First Party Recall Insurance

Form SJC112009FPR

CATLIN

Policy

First Party Recall Insurance

Policy Number:

Insured:

Address:

Period of Insurance:

From: **To:**

Both days at 12.01 am Local Standard Time at the Insured s address as above stated.

Limits of Liability:
Section 1.1 Accidental Ommission, **Section 1.2** Accidental Introduction
Section 1.3 Manufacturing Error and **Section 1.4** Malicious Tampering

USD Each Insured Event and in the aggregate for the policy period

Consultants Costs:	Unlimited
Recall costs	USD Each Insured Event and in the aggregate. This sub-limit does not increase the limit of liability per Insured Event.

Deductible:

Section 1.1	USD per Insured Event
Section 1.2	USD per Insured Event
Section 1.3	USD per Insured Event
Section 1.4	USD per Insured Event

No Self-Insured Retention applies to any Consultants Costs.

CATLIN

Co-Insurance: %

Policy Territory: World-wide

Specified Insured Product(s): As per Application form signed and dated and held on file with the Insurers.

Endorsements Effective Inception and Forming Part of the Policy:
SJCPCICrisis0308 - What to do in a Crisis?
SJCComplaints - Complaints Notice (Lloyd's)
LSW0585 (60 days)
LMA3333 – (Re)insurers liability clause
SJC 45 day

Premium:

Effected Through:

Law and Jurisdiction of the Policy:
Law: **Jurisdiction:**

CATLIN

First Party Recall Insurance

Policy

In consideration of the premium paid and in reliance on the representations made by the Insured in the Application for this insurance, which is incorporated into and forms a part of this insurance, the Insurer agrees as follows:-

1 Insured Events

The Insurer will reimburse the Insured for its Loss in excess of the deductible, 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 during the Policy Period and reported to the Insurers in accordance with Condition 5.20 Notice of a Claim, provided that as of inception of this insurance the Insured was not aware and could not reasonably have been aware of circumstances which could produce a Loss under this insurance.

1.1 Accidental Omission

Accidental omission of a component or substance in the manufacture of the Insured Product(s).

1.2 Accidental Introduction

Accidental introduction or accidental substitution of a component or substance during the manufacture of the Insured Product(s).

1.3 Manufacturing Error

Error by the Insured in the design, manufacture, packaging, blending, mixing, labelling or storage of the Insured Product(s).

1.4 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.

For the purposes of this clause 1.4 and any applicable exclusions malicious means circumstances where there is clear evidence that the person committing the act or threat to alter or contaminate the Insured Product has an intention to cause loss or damage to the Insured or Insured Products or where a person uses any such Insured Products as a means to attempt to or to cause bodily injury or property damage.

Provided that the use of the Insured Product(s) has resulted in or would result in Bodily Injury or property damage to the property of others caused by or because of 1.1, 1.2, 1.3, or 1.4 above.

2 Loss

Loss under this Policy includes only the following reasonable and necessary expenses or costs incurred by the Insured directly and solely in connection with a covered Insured Event and subject to the Limits of Liability stated in the Schedule. Loss is limited to expenses or costs incurred within twelve (12) months of the Insured Event first becoming 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

Chemical analysis and/or physical examination in order to ascertain whether the Insured Product(s) has been contaminated and/or to ascertain the potential effect of Accidental Omission, Accidental Introduction, Manufacturing Error or Malicious Tampering.

2.2 Recall Costs
Recall Costs

2.3 Consultants' Costs
The reasonable and necessary fees and costs of Security Exchange Ltd. or its subsidiaries; RQA Inc. 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. These expenses have no maximum limit. The stated policy deductible will not apply to these expenses. Consultants' Costs shall not include any costs more specifically described in 2.1 and 2.2 above.

3 Definitions

As used in this policy:

3.1 Bodily Injury means
bodily injury, sickness or disease sustained by a person within 120 days of use, including death resulting from any of the foregoing at any time. Bodily injury does not include emotional distress or mental anguish unless due to physical injury, sickness or disease.

3.2 Bodily Injury means
the first date the Insured has communicated that an Insured Product(s) should be withdrawn from any points of distribution or sale, where such withdrawal is directly caused by an Insured Event.

