insured to act as a distributor to market the insureds products.
- 3.15 LOCATION shall mean the place or places of business of the Insured or Franchisee as reported to the Insurer on the application on file with the Insurer for the effective dates of this policy, or by addendum to such application, and where such locations Loss of Gross Profit is negatively impacted directly and solely as a result of an Insured Event.
- 3.16 REHABILITATION EXPENSE means the reasonable and necessary expenses incurred directly by the Insured as a direct result of an Insured Event to re-establish the Insured's Product(s) to the reasonably projected level of sales or market share anticipated prior to the Insured Event. Rehabilitation Expense is limited to expenses incurred within six (6) months after the Insured Event first became known to the Insured.
- 3.17 ADVERSE PUBLICITY means the reporting of an actual or alleged Accidental Contamination during the policy period in local, regional or national media (including but not limited to radio, television, newspaper, magazines or the Internet) or any governmental publication provided that the *Insured Product(s)* is specifically named.
- 3.18 CORPORATE ACT OF THE INSURED means any deliberate activity including but not limited to any dishonest, wilful, illegal, fraudulent, criminal or malicious act, which has been expressly or impliedly approved, condoned, ratified or endorsed by any two or more members of the *Insured's Management* and which results directly or indirectly in an Insured Event or Loss.
- (a) For the purpose of any activity which constitutes a *Corporate Act of the Insured*, *Insured's Management* means the *Insured's* past or present Chairman, Chief Executive Officer, President, Managing Director, any executive or non-executive Director of the Insured and any person who holds or has held an equivalent position or who has or had authority to make decisions about the operation or management of the *Insured's* business on behalf of the *Insured*.
- (b) For the purpose of any other reference to the *Insured's Management* herein, *Insured's Management* means in addition to those named in Definition (a) above any Department or Division of the *Insured* which shall include but not be limited to, any legal, compliance, risk management, internal audit or insurance Department or Division.
- 3.19 TERRORISM means an act of actual, alleged or threatened, intentional, malicious and wrongful alteration or contamination of any product(s), not limited to *Insured Product(s)*.

4 EXCLUSIONS

The Policy does not apply to any loss arising out of, based upon, attributable to or consisting of, directly or indirectly:

- 4.1. Any *Accidental Contamination* or *Malicious Tampering* of a product of a competitor which is similar to an *Insured Product(s)*.
- 4.2. Any *Accidental Contamination* involving gradual deterioration, decomposition, or transformation of the chemical structure of the *Insured Product(s)* unless such deterioration, decomposition, or transformation is a result of a sudden, identifiable event occurring at a specific time and location during the period of insurance or was not likely to have been discovered by the insured following its standard operating procedures.
- 4.3. Changes in population, customer tastes, economic conditions, seasonal sales variations, or competitive environment.
- 4.4. Any *Corporate Act of the Insured*;
- 4.5. Any injury, damage, or claim made by a third party arising out of or in connection with the use or consumption of the *Insured Product(s)*. This includes any defence costs related to a third party lawsuit.
- 4.6. Intentional violation by the Insured of any governmental regulation in connection with the manufacture, sale, or distribution of any *Insured Product(s)* or from the use of materials or substances in the manufacturing process which have been banned or declared unsafe by any governmental entity.
- 4.7. 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.
- 4.8. Any 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.
- 4.9. Costs or expenses of any litigation or any proceedings before any governmental body as a result of an *Insured Event* or otherwise.
- 4.10. Failure by any consumer of the product other than the *Insured* to adhere to procedures prescribed by the *Insured* regarding the storage, consumption, or use of an *Insured Product(s)*. This exclusion only applies to *Insured Event 1.1 - Accidental Contamination*.

4.11 Any *Accidental Contamination* arising out of:

- (i) Bioengineering, genetic engineering or genetic modification of any *Insured Product(s)*; or
- (ii) Hormone treatment of any *Insured Product(s)*; or
- (iii) Irradiation of any *Insured Product(s)*; or
- (iv) Transmissible Spongiform Encephalopathies (TSE)

4.12 Any *Accidental Contamination* arising out of an *Insured Product* containing a carcinogen, regardless of whether such carcinogens are shown to have other non-carcinogenic effects. This exclusion shall not apply where the *Insured* can prove that such substance was not part of the *Insured Product* at the point where it was supplied to the restaurant.

