



THE KROGER CO.

STANDARD VENDOR AGREEMENT
FOR MERCHANDISE (PRODUCTS)

JANUARY 2010

THE KROGER CO.
STANDARD VENDOR AGREEMENT FOR MERCHANDISE (PRODUCTS)
VERSION JANUARY 2010
SIGNATURE PAGE

The signature set forth below acknowledges Vendor's agreement with and acceptance of the Standard Vendor Agreement for Merchandise (Products)-Version January 2010, comprising pages 2 through 27, inclusive.

Vendor (legal entity name): _____

Business Entity Type (e.g., Corp., LLC, etc.): _____

Vendor Name as Shown on Invoice (DBA): _____

Vendor Taxpayer Identification Number (EIN/SSN): _____

Kroger Vendor Number: _____

Vendor Contact Name: _____

Vendor Contact Title: _____

Vendor Contact Address: *Street / Suite:* _____
City / St / Zip: _____

Vendor Contact #s:	<i>Phone:</i> _____	<i>Fax:</i> _____
	<i>Cell:</i> _____	<i>E-Mail:</i> _____

Vendor Emergency Contact Name: _____

Vendor Emergency Contact Title: _____

Vendor Emergency Contact Address: *Street / Suite:* _____
City / St / Zip: _____

Vendor Emergency Contact #'s:	<i>Phone:</i> _____	<i>Fax:</i> _____
	<i>Cell:</i> _____	<i>E-Mail:</i> _____

Name of Signatory (printed): _____

Signatory Signature: _____

Signatory Title: _____

Date Signed by Signatory: _____

Please check the appropriate statement below:

- Vendor has read and agrees to comply with this Agreement.
- Vendor has read and agrees to comply with the terms of this Agreement as amended by Vendor's proposed changes attached to this Signature Page in the form of an addendum. I understand that no addendum or amendment to this Agreement will go into effect until signed by Vendor and an authorized representative of Kroger. Vendor's shipment of Products subsequent to the date of its receipt of this Agreement will be deemed to be acceptance by Vendor of this Agreement, without modification, unless Kroger has executed an addendum attached to this Signature Page.

**PLEASE RETURN THIS COMPLETED SIGNATURE PAGE TO KROGER AND RETAIN A COPY FOR YOUR RECORDS.
FAILURE TO CHECK EITHER BOX ABOVE WILL BE DEEMED TO BE ACCEPTANCE BY VENDOR OF THIS
AGREEMENT WITHOUT MODIFICATION.**

THE KROGER CO.
STANDARD VENDOR AGREEMENT FOR MERCHANDISE (PRODUCTS)
VERSION JANUARY 2010

This Standard Vendor Agreement for Merchandise (Products)-Version January 2010 (this “**Agreement**”) is by and between The Kroger Co., an Ohio corporation, on behalf of itself and its direct and indirect subsidiaries and other affiliates issuing purchase orders hereunder (“**Kroger**”) and the vendor designated on the Signature Page (“**Vendor**”).

Introduction

Scope

The terms and conditions of this Agreement set forth Kroger’s offer and apply to Vendor with respect to Vendor’s provision of goods, merchandise and incidental services (“**Products**”) to Kroger. Products include food (including perishables and canned goods) ingredients for food, general merchandise, supplies, health and beauty aides, and similar items for Kroger offices, retail stores and manufacturing plants. This Agreement is effective as of the date this Agreement is accepted by Vendor (the “**Effective Date**”) and applies to any shipment of Products made by Vendor to Kroger from and after the Effective Date. Kroger’s retail, distribution, procurement and manufacturing operations currently are conducted under the names listed on **Schedule 1** attached hereto. This Agreement includes the terms and conditions of all Exhibits.

Execution of Agreement

By its execution of this Agreement, Vendor acknowledges its acceptance of the terms and conditions contained herein and represents and warrants that Vendor’s execution and delivery of this Agreement to Kroger has been duly authorized by all necessary corporate or other action on the part of Vendor.