3.3 Insured means
the sole proprietorship, partnership, or corporation stated in the Schedule.

3.4 Insured event means
any of the events described in clauses 1.1,1.2,1.3, or 1.4.

3.5 Insured Product(s) means

(i) All finished goods or product(s) that have been reported to the Insurer on the Application on file with the Insurer or by addendum to such Application and that have been:

a. manufactured, packaged or distributed by the Insured or
b. manufactured by a contract manufacturer for the Insured or
c. sold or marketed by the Insured,

physical possession of which has been transferred by the Insured to others during the Policy Period or no more than twelve (12) months prior to the inception date of this Policy.

(ii) Any new product(s) separate and distinct from the existing product lines(s) provided that:

a. written notice is given to the Insurer not less than ninety (90) days prior to its introduction for sale and
b. the Insured did not know nor could reasonably have been expected to know as of the date of the written notice to the Insurer that an Insured Event affecting the new product(s) had occurred and
c. the Insurer has given written acceptance of such new product(s). Such acceptance will be given or refused within sixty (60) days of receipt of the written notice (referred to in (ii) a. above). At the Insurer's option, such acceptance may be accompanied by changes in one or more of the terms, conditions or premium of the Policy.

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

3.7 Recall means
withdrawal from the stream of commerce of the Insured Product(s) no longer in the physical possession of the Insured or its agents or employees.

3.8 Recall Costs means
any reasonable and necessary costs incurred by the Insured to inspect, withdraw, or destroy the Insured Product(s) after the Date of Recall. Recall Costs are limited to the following:

(i) the cost of newspaper, internet, magazine or any printed advertising, radio and television announcements or commercials, as well as the cost of correspondence, necessary to effect the recall of an Insured Product(s),

(ii) essential transportation and accommodation costs directly attributable to the Recall,

(iii) the cost of hiring additional person(s), other than existing employees of the Insured, devoted exclusively to effect the Recall of the Insured Product(s),

(iv) overtime paid to existing employees of the Insured for work devoted exclusively to the Recall of the Insured Product(s),

(v) the necessary out of pocket expenses for personnel under paragraphs (iii) and (iv) above, including transportation, incurred exclusively for the purpose of such Recall,

(vi) the necessary cost to rent additional warehouse or storage space for the Recall for a maximum period of twelve (12) months from the Date of Recall,

(vii) the cost of shipping the recalled Insured Product(s) from any purchaser, distributor or user to the place or places the Insured designates,

(viii) expense incurred to properly dispose of the unused packaging and point of purchase marketing material of any recalled Insured Product(s) if such packaging or material cannot be used or reused,

(ix) the actual cost of disposal of the recalled Insured Product(s), but only to the extent that specific methods of destruction other than those usually employed for rubbish discarding or disposal are required to avoid Bodily Injury or property damage as a result of such disposal,

(x) the actual cost to redistribute any recalled Insured Product(s) for a maximum period of twelve (12) months from the Date of Recall,

(xi) retailers' and other third party recall costs incurred during the recall of the Insured Product(s).

3.9 Statement of Loss means
a statement produced by the Insured stating the full particulars of the Loss.

4 Exclusions

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

4.1 any injury, damage, or claim made by a third party arising out of or in connection with the use of the Insured Product(s), including any defence costs related to a third party lawsuit,

4.2 any product(s) manufactured, designed, sold, distributed or handled by the Insured that is/are incorporated as a component part, constituent part or ingredient of any third party's work-in-progress or finished good(s),

4.3 any income loss that the Insured suffers as a result of the Recall of the Insured Product(s),

4.4 changes in population, customer tastes, economic conditions, seasonal sales variations, or competitive environment,

4.5 failure by any party other than the Insured to adhere to procedures prescribed by the Insured regarding the storage, use or misuse of an Insured Product(s),

4.6 expenses or Loss incurred by the Insured because of a Recall:

(i) of a product(s) of a competitor similar to an Insured Product(s), or

(ii) if the Insured Product(s) is similar to or has the same trade or brand name but is of a different batch than the Insured Product(s) that is subject to or about to be subject to a Recall and is likely to result in an Insured Event,

4.7 any Recall initiated by a third party or at the request of a third party where the accidental omission, accidental introduction or substitution, error in manufacturing, tampering, or defective design is not attributable to the Insured Product(s),

4.8 removal of the Insured Product(s) from the stream of commerce for reasons unrelated to an Insured Event,

4.9 any costs associated with the expense of designing or redesigning, engineering or re-engineering of any Insured Product(s),

