

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **RESTAURANTS**

This endorsement modifies insurance provided under the following:

### **BUSINESSOWNERS COVERAGE FORM**

**A. The following are added to Paragraph A.5.  
Additional Coverages of Section I – Property:**

**a. Reward Payment**

**(1)** We will reimburse you for rewards paid as follows:

**(a)** Up to \$5,000 to an eligible person for information leading to the arrest and conviction of any person or persons committing a crime resulting in loss of or damage to Covered Property from a Covered Cause of Loss. However, we will pay no more than the lesser of the following amounts:

**(i)** Actual cash value of the Covered Property at the time of loss or damage, but not more than the amount required to repair or replace it; or

**(ii)** The amount determined by the loss settlement procedure applicable to the Covered Property under the Loss Payment Condition.

**(b)** Up to \$5,000 to an eligible person for the return of stolen Covered Property, when the loss is caused by theft. However, we will pay no more than the lesser of the following amounts:

**(i)** Actual cash value based on the condition of the Covered Property at the time it is returned, but not more than the amount required to repair or replace it; or

**(ii)** The amount determined by the loss settlement procedure applicable to the returned Covered Property under the Loss Payment Condition.

**(2)** This Additional Coverage applies, subject to the following conditions:

**(a)** An eligible person means that person designated by a law enforcement agency as being the first to voluntarily provide the information leading to the arrest and conviction or return of the stolen Covered Property, and who is not:

**(i)** You or any family member;

**(ii)** Your employee (including a temporary or leased employee) or any of his or her family members;

**(iii)** An employee of a law enforcement agency;

**(iv)** An employee of a business engaged in property protection;

**(v)** Any person who had custody of the Covered Property at the time the theft was committed; or

**(vi)** Any person involved in the crime.

**(b)** No reward will be reimbursed unless and until the person(s) committing the crime is (are) convicted or the Covered Property is returned.

**(c)** The lesser of the amount of the reward or \$5,000 is the most we will reimburse for loss under this Additional Coverage in any one occurrence.

**b. Brands And Labels**

**(1)** If branded or labeled merchandise that is Covered Property is damaged by a Covered Cause of Loss, we may take all or any part of the property at an agreed or appraised value. If so, you may:

**(a)** Stamp the word salvage on the merchandise or its containers, if the stamp will not physically damage the merchandise; or

(b) Remove the brands or labels, if doing so will not physically damage the merchandise. You must relabel the merchandise or its containers to comply with the law.

(2) We will pay reasonable costs you incur to perform the activity described in Paragraph (a) or (b) above. But the total we pay for these costs and the value of the damaged property will not exceed the applicable Limit of Insurance on such property.

**c. Ordinance Or Law – Equipment Coverage**

(1) Subject to Paragraph (2), if a Covered Cause of Loss occurs to equipment that is Covered Property, we will pay to repair or replace the equipment as required by law.

(2) If a Covered Cause of Loss occurs to refrigeration equipment that is Covered Property, we will pay:

(a) The cost to reclaim the refrigerant as required by law;

(b) The cost to retrofit the equipment to use a non-CFC refrigerant as required by the Clean Air Act of 1990, and any amendments thereto or any other similar laws; and

(c) The increased cost to recharge the system with a non-CFC refrigerant.

(3) The terms of this coverage apply separately to each piece of covered equipment.

(4) We will not pay under this Additional Coverage for the costs associated with the enforcement of or compliance with any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungi", wet rot or dry rot.

(5) Loss to the equipment will be determined as follows:

(a) If the equipment is repaired or replaced, on the same or another premises, we will not pay more than the lesser of:

(i) The amount you actually spend to repair the equipment, but not for more than the amount it would cost to replace the equipment with equipment of the same kind and quality; or

(ii) The Limit Of Insurance shown in the Declarations as applicable to the covered Building or Business Personal Property.

(b) If the equipment is not repaired or replaced, we will not pay more than the lesser of:

(i) The actual cash value of the equipment at the time of loss; or

(ii) The Limit Of Insurance shown in the Declarations as applicable to the Building or Business Personal Property.

(c) We will not pay for loss due to any ordinance or law that:

(i) You were required to comply with before the loss, even if the equipment was undamaged; and

(ii) You failed to comply with.

**d. Lock Replacement**

(1) We will pay for the cost to repair or replace locks at the described premises due to theft or other loss to keys.

(2) The most we will pay under this Additional Coverage for all loss or damage in any one occurrence is \$1,000.

(3) A per occurrence deductible of \$100 will apply.

**e. Spoilage Coverage**

(1) We will pay for the loss of "perishable stock" caused by:

(a) A change in temperature or humidity resulting from mechanical breakdown or failure of refrigeration, cooling or humidity control apparatus or equipment, only while such apparatus or equipment is at the described premises;

(b) Contamination by a refrigerant; and

(c) Power outage, meaning change in temperature or humidity resulting from complete or partial interruption of electrical power, either on or off the described premises, due to conditions beyond your control.