Vendor will promptly deliver an executed original of the signature page of this Agreement signed by a person of authority representing Vendor to its Kroger buyer or other representative (“**Kroger Representative**”), but in no event later than fifteen (15) days after Vendor’s receipt of this Agreement. **If Kroger does not receive an executed signature page from Vendor within this timeframe, Vendor’s shipment of Products in response to a Kroger purchase order, whether electronically, orally or hard copy generated, constitutes Vendor’s unconditional acceptance of this Agreement.**

General Terms and Conditions

Purchase Orders

The legal basis for Kroger's purchase of Products is set forth in its purchase orders ("**Kroger Purchase Order**") and in this Agreement. A Kroger Purchase Order may be transmitted by Electronic Data Interchange ("**EDI**"), GlobalNetXchange ("**GNX**"), other electronic format including facsimile and electronic mail, or in paper format. Additional requirements governing EDI transactions are set forth below in the section captioned "**EDI Transactions.**" The legal basis for Kroger's purchase of private label goods is set forth in this Agreement and in the Corporate Brand Addendum to this Agreement.

The terms and conditions applicable to a Kroger Purchase Order (the "**P.O. Terms and Conditions**") are attached as **Exhibit A**. Unless Vendor and Kroger have executed a written amendment to the P.O. Terms and Conditions, the P.O. Terms and Conditions apply to every purchase of Products by Kroger from Vendor. If there is an inconsistency between the terms and conditions contained in this Agreement (including the P.O. Terms and Conditions) and the terms and conditions contained in other documents relating to the business to be conducted between Kroger and Vendor, the terms and conditions of this Agreement (including the P.O. Terms and Conditions) will prevail unless the conflicting document provides otherwise and is signed by both Kroger and Vendor.

Special Circumstances

Vendors that sell private label goods to Kroger or that sell Products based upon the transmittal of Kroger Purchase Orders by EDI may be subject to supplemental contractual requirements. It is the responsibility of each Vendor in these categories to inquire of Kroger what, if any, supplemental requirements may apply to its specific transaction.

Insurance Requirements

Vendor will maintain at all times while providing Products to Kroger, at Vendor's own cost and expense, insurance coverage of the types and in such amounts as described in **Exhibit B** with a company that has an A.M. Best Co. rating of "A-" or better. Products liability and completed operations insurance must provide coverage in respect of claims involving bodily injury or property damage arising out of or in connection with the Products. Vendor may comply with the required "*per occurrence*" limit through a combination of Primary and Excess Liability insurance policies. The insurance must be primary and not excess or contributing with any insurance or self-insurance maintained by Kroger. The insurance coverage required under this Agreement *must* be maintained by each Vendor for a minimum period of two years following any purchase by Kroger or as long as the Products are still held by Kroger for resale or use, whichever is longer.

Vendor will deliver to Kroger, prior to shipping Products, a Certificate of Insurance including "The Kroger Co. and Kroger's affiliates and subsidiaries" as Additional Insured Vendors. Such Additional Insured status may be given by either an Additional Insured Vendors Endorsement or blanket Additional Insured Vendors coverage built into the Vendor's General Liability policy form.

The Certificate of Insurance must identify all self-insured retentions and/or deductibles to the current ISO general liability policy. The Certificate of Insurance must evidence that the stated insurance will not be cancelled (voluntarily or otherwise) without at least thirty (30) days advance written notice to Vendor's Kroger

Representative. In the event of cancellation or expiration of said insurance during the period of time insurance coverage is required under this Agreement, Vendor must provide proof of replacement insurance a minimum of thirty (30) days in advance of the effective date of such cancellation or expiration. Failure to provide such proof of insurance will result in payments being withheld by Kroger until such time as such proof of replacement insurance is received. If payment to Vendor is delayed by Vendor's failure to furnish Kroger with acceptable proof of insurance, Vendor acknowledges that no discount terms previously negotiated with Kroger will be lost, revoked, denied or reduced, and Kroger will continue to enjoy such negotiated discounts to such extent as if payment were made within the time period necessary to obtain them.

Product Recall Policy

In the event of any and all product recalls that are either (i) agreed upon between Vendor and Kroger, or (ii) that are required (either by law or in the commercially reasonable judgment of Kroger) because Kroger has reason to believe the Products are defective, dangerous, incomplete, infringe upon intellectual property rights, or are not in compliance with applicable laws or regulations, the Products will be returned to Vendor at Vendor's expense, or otherwise disposed of as provided for in the Kroger National Reclamation Policy. This expense, unless otherwise agreed in writing between Vendor and Kroger, will be as set forth in attached **Exhibit C - Division Recall/Withdrawal Charges**. The Purchase Order Terms and Conditions continue to apply to Products that have been recalled. Agreed upon returns of slow sellers, overstock, and product recalls that result from defective, dangerous or incomplete merchandise will be returned to Vendor at Vendor's expense. This expense, unless otherwise agreed, will include: 1) a 12% handling fee for product consolidation and 2) incoming and return freight charges. Any exceptions to this policy must be in writing and signed by the Kroger Representative prior to the return.