4.13 Any *Accidental Contamination* that occurs after the *Insured* has actual or constructive knowledge of a defect or deviation in the production, preparation or manufacture of *Insured Product(s)*, or circumstance(s) which have or are likely to result in such deviation or defect, and fails to take reasonable corrective action.

4.14 Any *Loss* arising out of a change in governmental regulations or public perceptions with respect to the safety of any *Insured Product(s)* or intended ingredients. This exclusion applies to *Accidental Contamination* only.

4.15 Notwithstanding any provision in this Policy, this Policy does not insure against:

- (i) *Loss* to land (including land on which property is located), water, growing crops or lawns, or;
- (ii) Crop failure due to weather, pest or other cause.
- (iii) Contamination of livestock.

4.16 Any costs associated with the expense to design or redesign, engineer or re-engineer any product.

4.17 An event, series of events or circumstance(s) of which an employee, officer or director of the *Insured* had actual or constructive knowledge prior to the policy inception date.

4.18 An actual or alleged act of *Terrorism*. This exclusion shall not apply where the *Insured* or an *Insured Product* is the direct target of the act or alleged act of *Terrorism*.

4.19 Fines or penalties imposed by third parties or governmental organisations/agencies.

4.20 Any *Accidental Contamination* that occurs where the *Insured* is or ought to be aware that the *Insured* or franchisee is in violation of the corporate mandated food handling or food procurement procedures and has not taken action to rectify the violation.

4.21 Any *Accidental Contamination* that occurs at a location where at the time of the insured event no person or individual at the insured location holds a recognized current Food Safety Certification where required by law or similar corporate supplied food safety training.

4.22 Any expenses or costs incurred by the Franchisee of the insured as a result of an Insured Event

4.23 Any loss caused directly or indirectly, in whole or in part, by:

1. Any form of *Avian Influenza Viruses*; or
2. Any actual, threatened, predicted or perceived outbreak of *Avian Influenza Viruses*; or
3. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with *Avian Influenza Viruses*; or
4. Any measures or actions undertaken, directed and/or recommended by any governmental or regulatory authority, or any other entity or natural person, with respect to *Avian Influenza Viruses*

regardless of any other cause, event, material or product that contributed concurrently or in any sequence to or was accelerated by or results from the loss, injury, cost, damage, claim, expense, dispute and/or suit.

For the purposes of this exclusion, the term *Avian Influenza Viruses* includes:

1. All avian flu or bird influenza viruses including any other nomenclature, scientific (e.g. AH5N1, AH5N2, AH7N1, A H9N2) or otherwise (e.g. "bird flu") devised or used to describe the viruses regardless of any genetic features or differences, subtype or strain, and whether or not partnered with any neuraminidase surface proteins; and any progression, mutation or recombination thereof, including but not limited to progression, mutation or recombination of any subtype or strain, and/or any changes in the antigenic composition thereof.
2. Any complications, infections, illnesses, or secondary or opportunistic diseases related to, or initiating because of, or occurring in conjunction with, or following *Avian Influenza Viruses*

4.24 *Adverse Publicity* generated by any of the *Insured's* directors, officers or trustees.

PREMIUM PAYMENT TERMS

The Insured undertakes that premium will be paid in full to the *Insurer* within sixty (60) days of inception of this policy (or, in respect of instalment premiums, when due).

If the premium due under this policy has not been so paid to *Insurers* by the sixtieth (60th) day from the inception of this policy (and, in respect of instalment premiums, by the date they are due) *Insurers* shall have the right to cancel this policy by notifying the Insured via the broker in writing. In the event of cancellation, premium is due to *Insurers* on a pro rata basis for the period that *Insurers* are on risk but the full policy premium shall be payable to *Insurers* in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this policy.

It is agreed that *Insurers* shall give not less than fifteen (15) days prior notice of cancellation to the Insured via the broker. If premium due is paid in full to *Insurers* before the notice period expires, notice of cancellation shall automatically be revoked. If not, the policy shall automatically terminate at the end of the notice period.