4.10 any claim arising out of incidents or circumstances of which the Insured had knowledge prior to the effective date of this Policy, and which the Insured could reasonably foresee might result in a claim,

4.11 any natural deterioration, decomposition or transformation of chemical structure. This Exclusion shall not apply if the deterioration, decomposition or transformation occurred as a direct result of an error or omission in the manufacture of the Insured Product(s),

4.12 dishonest, wilful, illegal, fraudulent, criminal or malicious act committed by any director or officer of the Insured,

4.13 failure by the Insured to adhere to any governmental agency's, industry or similarly recognised body's regulations and requirements, for the design and manufacture of the Insured Product(s), including but not limited to the complete testing of the Insured Product(s) as mandated by the relevant government agency and/or similarly recognised body,

4.14 violation by the Insured of any governmental regulation in connection with the manufacture, sale, or distribution of the Insured Product(s) or the use of materials or substances in the manufacturing process which have been banned or declared unsafe by any governmental entity, including but not limited to asbestos, lead or carcinogens,

4.15 fines, penalties, punitive awards, civil liabilities including damages, costs and interest, or exemplary damages,

4.16 nuclear reaction, nuclear radiation or radioactive contamination, 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 part caused by, contributed to, or aggravated by an Insured Event or otherwise,

4.17 war, invasion, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, or military or usurped power, or

4.18 "Terrorism".

For the purpose of this Exclusion “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), when the Insured or an Insured Product(s) is the sole, direct target of that act.

This Exclusion shall apply except when the Insured or an Insured Product(s) is the sole, direct target of the person or group described.

4.19 the use of any counterfeit or fraudulent or substandard ingredient or component of an Insured Product supplied to the Insured by any other party without malicious intent. Applies to Section 1.4 Malicious Tampering only.

4.20 arising out of any breach of the warranties of fitness, quality, efficacy or efficiency.

4.21 arising out of a Government advisory or official recall order by the component authorities

5 Conditions

5.1 Additional Exposures

It is a condition precedent to recovery under the Policy that the Insured shall give the Insurer written notice within thirty (30) days of any additional exposure arising from:

(i) consolidation or merger with or
(ii) acquisition of the majority stock ownership of or
(iii) acquisition of the assets of or
(iv) creation of

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

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 is notified in writing of the rejection.

If the Insurer accepts the additional exposure, the Insured will pay the Insurer additional premium as may be required, computed from the date of consolidation, merger, acquisition or creation to the end of the current period unless otherwise specifically requested by the Insurer.

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.

5.2 Action Against the Insurer

No suit, action, or proceeding for recovery of any Loss under this Policy will be sustainable in any court of law, 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 Statement of Loss has been submitted to the Insurer by the Insured.

5.3 Appraisal

In the event that the Insured and the Insurer fail to agree on the amount of Loss, the Insured or the Insurer may make a written demand for appraisal within sixty (60) days after rejection of the Statement of Loss by the Insurer. The Insured and the Insurer shall both select a competent and independent Chartered Loss Adjuster and notify the other of the adjuster selected within twenty (20) days of such demand.

If within fifteen (15) days the Insured and the Insurer do not agree to the appointment of such adjuster, then upon the Insurer's request or the request of the Insured such adjuster shall be selected by the President for the time being of the Chartered Institute of Loss Adjusters. The Insured and the Insurer will submit their cases within thirty (30) days of the appointment of the adjuster. An itemised award in writing of the adjuster will determine the amount of Loss. The Insured and the Insurer will each bear equally the other expenses and costs of the adjuster. The Insurer and the Insured will not be held to have waived any of their rights by any act relating to the appraisal.

5.4 Assistance and Cooperation

The Insured shall 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 and assisting in effecting settlements and conducting litigation, arbitration, or other proceedings.

5.5 Authorisation Clause

By acceptance of this Policy, the first named 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.

5.6 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 post, at the Insured's address stated in the Schedule, written notice stating when, not less than ninety (90) 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 the short rate portion of the premium as determined by the Short Rate Scale below but not less than the amount of any claims paid or outstanding at the date of cancellation. 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.

Short Rate Scale

1 month	20%	6 months	70%
2 months	30%	7 months	75%
3 months	40%	8 months	80%
4 months	50%	9 months	85%
5 months	60%	Over 9 months	100%

5.7 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 of 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 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 the Insurer or it's authorised representative.