Price Increase Notification Policy

Vendor must deliver to its Kroger Representative written notice of any proposed price increases, excluding commodity products (*e.g.*, perishable products and live goods), 1) a minimum of ninety (90) days prior to the effective date of such price increase with respect to general merchandise items, and 2) thirty (30) days prior to the effective date of such price increase with respect to all other items. Kroger may establish additional price change notices and other procedures from time to time upon written notice to Vendor. Kroger will not be obligated to pay such price increase for any Products for which Vendor did not timely deliver such written notice. All such notices must be accompanied by a Certification for Price Increase in the form of attached **Exhibit D**.

Price Decrease Notification Policy

Vendor must deliver to its Kroger Representative written notice of any proposed price decreases, excluding those for commodity products (*e.g.*, perishable products, live goods, and some food products), a minimum of thirty (30) days prior to the effective date of such price decrease. Price decreases received without proper notification will be subject to a price support charge.

Accounting Office Policies

Vendor must provide a separate invoice for each Kroger Purchase Order shipped. Each invoice must include the following:

- Unique invoice number.
- Valid Kroger Purchase Order number.
- Vendor name and "remit to address".
- Complete address to which the product was shipped.

- ❑ Net payment before cash discount.
- ❑ Payment terms.
- ❑ Total shipped quantity and total invoiced quantity. (Food product: Case count, Non-food product: Eaches).
- ❑ Invoice date on or after the ship date.

Vendor must notify Kroger's Accounts Payable in writing of any change to Vendor's "remit to address." Failure to do so will delay future payments. Notification information for the various Kroger entities is available from the Kroger Representative.

Unless otherwise agreed in writing, terms of payment for the Products ordered will begin on the later of the date the Products ordered were scheduled for delivery and are received at Kroger's designated location and discounts will be calculated on the gross amount.

If Vendor ships Products prior to the date shown on the Kroger Purchase Order, payment will be made based upon the scheduled receiving date, increasing the original terms by the number of days early. All early shipment requests must be in writing and signed by the Kroger Representative.

Vendor must reference a Kroger Purchase Order number and Vendor's invoice number when making inquiries or initiating correspondence.

Kroger will notify Vendor of invoice payment discrepancies by advice messages on check stubs. Separate debit memos will not be issued. The deadline for inquiries regarding advice messages is ninety (90) days following issuance.

Vendor must keep full and detailed accounts for a period of not less than two (2) years or as required by law and exercise such controls as may be necessary for proper financial management with respect to transactions with Kroger. Kroger reserves the right to audit up to two (2) years of Vendor's books and records at any time with respect to Vendor's charges, policies, procedures and transactions with Kroger. Any resulting claims will be immediately deducted with or without prior Vendor approval or notice.

Kroger reserves the right to deduct, set-off or withhold payments determined by Kroger to be due and owing by Vendor, whether determined by Kroger in the course of any audit conducted on behalf of Kroger or otherwise, if Vendor has not made payment within thirty (30) days after the invoice date. Kroger will not be responsible for any late charges, penalties or assessments in connection with the assertion of its rights to deduct, set-off or withhold such amounts.

Vendor promotional offers and allowances will be administered and implemented by Kroger pursuant to Kroger and its division's current guidelines, a copy of which is available from the Kroger Representative.

For Fred Meyer store's non-food purchases including Health and Beauty Aids and Candy, a New Store Allowance deduction will be taken on all net new stores, not including remodels or replacements. The amount of the new store-opening allowance will be a percentage of the Vendor's initial inventory shipments to the store or is based on a weight average of shipments from a Fred Meyer warehouse for a period of thirty (30) days prior to and after the new store opens, whichever is applicable. Seasonal goods or first-time buys received during the first full year of operation will be deducted at the time of receipt of goods. If a Vendor does not allow a New Store

Allowance, an officer or executive of the Vendor must sign a certification stating this fact prior to payback of the allowance to the Vendor.