(2) The most we will pay for loss under this Additional Coverage is \$10,000 unless a different Limit Of Insurance for spoilage coverage is shown in the Declarations.

- (3) The value of the "perishable stock" will be the selling price, as if no loss or damage had occurred, less discounts and expenses you otherwise would have had.
- (4) This Additional Coverage does not apply if the spoilage results from:
  - (a) Earth movement;
  - (b) Governmental action;
  - (c) Nuclear hazard;
  - (d) War and military action;
  - (e) Water;
  - (f) The disconnection of any refrigerating, cooling or humidity control system from the source of power;
  - (g) The deactivation of electrical power caused by the manipulation of any switch or other device used to control the flow of electrical power or current;
  - (h) The inability of an electrical utility company or other power source to provide sufficient power due to:
    - (i) Lack of fuel; or
    - (ii) Governmental order;
  - (i) The inability of a power source at the described premises to provide sufficient power due to lack of generating capacity to meet demand; and
  - (j) Breaking of any glass that is a permanent part of any refrigerating, cooling or humidity control unit.
- (5) We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of that deductible, up to the applicable Limit of Insurance. No other deductible in this policy applies to the coverage provided by this Additional Coverage.
- (6) You must maintain a refrigeration maintenance or service agreement. If you voluntarily terminate this agreement and do not notify us within 10 days, the spoilage coverage provided by this Additional Coverage will be automatically suspended at the involved location.

However, coverage provided by this Additional Coverage is restored upon:

- (a) Reinstatement of the applicable refrigeration maintenance or service agreement; or
- (b) Procurement of a replacement refrigeration maintenance or service agreement.

A refrigeration maintenance agreement means a written service contract, between you and the refrigeration service organization, which provides for regular periodic inspection of the refrigeration equipment at the insured location, and the servicing and repair of the equipment, including emergency response at the insured location.

#### f. Food Contamination

- (1) If your business at the described premises is ordered closed by the Board of Health or any other governmental authority as a result of the discovery or suspicion of "food contamination", we will pay:
  - (a) Your expense to clean your equipment as required by the Board of Health or any other governmental authority;
  - (b) Your expense to replace food which is, or is suspected to be, contaminated;
  - (c) Your expense to provide necessary medical tests or vaccinations for your employees (including temporary or leased employees) who are potentially infected by the "food contamination". However, we will not pay for any expense that is otherwise covered under a Workers' Compensation policy;
  - (d) The loss of Business Income you sustain due to the necessary suspension of your "operations". The coverage for Business Income will begin 24 hours after you receive notice of closing from the Board of Health or any other governmental authority; and
  - (e) Additional advertising expenses you incur to restore your reputation.
- (2) The definition of Business Income in the **Business Income** Additional Coverage also applies to this **Food Contamination** Additional Coverage.

(3) The most we will pay for all loss in any one occurrence under Paragraphs (1)(a) through (1)(d), including Business Income, is \$10,000, unless a higher Food Contamination Limit Of Insurance is indicated in the Declarations.

The most we will pay for all loss in any one occurrence under Paragraph (1)(e) is \$3,000, unless a higher Additional Advertising Expenses Limit Of Insurance is indicated in the Declarations.

(4) We will not pay any fines or penalties levied against you by the Board of Health or any other governmental authority as a result of the discovery or suspicion of food contamination at the described premises.

(5) With respect to the coverage provided under this Paragraph f., Exclusion B.1.j. Virus Or Bacteria in Section I – Property does not apply.

B. If the Employee Dishonesty Optional Coverage is shown as an applicable coverage in the Declarations, the following is added to Paragraph 3. **Employee Dishonesty** of Paragraph G. **Optional Coverages of Section I – Property** and is subject to the provisions of that paragraph:

We will also pay for loss of or damage to "money", "securities" and "other property" sustained by your customer resulting directly from theft committed by an identified employee, acting alone or in collusion with other persons.

The property covered under this coverage is limited to property:

- a. That your customer owns or leases; or
- b. That your customer holds for others.

Coverage applies only while the property is in a covered Building at the premises described in the Declarations.

However, this insurance is for your benefit only. It provides no rights or benefits to any other person or organization, including your customer. Any claim for loss that is covered under this coverage must be presented by you.

C. For coverage provided under this endorsement, the following definitions are added to Paragraph H. **Property Definitions of Section I – Property:**

1. "Food contamination" means an outbreak of food poisoning or food-related illness of one or more persons arising out of:

- a. Tainted food you distributed or purchased;
- b. Food which has been improperly processed, stored, handled or prepared in the course of your business operations; or
- c. Food which has been contaminated by virus or bacteria transmitted through one or more of your employees, including temporary or leased employees.

