

KROGER PURCHASE ORDER TERMS AND CONDITIONS

1	<p><u>Purchase Order; Cancellation.</u> These Kroger Purchase Order Terms and Conditions apply to all orders (“Kroger Purchase Orders”) of goods, merchandise and incidental services (“Products”) by The Kroger Co. and its affiliates (collectively, “Kroger”) from Vendor. Kroger reserves the right to cancel a Kroger Purchase Order without penalty by notice to Vendor on or before the given cancellation date and at any time if the completion or delivery date is not met or if prior to such date, Kroger had reason to demand adequate assurance of due performance and such assurance is not forthcoming within ten (10) days after the date of Kroger’s demand. If a delivery date or completion date is not specified on the Kroger Purchase Order a reasonable time will be allowed. Kroger may cancel the unreceived portion of a Kroger Purchase Order at any time if delivery of the Products is not timely. If Vendor can fulfill its delivery obligation only by shipping by premium routing, the premium charges will be prepaid by Vendor. If no cancellation date appears on the front of the Kroger Purchase Order, the cancellation date will be a reasonable period of time prior to the shipment of the Products. If Vendor ships the Products before the “ship on” date, after the cancellation date, or after actual cancellation, Kroger may, in the exercise of its sole discretion, refuse the shipment, or Kroger may accept the Products and charge Vendor in accordance with Kroger’s Non-Compliance Fee Schedule. Any and all loads created at Vendor’s dock must be segregated by individual Kroger Purchase Order.</p>
2	<p><u>Non-Conforming or Unordered Products.</u> Kroger will have no obligation to accept or pay for any unordered Products or Products shipped that do not conform to, or comply with, the terms and conditions of the Kroger Purchase Order or the terms and conditions of any agreement to which these Kroger Purchase Order Terms and Conditions are attached, including shipping and routing instructions and dates of shipment and delivery. If Kroger takes delivery of such nonconforming order, or any part of such an order, Kroger reserves the right to deduct from its payment all actual or reasonable expenses, including but not limited to transportation, inspection, receipt, ticketing, re-ticketing, recall, care and custody of the Products, and notice to Vendor incurred as a result of such non-conformity or non-compliance. If Kroger takes delivery of any unordered or non-complying Products, Kroger may, without notice to Vendor of such fact, ship the unordered or non-complying Products to Vendor at Vendor’s cost and expense. Kroger will have no obligation to accept or to pay for any substituted goods or excess shipment of any Products made without Kroger’s prior written approval. Vendor will not backorder any Products subject to the Kroger Purchase Order without Kroger’s prior written consent. Vendor must pay all shipping costs associated with a backorder. All backorders should receive the best of pricing and terms at either the time of original order or at the time of actual shipment. All terms and conditions of the Kroger Purchase Order apply to any Products on backorder.</p>
3	<p><u>Right of Inspection.</u> Kroger will have the right to inspect the Products and reject any nonconforming Products within sixty (60) days of delivery. This right of inspection, whether exercised or not, will not affect Kroger’s right to revoke acceptance or pursue other remedies if defects or nonconformities are discovered at a later date, notwithstanding that any defect or nonconformity could have been discovered upon inspection. Payment by Kroger will not be construed as an acceptance of Products, or as a waiver or limitation of any of Kroger’s rights as set forth herein. In no event will Vendor sell or distribute to third parties any Products that contain logos, trade names, trademarks or labels of Kroger, even if rejected by Kroger as nonconforming.</p>
4	<p><u>Shipment Constitutes Acceptance of Agreement.</u> Shipment of Products by Vendor constitutes acceptance of these Kroger Purchase Order Terms and Conditions and the terms and conditions set forth in any agreement to which the Kroger Purchase Order Terms and Conditions are attached, unless Kroger has agreed to a change in writing prior to shipment.</p>
5	<p><u>Retail Pricing.</u> Kroger makes no representation regarding the maintenance of any specific retail price for Products purchased for resale.</p>

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Representations, Warranties and Guarantees. By acceptance of the Kroger Purchase Order, Vendor makes the following representations, warranties and guarantees:

- a. The Products shipped, as of the date of shipment, comply with, and are not adulterated or misbranded within the meaning of, the Federal Food, Drug and Cosmetic Act, as amended, ("FDCA"), including, without limitation, the Food Additives Amendment as further amended and also comply with, and are not adulterated or misbranded within the meaning of, any states' food and drug law; are not articles that may not be introduced into interstate commerce pursuant to Sections 404 or 505 of the FDCA, the Federal Hazardous Substances Act ("FHSA"), or otherwise; if meat and poultry products comply with the Federal Meat Inspection Act and the Poultry Products Inspection Act; conform to all applicable Consumer Product Safety Act ("CPSA") rules, bans, standards or regulations, and if sold in California, Proposition 65 Standards; and furthermore comply with all other applicable federal, state and local laws, rules and regulations.
- b. Each shipment or other delivery of Products is not misbranded or mislabeled under the FHSA or any other law or regulation, has been tested and approved by the Underwriters Laboratory, Inc. and the National Sanitation Foundation (if applicable); will include a Certificate of Compliance for children's products or a General Compliancy Certificate for other CPSA regulated products as required under the Consumer Product Safety Improvement Act of 2008 ("CPSIA"); will, if constituting or containing an economic poison as defined in the Federal Insecticide, Fungicide, and Rodenticide Act, be registered pursuant to said Act and comply with all other provisions of such Act (7 U.S.C.A. 135-135K); will conform to the applicable flammability standards under the Federal Flammable Fabrics Act; and meet all applicable Occupational Safety and Health Administration Standards. Vendor warrants that all electric appliances, component parts and wiring purchased shall be listed by the Underwriters Laboratories, Inc. in compliance with applicable electrical codes; that all merchandise purchased containing fabric which is subject to the provisions of the Federal Flammable Fabrics Act shall conform to the provisions of such act; that all merchandise purchased which is subject to the provisions of the applicable state bedding and furniture laws shall conform to the provisions of such laws; and that all textile fiber products furnished shall be properly branded and invoiced in accordance with the Textile Fiber Products Identification Act and all other Federal Statutes applicable to such products. Vendor will provide Kroger copies of all Material Safety Data Sheets ("MSDS") for any applicable products.
- c. The Products, including the packaging, advertising, labels and other materials contained on, with, or relating to the Products, do not infringe any patent, copyright, trademark, trade name or other proprietary interest of Kroger or any third party and comply with the Federal Trade Commission Act and all other applicable laws, rules and regulations.
- d. The price charged, allowances and services furnished, if any, in connection with the sale of Products to Kroger are not discriminatory and were made available on substantially proportionate terms to other customers of Vendor, and that the prices charged for the Products shipped are the lowest lawful prices available from Vendor.
- e. The Products and the manufacture, sale, storage, shipping, transportation and billing for the Products, comply with all provisions of applicable law and with all applicable promulgations of governmental authority, both domestic and foreign.
- f. Vendor is the lawful owner of the Products, has good right to sell same and convey good and merchantable title, and the Products are and will be conveyed free of any and all claims, liens, security interests or other encumbrances.
- g. The Products are of merchantable quality and of good material and workmanship, are free from contamination or impurity and defects in design and title, and are fit and sufficient for purposes for which goods of that type are ordinarily used, as well as for any purposes Vendor has specified or advertised.
- h. The Products conform in every respect to applicable specifications, instructions, drawings, data, samples and descriptions.

	<ul style="list-style-type: none"> i. The representations, warranties and guarantees contained in this Section 6 run to Kroger, its customers, and its and their successors and assigns. Vendor incorporates by reference and passes on to Kroger and its customers and its and their successors and assigns the benefits of all warranties and guarantees given to Vendor by persons from whom Vendor purchased any of the Products. Kroger's approval of specifications, drawings, samples and/or other descriptions furnished by Vendor does not relieve Vendor of its obligations. The representations, warranties and guarantees set forth in this Section 6 are in addition to all other express, implied or statutory warranties, are continuing in nature, survive Kroger's payment, acceptance, inspection or failure to inspect the Products. j. It will in every manner of its business related to the Kroger Purchase Order obey and conform to all applicable laws, rules and regulations, both domestic and foreign.
7	<p><u>Code of Conduct.</u> Vendor warrants that the Products are produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof. Vendor represents and warrants that Vendor and its contractors are not engaged in and will not engage in any labor practice in violation of the laws or regulations of the country of manufacture or assembly of the Products involving unsanitary and/or unsafe labor conditions. If Kroger determines that Vendor or its contractors have failed to comply with the foregoing, Kroger will be entitled to return all Products on hand for full refund, at Vendor's cost, and cancel any unfilled orders at no cost.</p> <p>The following Code of Conduct is an integral part of all Kroger Purchase Orders, the terms of which must be followed by Vendor and its contractors:</p> <ul style="list-style-type: none"> a. Child, indentured, involuntary, or prison labor must not be used or supported. b. Workers may not be exposed to unreasonably hazardous, unsafe, or unhealthy conditions. c. Workers may not be unlawfully discriminated against on the basis of race, color, religion, gender, national origin, age, disability or sexual orientation. d. The workplace must be free from harassment, which includes sexually coercive, threatening, abusive, or exploitive conduct or behavior or harassment because of one's race, color, religion, gender, national origin, age, disability or sexual orientation. e. Workers at all time must be treated fairly, with dignity and respect. f. Wages paid to workers must meet or exceed legal and industry standards. g. All Vendor workers performing work within the United States must be legally eligible for employment in the U.S.A. under the United States Immigration Laws. Vendor must require and review, prior to each non-U.S. citizen employee's assignment, documentation establishing such eligibility for all Vendor workers who perform services for Kroger within the United States. h. Vendor may not engage in any conduct likely, intending, or appearing to improperly influence any Kroger Representatives in the performance of their job responsibilities. Bribes, cash payments, and business gifts and entertainment of more than token value expressly are prohibited. Vendor must refrain from engaging in any conduct that may appear improper or may result in a conflict of interest when viewed from Kroger's point of view. <ul style="list-style-type: none"> i. Vendor must comply with the provision of the U.S. Foreign Corrupt Practices Act of 1977 as amended. Vendor will not offer or provide money or anything else of value to any agent or representative of any government or government agency in order to obtain or retain business. j. Vendor and its contractors must maintain written records evidencing compliance with the provisions of this Code of Conduct and must make those records available to Kroger upon request.
8	<p><u>Customer Returns.</u> If Kroger has purchased Products hereunder for the purpose of resale and Kroger's customers return any of the Products to Kroger due to any actual or alleged defect, or the Products in any way fails to comply with these Kroger Purchase Order Terms and Conditions, Kroger may tender back such</p>