Unless otherwise agreed, the lead *Insurer* (and Agreement Parties if appropriate) are authorised to exercise rights under this clause on their own behalf and on behalf of all *Insurers* participating in this contract.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect. Where the premium is to be paid through a London Market Bureau, payment to *Insurers* will be deemed to occur on the day of delivery of a premium advice note to the Bureau.

6 GENERAL CONDITIONS

6.1 ACTION AGAINST THE INSURER: No suit, action, or proceedings for recovery of any claim 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 the same be commenced within twenty four (24) months after a final statement of loss has been submitted to the *Insurer* by the *Insured*.

6.2 ADDITIONAL EXPOSURES: The *Insured* will give the *Insurer* written notice as soon as practicable or permissible of any

(i) consolidation or merger with, or

(ii) acquisition of the majority stock ownership of, or

(iii) 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.

Additional exposure such as is otherwise covered by this policy resulting from any of the above will be covered automatically from the date of consolidation, merger or acquisition, as the case may be, but only until

- a) the *Insurer* notifies the *Insured* in writing of his election to reject such additional exposure
- b) the *Insured* and the *Insurer* agree new terms and conditions for the permanent cover of the additional exposure or
- c) 90 calendar days have elapsed

whichever occurs first.

No claim arising out of the additional exposure will be covered unless the *Insured*, 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 claim.

6.4 ASSISTANCE AND CO-OPERATION: The *Insured* will cooperate with the *Insurer* in all matters relating to this Insurance. 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.

6.5 AUTHORISATION CLAUSE: By acceptance of this policy, the first *Insured* listed on the Schedule agrees to act on behalf of all other *Insureds* with respect to the giving and receiving of any return premiums that may become due under this policy, the acceptance of endorsements, and the giving or receiving of any other notice provided for in this policy; and all other *Insureds* agree that the first *Insured* listed on the Schedule will act on their behalf.

6.6 CALCULATION OF THE AMOUNT PAYABLE UNDER A SUB-LIMIT: Any amount payable for *Loss* under the *Sub-limit* pertaining to Section 2.3 of this policy will be calculated as follows:

First the apportioned Self Insured Retention as calculated under General Conditions 6.13 will be subtracted from the applicable section of loss. Second, the applicable coinsurance will be applied to the balance. The amount payable thereafter will be the lesser of either the *Sub-limit* or the product of the coinsurance and the balance. No amount of loss will be paid in excess of the *Sub-limit*.

6.7 CANCELLATION: This policy may be cancelled by the *Insured* 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 Item 1 of the Schedule, written notice stating when, not less than one hundred and twenty (120) 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 fifteen (15) 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 the short rate portion of the premium hereon. 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.

6.8 CHANGES: Notice to any representative of the *Insurer* or knowledge possessed by any representative or by any person will not effect a waiver or a change in any part of the policy or stop 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 an authorized representative of the *Insurer*.

6.9 CHOICE OF LAW AND FORUM: The construction, validity and performance of this policy will be governed by the laws of the country or state specified for the purpose in the Schedule. The *Insurer* and the *Insured* hereby expressly agree that all claims and disputes will be litigated in the court or courts specified for the purpose in item 12 of the Schedule.

6.10 COINSURANCE: The *Insured* will bear the Coinsurance amount stated in Item 6 of the Schedule of each covered *Loss* in excess of and in addition to the Self Insured Retention under *Insured Event 1.1, Accidental Contamination*. The Coinsurance amount will be calculated by multiplying the covered *Loss* in excess of the Self Insured Retention by the Coinsurance amount. The *Insurer* will pay covered *Loss* in excess of the Self Insured Retention subject to the Limit of Liability stated in Item 3 of the Schedule after deduction of the Coinsurance amount from the covered *Loss*.

6.11 CONCEALMENT, MISREPRESENTATION, NON-DISCLOSURE, OR FRAUD: Without prejudice to the *Insurer's* other rights, howsoever arising, this policy is null and void in case of concealment, misrepresentation, non-disclosure, or fraud by any *Insured* of a material fact concerning:

1. this insurance or the procurement thereof; or
2. the *Insured Product(s)*, or the *Insured's* interest in the *Insured Product(s)*; or
3. any *Insured Event*, or any *Loss* or claim under this policy.