2. "Other property" means any tangible property other than "money" and "securities" that has intrinsic value but does not include any property specifically excluded under this policy.

3. "Perishable stock" means property:

- a. Maintained under controlled temperature or humidity conditions for its preservation; and
- b. Susceptible to loss or damage if the controlled temperature or humidity conditions change.

D. The following are added to Paragraph A. **Coverages of Section II – Liability:**

1. **Delivery Errors And Omissions Coverage**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of a failure to deliver or a misdelivery of items you hold for sale by you, any of your "employees" or by a concessionaire trading under your name. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for delivery errors and omissions to which this insurance does not apply. We may, at our discretion, investigate the circumstances of any misdelivery or failure to deliver and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Paragraph 1.e. below;

- (2) We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds \$250. We will then pay the amount of loss or damage in excess of \$250 up to the applicable Limit of Insurance for this coverage; and
  - (3) Our right and duty to defend end when we have used up the applicable Limit of Insurance in the payment of judgments or settlements under this Delivery Errors And Omissions Coverage.
- b. This coverage applies only to errors in deliveries that take place or omissions of such deliveries that should have taken place in the "coverage territory" and during the policy period.
  - c. This coverage does not apply to:
    - (1) Intentional error or intentional misdelivery or failure to deliver "your product".
    - (2) "Bodily injury", "property damage" or "personal and advertising injury".
    - (3) Discrimination based on a customer's race, color, national origin, religion, gender, marital status, age, sexual orientation or preference, physical or mental condition or residence location.
  - d. The Supplementary Payments provision applicable to the Bodily Injury, Property Damage, and Personal And Advertising Injury Liability Coverages also applies to this Delivery Errors And Omissions Coverage.
  - e. The most we will pay for the sum of all damages under this coverage because of all failures or misdeliveries is \$10,000 in any annual period starting with the beginning of the policy period shown in the Declarations. This limit applies separately to each premises described in the Declarations.
- f. The following replaces the **Duties In The Event Of Occurrence, Offense, Claim Or Suit Condition** under Paragraph E. **Liability And Medical Expenses General Conditions of Section II – Liability for the Delivery Errors Or Omissions Coverage: Duties In The Event Of A Delivery Error Or Omission**
    - (1) You must see to it that we are notified as soon as practicable of an error or omission which may result in a claim. To the extent possible, notice should include:
      - (a) How, when and where the error or omission took place; and
      - (b) The name(s) and address(es) of the affected customer(s).
    - (2) If a claim is made or "suit" is brought against any insured, you must:
      - (a) Immediately record the specifics of the claim or "suit" and the date received; and
      - (b) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
    - (3) You and any other involved insured must:
      - (a) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
      - (b) Authorize us to obtain records and other information;
      - (c) Cooperate with us in our investigation or settlement of the claim or defense against the "suit"; and
      - (d) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of error or omission to which this insurance may apply.

- (4) No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

## 2. Merchandise Withdrawal Expenses Coverage

- a. We will reimburse you for "merchandise withdrawal expenses" incurred because of "merchandise withdrawal" to which this insurance applies.
- b. This insurance applies to a "merchandise withdrawal" only if the "merchandise withdrawal" is initiated in the "coverage territory" during the policy period because:
  - (1) You determine that the "merchandise withdrawal" is necessary; or
  - (2) An authorized government entity has ordered you to conduct a "merchandise withdrawal".
- c. The initiation of a "merchandise withdrawal" will be deemed to have been made only at the earliest of the following times:
  - (1) When you first announced, in any manner, to the general public, your vendors or to your "employees" (other than those "employees" directly involved in making the determination) your decision to conduct or participate in a "merchandise withdrawal". This applies regardless of whether the determination to conduct a "merchandise withdrawal" is made by you or is requested by a third party; or
  - (2) When you first received, either orally or in writing, notification of an order from an authorized government entity to conduct a "merchandise withdrawal".
- d. "Merchandise withdrawal expenses" incurred to withdraw "your products" which contain the same or substantially similar "defects" will be deemed to have arisen out of the same "merchandise withdrawal".
- e. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds \$250. We will then pay the amount of loss or damage in excess of \$250 up to the applicable Limit of Insurance for this coverage.