Vendor will pay to Kroger the amounts set forth in the Noncompliance Fee Schedule attached as **Exhibit E** for any noncompliance with this Agreement. The amounts set forth in Exhibit E are in addition to and not in lieu of Vendor's Indemnification and other obligations under this Agreement.

Confidential Information

Vendor acknowledges that it may from time to time possess Confidential Information that has been created, discovered, developed by or provided to it by or on behalf of Kroger, which information has commercial value in Kroger's business and which is not in the public domain. As used herein, "**Confidential Information**" means all information (whether oral, observed, or written) that is marked or treated as confidential, restricted, or proprietary by Kroger, including but not limited to customer information, pricing information, product information, employee information, information regarding business planning and operations, and administrative, financial and marketing activities.

Vendor will protect Confidential Information with the same degree of care that it uses in protecting its own confidential information, but not less than reasonable care. Vendor will not, without Kroger's prior written consent, use or disclose any Confidential Information to any person except its authorized employees who require the same in connection with fulfilling Vendor's obligations to Kroger. Vendor will not commercially utilize any Confidential Information without Kroger's express prior written consent.

Notwithstanding the foregoing, Vendor will have no obligation under this Section with respect to any Confidential Information that it can prove is: (i) received from a third party having a bona fide right to such information and not under an obligation of confidentiality; (ii) approved for release in writing by Kroger; (iii) developed independently without reliance on any Confidential Information; (iv) published or becomes generally available through no act or failure to act on the part of Vendor, (v) publicly known through no wrongful act of Vendor, or (vi) required to be disclosed by a court of law, provided Vendor notifies Kroger prior to such disclosure.

Vendor will return all Confidential Information contained in a tangible form upon termination of its relationship with Kroger, or at an earlier time at Kroger's request. Unless otherwise agreed in writing, Vendor shall not make copies of any Confidential Information.

Store Visits, Merchandise Deliveries and Pickup Requirements

Except with respect to Products governed by a Scan Based Trading Agreement, Vendor will comply with the following requirements regarding store visits, deliveries, and pick-ups:

Vendor/Supplier Representative Entering And Exiting Store

Sign in on the Vendor store log located at the Customer Information Desk or Receiving Area.

Check attaché-type case at the Customer Information Desk. If there is a need to use items in the case while in the store, the Vendor/Supplier representative may be requested to open the case for examination prior to entering and leaving the department.

Sign out on the Vendor store log when leaving the store. Open attaché case for inspection by the person in charge when leaving the store.

Vendor Delivering Merchandise

Make all deliveries through designated receiving doors only. The only exceptions are pharmacy merchandise, fine jewelry, bulky garden and building materials, garden live goods and processed film. Request approval of the Receiving Clerk to remove Products from the location. The only exceptions are photo finishing and scan based trading partners.

Unload Products and place in designated receiving area. If load is too large to fit in designated area, the Receiving Clerk will select an alternate staging site.

Enter Products delivered into Kroger's Direct Store Delivery ("DSD") system. Unauthorized items will be refused.

Receiving Clerk will count Products delivered as eaches, verify that Products delivered corresponds with items and quantities listed on the invoice, and compare dollar totals to the invoice.

The invoice for Products received using Kroger's DSD system must agree with or be no higher than the Kroger Purchase Order.

Any Products not counted at time of receipt will be verified by item by store personnel prior to stocking. Vendor will be notified of any adjustments to invoice. (Exception is food.)

Sign Receiving Log. Vendor will receive a copy of Kroger receiving document (where applicable) after Log has been signed.

EDI Transactions

Use of EDI

Maximizing use of Electronic Data Interchange (EDI) is a key priority of Kroger. Cooperative efforts through the use of EDI have resulted in increased accuracy, improved timeliness, and reduced operating expenses. Kroger supports a variety of different EDI Transactions, some of which are mandated through an "EDI Non-Compliance" program. Information relative to available transactions sets, Kroger's requirements, and supply chain programs leveraged through EDI can be found on the Kroger EDI web site: <http://edi.kroger.com> Vendor will comply with Advance Shipment Notification Requirements, as set forth in **Exhibit F**.

Because updates to the site are made on a regular basis, including posting of "Alerts", all Vendors are expected to make site visits regularly. For new Vendors, the site provides valuable information on how to "Get Started" with Kroger. If Vendor does not have an EDI solution, suggestions are offered on the site and we encourage Vendor to contact one of our EDI Business Analysts. A current contact list is provided.