6.12 CONFIDENTIALITY: The *Insured* will not disclose the existence of this policy to any person or party whether within or outside the *Insured* except insofar as is required in order to comply with the terms of the policy or by law.

6.13 SELF INSURED RETENTION: The Self Insured Retention(s) stated in Item 5 of the Schedule will apply separately to each and every *Loss*. The Self Insured Retention(s) is to be borne by the *Insured* and remain uninsured. A portion of the Self Insured Retention will apply to the section of *Loss* limited by a *Sub-limit* calculated as follows:

1. The portion of the Self Insured Retention 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 section 1.1, 1.2 and 1.3 of the policy, multiplied by the Self Insured Retention.

- 6.14 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*.
- 6.15 EXAMINATION UNDER OATH: The *Insured*, as often as may be reasonably be required, shall exhibit to any person designated by the *Insurer* all affected *Insured Product(s)* whether salvageable or otherwise, and shall submit to examinations under oath by any person named by the *Insurer*, 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 *Insured's* calculation of its *Loss*, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the *Insurer* or its representative, and shall permit extracts and copies thereof to be made.
- 6.16 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.
- 6.17 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*.
- 6.18 LIMITS OF LIABILITY: The *Insurer's* liability hereunder will be limited to the amounts stated in Item 3 of the Schedule.
- 6.19 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.
- 6.20 NON-ASSIGNMENT: This policy may not be assigned or transferred without the written consent of the *Insurer*
- 6.21 NOTICE OF LOSS: It is a condition precedent to recovery under the policy that upon discovery of a potential or actual event or incident which may give rise to an *Insured Event* or any claim for a *payment* the *insured* shall:
- (i) firstly, give oral notice within 24 hours to the *Insurer* by contacting the Emergency Exchange 24-hour Crisis Line (**as per notification procedures attached**); and
 - (ii) having given immediate oral notice under (i), determine whether an *Insured Event* has actually occurred; and
 - (iii) upon determination that an *Insured Event* has actually occurred under (ii) provide written notice to the *Insurer* (**as per notification procedures attached**) within 48 hours of a director or officer of the *Insured* becoming aware of an *Insured Event* with periodic and timely updates concurrent with activity occurring during the incident; and

(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 governmental agencies having jurisdiction over the matter.

6.22 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 Schedule.

6.23 OTHER INSURANCE: The *Insured* may purchase other insurance written on the same terms and conditions as this policy provided the Self Insured Retention and Coinsurance as described in Sections 6.10 and 6.13 herein remains uninsured. The insurance provided under this policy will be primary in all instances except where a Kidnap and Ransom/Extortion policy issued by a NON-Syndicate 2003, SJC company exists. The insurance will co-insure all losses where coverage is also provided by such Kidnap and Ransom/Extortion policy.

6.24 SALVAGE: Any salvage or other recovery, after expenses incurred in salvage or recovery are 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*.

6.25 SEVERABILITY, CONSTRUCTION AND CONFORMANCE TO STATUTE:

- (i) 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.
- (ii) 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.
- (iii) 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.

6.26 TERRITORY: This Policy applies to an *Insured Event* anywhere in the world unless specifically limited by the *Insurer* through endorsement or where prohibited by applicable Law.

6.27 VALUATION CLAUSE: In determining the amount of *Gross Revenue*, *Extra Expense* and other insured loss, such adjustments shall be made as may be necessary to provide for the trend of the business and for variations in or special circumstances affecting the business either before or after the *Insured Event* 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 period after the *Insured Event* during which the business has been affected.

6.28 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*.

6.29 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.

6.30 COMPLAINTS: We are dedicated to providing a high quality service and we want to ensure that we maintain this at all times. If you feel that we have not offered a first class service or if you have any questions or concerns about the policy or the handling of a claim you should, in the first instance, contact your broker through whom this insurance was placed.

If you are unable to resolve the situation and wish to make a complaint you can do so at any time by referring the matter to the Complaints Department at Lloyd's.

Their address is:
Complaints Department
Lloyd's
One Lime Street
London
EC3M 7HA
Tel No: 020 7327 5693
Fax No: 020 7327 5225
E-mail: Complaints@Lloyds.com

Complaints that cannot be resolved by the Complaints Department may be referred to the Financial Ombudsman Service. Further details will be provided at the appropriate stage of the complaints process.