5.8 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 the Schedule.

5.9 Coinsurance

The Insured shall bear the Coinsurance amount stated in the Schedule, uninsured and at its sole risk, for each covered Loss, in excess of and in addition to the Deductible for each Recall. The Coinsurance amount shall be calculated by multiplying the covered Loss in excess of the Deductible by the Coinsurance percentage stated in the Schedule. The Insurer shall reimburse the Insured for Loss in excess of the Deductible subject to the Limit of Liability stated in the Schedule after deduction of the Coinsurance from the covered Loss.

5.10 Concealment, Misrepresentation, Non-Disclosure, or Fraud

This Policy shall be cancelled and coverage denied in the case of intentional concealment, misrepresentation, non-disclosure, or fraud by any Insured of a material fact concerning:

(i) this insurance or the procurement thereof or
(ii) any Insured Product(s) or the Insured's interest in any Insured Product(s) or
(iii) any Insured Event, Recall, or Loss or claim under this Policy.

5.11 Confidentiality

The Insured will use all reasonable efforts not to disclose the existence of this policy to any person or party whether within or outside the Insured unless required by law to do so.

5.12 Deductible

The deductible stated in the Schedule shall apply separately to each Loss. The deductible shall be borne by the Insured and remain uninsured.

5.13 Due Diligence

The Insured shall perform due diligence and exercise reasonable caution to avoid any event which may be covered under this Policy and shall make all reasonable efforts to mitigate any Loss arising as a result of a Recall.

5.14 Examination under Oath

The Insured, as often as may 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 be 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 the Insurer's authorised representative and shall permit extracts and copies thereof to be made.

5.15 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.

(i) The Limits of Liability stated in the Schedule and the provisions of this Condition fix the most the Insurer shall pay regardless of the number of:

a. Insureds or
b. claims made or suits brought or
c. persons or organisations making claims or bringing suits.

(ii) The Aggregate Limit is the most the Insurer shall reimburse the Insured for all Loss covered under this Policy.

(iii) The Recall Limit is the most the Insurer shall reimburse the Insured for Loss resulting from any one Recall.

(iv) All Loss resulting from a Recall and arising from the same, continuous, related, or repeated conditions or incidents shall be treated as arising out of one Insured Event. The limits in effect when the first such claim is reported shall apply.

(v) In no event shall any Loss claimed and paid under one Insured Event be recoverable under another Insured Event.

5.17 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) or Recall(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.

5.18 Non-Assignment

This Policy may not be assigned or transferred without the written consent of the Insurer.

5.19 Notice of an Incident

Upon discovery of a potential or actual event or incident which may give rise to an Insured Event that the Insured will make every reasonable effort to:

(i) firstly, within 48 hours contact the Emergency Exchange 24-hour Crisis Line (as per notification procedures attached); and

(ii) having given verbal notice under (i), determine whether an Insured Event has actually occurred.

5.20 Notice Of A Claim

Upon determination that an Insured Event has actually occurred under Condition 5.19, the Insured shall give written notice to the Insurer (as per notification procedures attached) within five days 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 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.

5.21 Notices

Unless indicated otherwise 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.

5.22 Other Insurance

The Insured may purchase other insurance written on the same terms and conditions as this Policy provided the coinsurance and deductible as described in the Schedule remains uninsured.

5.23 Salvage

Any salvage or other recovery, whether recovered by the Insured or the Insurer, after expenses incurred in salvage or recovery are deducted, will accrue entirely to the benefit of the Insurer until any sum paid by the Insurer has been recovered. In case of damage to property bearing a brand or trademark, proprietary designation 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 proprietary designations 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 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.

5.24 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.

5.25 Subrogation

In the event of any payment under this Policy, the Insurer will be subrogated to the extent of such payment to all the Insured's rights of recovery including but not limited to any rights of recovery that the Insured may have against any third party that supplies components or other products to the Insured. Such rights will not be compromised or settled in any way without prior written approval from the Insurer. In such case the Insured will execute all documents required and will do everything necessary to secure and preserve such rights including the execution of any documents necessary to enable the Insurer to effectively bring suit in the name of the Insured.

5.26 Territory

This Policy applies to an Insured Event anywhere in the world unless specifically limited by the Insurer through endorsement or where prohibited by U.S. law.

5.27 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.

5.28 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.

CATLIN