EDI Non-Compliance Program (DC Purchase Orders)

Vendors who accept product orders that require shipment to any Kroger distribution center ("DC") are required to have the ability to receive the issued purchase order via EDI as well as to return the associated invoice via EDI. Vendors not meeting this requirement will be given ninety (90) days to comply. Should Vendor not conduct the transactions via EDI within the ninety (90) days required, a \$150.00 fee will be

deducted by Kroger from payment to help offset the cost of manual processing. Acceptance of a Kroger Purchase Order will signify consent to this term of purchase.

Standards

Kroger utilizes the standards of ANSI ASC 12 while following the industry guidelines of UCS, VIC, and Motor. These standards may be changed by Kroger from time to time.

Transmissions

Documents are transmitted electronically to each Vendor through the use of valued added networks and on a limited basis directly to Vendor. Either party may contract with the value-added network of its choice, but thirty (30) days notice must be given to the other party upon any change in the choice of the preferred value-added network. Each party is responsible for value-added network expenses for data sent or picked up from its own mailbox.

Acknowledgments

Vendor will acknowledge the receipt of transactions as facilitated through the 997 Functional Acknowledgment or alternative acknowledgment approved in writing by Kroger. Kroger will monitor these acknowledgments and take appropriate action if the expected acknowledgments have not been received within the time specified by the standard and version being used, or within twenty four (24) hours, whichever is the shorter period.

Transactions sent to Kroger by Vendor will be acknowledged according to the guidelines for standard versions being traded. As the sender, it is Vendor's responsibility to verify that Kroger acknowledges the transmissions sent. It is Vendor's responsibility to take appropriate action if the expected acknowledgments have not been forthcoming within the time specified by the standard and version being used or twenty four (24) hours, whichever is the shorter period.

Garbled Transmissions

If any transmitted document is received in an unintelligible or garbled form, the receiving party must promptly notify the originating party in a reasonable manner.

Termination

Kroger reserves the right to revoke an EDI partnership at any time and to revert to the comparable paper process exchange.

Logistics Requirements

Vendor will comply with the following logistics requirements:

UPC/GTIN Policy

- ❑ All Products sold to Kroger in consumer units for the purpose of resale must have a readable UPC or GTIN (“UPC”) barcode affixed to the Product or the Product’s “sellable” packing. The exceptions are items that have been declared exempt, such as newspapers, bulk items, produce, etc. All produce sold to Kroger must have a PLU code affixed to the Product. See your Kroger Representative for further clarification.
- ❑ Vendor must adhere to the UCC specifications for the UPC bar code for format, size, color, location and clarity.

- ❑ Bar codes must be clear, legible, scannable and represent the human readable numeric code located beneath the barcode.
 - ❑ Vendor must e-mail its Kroger Representative for authorization prior to making substitutions for the Products appearing on the Kroger Purchase Order.
 - ❑ Vendor must communicate to its Kroger Representative, in writing, all changes to current UPC numbers, as well as the addition of new numbers, no less than ninety (90) days prior to shipment of Products to Kroger.
 - ❑ Vendor covenants that: 1) the UPC on the labels or packaging for all Products will be imprinted in an accurately scannable manner; and, 2) the UPC information will be correctly assigned to the Products. For the breach of either or both of these covenants, Kroger will charge Vendor in accordance with the Non-Compliance Fee Schedule attached as Exhibit E.
 - ❑ As technology changes, Vendor agrees to adhere to any additional labeling or identification requirements that Kroger requires.
-

Product Preparation

Vendor must prepare Products for shipment as specified by the Kroger Purchase Order instructions, I.D.T.A., DOT CRF-49, I.M.D.G. requirements, and in accordance with the Terms and Conditions of the National Motor Freight Classification as it pertains to specifications for packages and the rules portion of the tariff.