- f. This insurance does not apply to "merchandise withdrawal expense" arising out of:

- (1) Any "merchandise withdrawal" initiated due to:
  - (a) The failure of "your product" to accomplish its intended purpose, including any breach of warranty of any kind, whether written or implied. This exclusion does not apply if such failure has caused or is reasonably expected to cause "bodily injury".
  - (b) Copyright, patent, trade secret, trade dress or trademark infringement.
  - (c) Transformation of a chemical nature, deterioration, or decomposition of "your product". This exclusion does not apply if it is caused by:
    - (i) An error in manufacturing, design, or processing;
    - (ii) Transportation of "your product"; or
    - (iii) "Merchandise tampering".
  - (d) Expiration of the designated shelf life of "your product"; or
- (2) A "defect" in "your product" known to exist by you or your "executive officers", prior to the date this endorsement was first issued to you or prior to the time "your product" leaves your control or possession;
- (3) Recall of any specific product for which "bodily injury" or "property damage" is excluded under Paragraph A. Coverages of Section II – Liability by endorsement;
- (4) Recall when "your product" or a component contained within "your product" has been:
  - (a) Banned from the market by an authorized government entity prior to the policy period; or
  - (b) Distributed or sold by you subsequent to any governmental ban;
- (5) The defense of a claim or "suit" against you for liability arising out of a "merchandise withdrawal"; or
- (6) The costs of regaining goodwill, market share, revenue or "profit" or the costs of redesigning "your product".

- g. The most we will reimburse you for the sum of all "merchandise withdrawal expenses" incurred for all "merchandise withdrawals" initiated during the policy period is \$25,000.
- h. The following replaces the **Duties In The Event Of Occurrence, Offense, Claim Or Suit** Condition under Paragraph **E. Liability And Medical Expenses General Conditions of Section II – Liability for the Merchandise Withdrawal Expenses Coverage**:

**Duties In The Event Of A Defect Or A Merchandise Withdrawal**

- (1) You must see to it that we are notified as soon as practicable of any actual, suspected or threatened "defect" in "your product" or any governmental investigation, that may result in a "merchandise withdrawal". To the extent possible, notice should include:
  - (a) How, when and where the "defect" was discovered;
  - (b) The names and addresses of any injured persons and witnesses; and
  - (c) The nature, location and circumstances of any injury or damage arising out of use or consumption of "your product".
- (2) If a "merchandise withdrawal" is initiated, you must:
  - (a) Immediately record the specifics of the "merchandise withdrawal" and the date it was initiated; and
  - (b) Notify us as soon as practicable.  
You must see to it that we receive written notice of the "merchandise withdrawal" as soon as practicable.
- (3) You must promptly take all reasonable steps to mitigate the expenses associated with a "merchandise withdrawal". Any "profit" that you receive from mitigating the expenses will be deducted from the amount of reimbursement that you will receive for "merchandise withdrawal expenses".
- (4) You and any other involved insured must:
  - (a) Immediately send us copies of pertinent correspondence received in connection with the "merchandise withdrawal";
  - (b) Authorize us to obtain records and other information; and

- (c) Cooperate with us in our investigation of the "merchandise withdrawal".

- E. For coverage provided under this endorsement, the following are added to Paragraph **F. Liability And Medical Expenses Definitions of Section II – Liability**:

- 1. "Defect" means a defect, deficiency or inadequacy that creates a dangerous condition.
- 2. "Merchandise tampering" is an act of intentional alteration of "your product" which has caused or is reasonably expected to cause "bodily injury".

When "merchandise tampering" is known, suspected or threatened, a "merchandise withdrawal" will be limited to those batches of "your product" which are known or suspected to have been tampered with.

- 3. "Merchandise withdrawal" means the recall or withdrawal:
  - a. From the market; or
  - b. From use by any other person or organization;
 of "your products" or products which contain "your products", because of known or suspected "defects" in "your product", or known or suspected "product tampering", which has caused or is reasonably expected to cause "bodily injury".
- 4. "Merchandise withdrawal expenses" means those reasonable and necessary extra expenses listed below, paid and directly related to a "merchandise withdrawal":
  - a. Costs of notification;
  - b. Costs of stationery, envelopes, production of announcements and postage or facsimiles;
  - c. Costs of overtime paid to your regular nonsalaried employees and costs incurred by your employees including costs of transportation and accommodations;
  - d. Costs of computer time;
  - e. Costs of hiring independent contractors and other temporary employees;
  - f. Costs of transportation, shipping or packaging;
  - g. Costs of warehouse or storage space; or
  - h. Costs of proper disposal of "your products" or products that contain "your products" that cannot be reused, not exceeding your purchase price or your cost to produce the products.

5. "Profit" means the positive gain from business operation after subtracting for all expenses.
- F. With respect to "bodily injury" or "property damage" arising out of "your products" manufactured, sold, handled or distributed in conjunction with the conduct of your restaurant operation, when conducted by you or on your behalf, Paragraph a. of the definition of "products-completed operations hazard" in Paragraph F. **Liability And Medical Expenses Definitions of Section II – Liability** is replaced by the following:
- a. Includes all "bodily injury" and "property damage" that arises out of "your products" if the "bodily injury" or "property damage" occurs after you have relinquished possession of those products.