	Products to Vendor on an F.O.B. origin basis. Vendor will promptly accept such Products, pay all shipping and handling expenses and give full, unconditional credit or cash refund, at Kroger's option, for the cost of the Products to Kroger. Perishable food Products need not be returned in order to obtain full credit.
9	Acceptance of Terms. Kroger's offer to purchase is expressly subject to Vendor's acceptance of these Kroger Purchase Order Terms and Conditions and any agreement to which these Kroger Purchase Order Terms and Conditions is attached. Vendor's execution of Kroger's Standard Vendor or other Purchase Agreement (or Vendor's shipment of Products in response to a Kroger Purchase Order) constitutes Vendor's acceptance of these Kroger Purchase Order Terms and Conditions and any Agreement to which the Kroger Purchase Order Terms and Conditions is attached, and precludes Vendor's objection to any such terms and conditions and/or Vendor's inclusion of any different or additional items, terms or conditions in any resulting order except as set forth in written amendment referencing these Kroger Purchase Order Terms and signed by both Kroger and Vendor. By accepting a Kroger Purchase Order or by shipping Products in response to a Kroger Purchase Order, Vendor agrees that Kroger is not bound by any other term or condition of Vendor in any written acknowledgment, invoice or otherwise, that is inconsistent with or in addition to the terms and conditions hereof. All sections of the Uniform Commercial Code that expressly or implicitly protect Kroger and are not inconsistent with any term hereunder are hereby incorporated by reference, whether it be construed as an offer or acceptance.
10	Payments Subject to Claims/Defenses. All amounts payable to Vendor will be subject to all claims and defenses of Kroger, whether arising from the Kroger Purchase Order or any other transaction. Kroger has the right to set off and deduct against any such amounts all present and future indebtedness of Vendor to Kroger (which includes all of its affiliates) and may exercise this right up to three (3) years from the date of the last shipment by Vendor. Vendor will be deemed to have accepted each debit amount or vendor chargeback within ninety (90) days following receipt of notice of same, unless Vendor notifies Kroger's Accounts Payable Department (marked "Correspondence") in writing during such period as to why the deduction should not be made and provides sufficient documentation of the reason(s) given.
11	Taxes and Other Charges. Unless otherwise agreed in writing, the contract price includes all federal, state and local taxes, tariffs, import duties, commissions and other charges, except taxes Vendor is required by law to collect from Kroger. Such taxes, if any, will be separately stated in Vendor's invoice and will be paid by Kroger unless an exemption is available. Vendor will obtain and pay for any licenses, permits, or inspections by public bodies required in connection with the manufacture, completion, or delivery of the Products.
12	Force Majeure. TIME IS OF THE ESSENCE. However, Kroger excuses Vendor from nonperformance or delays in delivery caused by acts of God, unforeseeable occurrences or other force majeure events, but Vendor agrees it is not excused by unexpected difficulty or commercial impracticality of any degree. Kroger may cancel the unreceived portion of a Kroger Purchase Order at any time if delivery of the goods is not timely. If Vendor can fulfill its delivery obligation only by shipping by premium routing, the premium charges shall be prepaid by the Vendor or, if not prepaid, then Kroger reserves the right to issue chargebacks relating to the additional freight costs and administrative costs. Kroger reserves the right to reject any shipment of any order of goods from Vendor and shall have no obligation to pay for the rejected shipment in the event that Kroger's business or operations are discontinued in whole or part by reason of fire, flood, earthquake, war, civil disorder or any other act or event beyond Kroger's reasonable control.
13	Indemnification. Vendor will protect, defend, indemnify and hold harmless Kroger, its subsidiaries and affiliates, and its and their directors, officers, employees, agents, contractors, successors and assigns from and against any and all claims and actions (including those in strict liability), demands, liabilities, losses, costs and expenses (including attorney's fees,) including, without limitation, liabilities arising from any actual or alleged injury to or death of any person, damage to any property, and any other damage or loss, by whomsoever