- ❑ Apply tickets to product in accordance with the Kroger Purchase Order, including any specific ticketing provisions and cost thereof:
 - Print the correct information on the ticket (*e.g.*, price, SKU, Class, UPC).
 - Place ticket on the correct Products.
 - Place ticket in the correct location on the Products.
 - ❑ Apply hangers as specified by the Kroger Purchase Order:
 - Proper color.
 - Proper size and type.
 - Size indicator properly applied.
 - ❑ Custom pre-pack and package Products as specified by the purchase order:
 - Case quantity and inner pack quantity as specified.
 - Correct number of units.
 - Pre-assorted as specified.
 - Do not ship partial cases.
-

Packing Lists

Vendors are required to prepare packing lists as specified below:

- ❑ Prepare a packing list for each Kroger Purchase Order to include the Kroger Purchase Order number, Vendor style/stock number, UPC, quantity ordered, quantity shipped, and customer address.
Note: Softgoods Products packing lists must also include the UPC/SKU number, color, size and the total quantity shipped by style.
 - ❑ Clearly indicate which carton contains the packing list.
Note: If agreed upon, prepare individual store packing lists and a consolidated packing list when shipment is specified for multiple stores. Attach paperwork to the lead carton.
 - ❑ Indicate the quantity and cost of pallets if Products are delivered on pallets for which Kroger will be charged.
-

Case Labeling

Case labeling is required only when UCC-128 carton labels meeting Kroger specifications are not used. Label cases legibly, as required, to include the following information:

- ❑ Kroger name, address and Kroger Purchase Order number.
 - ❑ Vendor name and invoice number.
 - ❑ Vendor style/stock number (list all styles in mixed cases).
 - ❑ Case-pack information by style, size breakdown, color, quantity, and lot code.
 - ❑ For Softgoods Products, mark the carton number and the total number of cartons on each carton in multiple carton shipments. (For example: 1 of 26, 2 of 26, etc.).
Note: If Products are one full pallet of the same item (all the same SKU), only one case label per pallet is required.
 - ❑ Label hazardous substances in compliance with the Federal Hazardous Substance Labeling Act and transportation method; I.D.T.A., DOT CRF-49, I.M.D.G. as may apply.
-

Product Packaging

Vendor will comply with all reasonable ergonomic requirements established by Kroger and provided to Vendor, including but not limited to those pertaining to packaging weights, carton dimensions and handhold requirements. Vendor will utilize secure clamshell packaging to better protect high theft Products if requested by Kroger.

Case Packaging

Using advanced automated technology systems, Kroger is changing the way Products are handled within its distribution processes. With these automated systems, pallets are received and inducted into the system in a uniform manner. Subsequently, each case flows through the same standardized processes throughout the system. The system's output is a mixed SKU pallet, ready for delivery to retail stores. Both pallets of Products and case units supplied by Vendor must be able to flow through this system without causing any errors or interruptions to the system process. If errors occur routinely with specific SKUs, packaging or pallet configuration changes may need to be made by Vendor.

Vendor must comply with the pallet, case and slip-sheet/tie-sheet specifications established by Kroger for Products handled by its Case Handling Automation System. A copy of these specifications is available from the Kroger Representative.

Routing and Shipping Instructions

- ❑ Vendor will list all Kroger Purchase Order numbers on the Bill of Lading. (This service may be performed by the carrier on the freight bill.)
- ❑ Mark all cartons and Bills of Lading with *complete* shipping address. Pack, mark and describe shipment on Bill of Lading in accordance with the National Motor Freight classifications, including I.D.T.A., DOT CRF-49, I.M.D.G.
- ❑ Call Kroger's Logistics Department for correct routing instructions on FOB origin shipments when the shipping point will be other than that shown on the Kroger Purchase Order. Any excess charges due to Vendor's failure to do so will be charged to Vendor.
- ❑ Provide Kroger with a contact name, address, and phone number, for each of Vendor's ship points, to receive updates to standard routing instructions.
- ❑ Follow the Kroger Logistics Department standard routing instructions for all collect shipments.
- ❑ Ship Products according to the date specified on the Kroger Purchase Order. Products shipped to arrive before the "due on" date or shipped after the cancel date (without written prior-approval by the Kroger Representative) are considered non-compliant and are subject to a non-compliance base fee charge.
- ❑ Ship Kroger Purchase Orders complete in one departure – backorders are not allowed unless the Kroger Representative gives prior written approval. Failure to do so will result in a chargeback for shipping costs associated with a backorder.
- ❑ Ship pre-approved backorders prepaid, FOB our dock at FOB Vendor expense plus applicable off invoice amounts.

Kroger covers marine insurance under its open marine policy on FOB origin shipments only. Any added costs caused by Vendor not following Kroger's instructions will be charged to Vendor.

Scheduling, Delivery, Unloading and Pallet Requirements

For prepaid Vendor shipments, a delivery appointment is required prior to pickup by the carrier. Vendor name, Kroger Purchase Order number, delivery address, and pertinent load information is required for appointment and delivery. This includes number of cases, weight, number of pallets/and cube, if available. Load type should be identified (floor stacked, slip sheets, pallets) and delivery appointments should be scheduled a minimum of 48 hours prior to the requested arrival-due date.

To facilitate scheduling of inbound delivery appointments, Vendor and its shippers and carriers must use One Network Enterprise's online web-based scheduling (www.onenetwork.com). Delivery appointments can be scheduled off line at a Kroger scheduling center. Kroger reserves the right to impose a fee for any manual scheduling.

Unloading for any type of shipment (floor stacked, slip sheets, pallets) will be based on Kroger's specifications. Palletized loads must be on 48x40 4-way entry pallets. **CHEP 48x40 block pallets are preferred.** If Products are not shipped on CHEP, or like type pool pallet, ONLY- #1/A GMA quality pallets will be accepted. Kroger reserves the right to refuse Products shipped on pallets that do not meet minimum standards of quality, safety or sanitation. Kroger may require Products to be converted to acceptable pallets at the Vendor's or carrier's expense. **Pallets are considered part of the cost of goods.** Kroger will not participate in pallet exchange programs or pallet bank programs, unless it has agreed to participate in a written agreement signed by both Kroger and Vendor.

Customer Pickup Fuel Allowance Policy

Vendor must provide Kroger a diesel fuel allowance on all Kroger backhaul shipments in accordance with the Customer Pickup Fuel Allowance Policy, attached as **Exhibit G.**

Returns

Shipping terms for returned Products are FOB Kroger's designated location, freight collect.

General

Salvage Terms

Vendor must sign and return to its Kroger Representative a National Reclamation Agreement. Vendor must update this agreement when major line changes occur, but no less than annually. Current agreements will remain in effect until changed in writing. Vendor will comply with the terms of the Kroger National Reclamation Policy, incorporated herein by reference.

In addition, Fred Meyer stores will conduct a bi-annual Reclamation True-up for non-food products including Health and Beauty Aids and Candy. This process will compare the Vendor's actual product processed through the Fred Meyer Reclamation Center compared to the monies collected from the Vendor as a Reclamation Allowance. If the Vendor's Reclamation Allowance is less than the product processed through Fred Meyer's Reclamation Center, then Fred Meyer is entitled to claim the variance, via an Accounts Receivable invoice or a deduction.

Scanning/Faxing

The parties agree that in the event Vendor returns the signature page of this Agreement via fax or other electronic means, Kroger will be entitled to rely on and enforce that version of the Agreement as if it were an original. Either party may rely on and/or enforce a scanned version of this Agreement as if it were an original.

Notices

Any notices required or permitted by this Agreement must be in writing and sent, in the case of Kroger to the Kroger Representative and in the case of Vendor to the Vendor Contact designated on the signature page of this Agreement. Notices will be deemed given on the date deposited in the mail, if mailed, or received, if delivered in any other manner.

TABLE OF EXHIBITS

SCHEDULE 1:	LIST OF CURRENT KROGER NAMES
EXHIBIT A:	KROGER PURCHASE ORDER TERMS AND CONDITIONS
EXHIBIT B:	VENDOR INSURANCE REQUIREMENTS
EXHIBIT C:	DIVISION RECALL/WITHDRAWAL CHARGES
EXHIBIT D:	CERTIFICATION FOR PRICE INCREASE
EXHIBIT E:	NON-COMPLIANCE FEE SCHEDULE
EXHIBIT F:	ADVANCE SHIPMENT NOTIFICATION VENDOR REQUIREMENTS
EXHIBIT G:	CUSTOMER PICKUP FUEL ALLOWANCE POLICY

SCHEDULE 1

LIST OF CURRENT KROGER NAMES

Grocery and Mass Merchandise Stores

Kroger
Kroger Marketplace
Baker's Supermarkets
Bell Markets
Cala Foods
City Market
Dillon Stores
Food 4 Less
Foods Co.
Fred Meyer
Fresh Fare
Fry's
Fry's Marketplace
Gerbes
Hilander
Jay C Food Stores
Kessel Food Markets
King Soopers
Owen's
Pay Less
QFC
Ralphs
Smith's
Smith's Marketplace

Convenience Stores

Kwik Shop
Loaf'n Jug
Mini Mart
Quik Stop Markets
Tom Thumb Food Stores
Turkey Hill Minit Markets

Distribution, Procurement And Other Entities

Kroger Group Cooperative, Inc.
Kroger Group, Inc.
Peytons
WESCO
Inter-American Products

Manufacturing Facilities

Grocery: America's Beverage
Bluefield Beverage
Delight Products
Kenlake Foods
Pace Dairy of Indiana
Pace Dairy
Pontiac Foods
Springdale Ice Cream & Beverage
State Avenue
Tara Foods

Bakery: Anderson Bakery
Clackamas Bakery
Columbus Bakery
Country Oven Bakery
Dillons Bakery
Indianapolis Bakery
K B Specialty Foods
King Soopers Bakery
La Habra Bakery
Layton Dough
Ralphs Deli Kitchen

Dairy: Centennial Farms Dairy
Compton Creamery
Crossroad Farms Dairy
Heritage Farms Dairy
Jackson Dairy
Jackson Ice Cream
Layton Dairy
Michigan Dairy
Riverside Creamery
Southern Ice Cream Specialties
Swan Island Dairy
Tamarack Farms Dairy
Tolleson Dairy
Turkey Hill Dairy
Vandervoort Dairy
Westover Dairy
Winchester Farm Dairy

Meat: King Soopers Meat
Sunland Meat
Vernon Meat

EXHIBIT A

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>

- 6** 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. Vendor represents that unless it has disclosed to Kroger otherwise, it is not a broker or reseller of the Products.
 - 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.
 - 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

	<p>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.</p> <p>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.</p>
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. 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 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.</p>
9	<p><u>Acceptance of Terms.</u> 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</p>

	<p>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.</p>
10	<p><u>Payments Subject to Claims/Defenses.</u> 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.</p>
11	<p><u>Taxes and Other Charges.</u> 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.</p>
12	<p><u>Force Majeure.</u> 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.</p>
13	<p><u>Indemnification.</u> 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 suffered, including Vendor's or Kroger's agents or employees, resulting or claimed to result, directly or indirectly, from 1) the Products, including Kroger's purchase, use, shipment, storage, delivery, sale, offering for sale, or other handling of the Products, or 2) Vendor's actual or alleged breach of any of the representations, warranties, guarantees or other terms and conditions contained herein, except if such liability is caused by the sole negligence or willful misconduct of Kroger or its employees. In addition to the foregoing, if any of the Products purchased or any part thereof is alleged or held to constitute infringement, Vendor, at its own expense, will either (i) procure for Kroger, its successors, assigns, and customers the right to continue using such Products, (ii) replace the Products with non-infringing items or (iii) only if options (i) and (ii) are impracticable, refund the purchase price for the Products and pay all related expenses.</p> <p>As to any claim made against Kroger, Vendor expressly waives any insulation from liability or immunity from suit with respect to injuries to Vendor's employees that may be extended to Vendor as a result of any payments made by Vendor to such employees or under any applicable worker's compensation statute or similar law or judicial decision. It is further agreed and affirmed that Vendor will hold harmless Kroger from and against any claims made by any of Vendor's employees, contractors or representatives working in the course and scope of their employment by Vendor or provision of services to Vendor while at any Kroger</p>

	<p>location (the term “location” not being limited to any store, manufacturing plant or distribution center, but encompassing Kroger and all of its affiliates and subsidiaries and their facilities), unless such claim was the sole and proximate result of the gross negligence and/or willful misconduct of Kroger. Further, Kroger will be held harmless from any worker’s compensation liens incurred from Vendor’s insurance carrier, third party administrator or self-administered, self-insured claims program(s). Vendor acknowledges that this provision is a reasonable request from Kroger and being agreed to by Vendor in order to give Vendor employees, contractors and representatives access to Kroger locations.</p>
<p>14</p>	<p><u>Country of Origin Requirements.</u> Vendor warrants to Kroger that it complies (or prior to the Effective Date will be in full compliance) with all federal, state and local Country of Origin labeling and related requirements, including those required by the U.S. Customs Service, those contained in the Agricultural Marketing Act, as amended by the 2002 Farm Bill, and the implementing regulations (collectively, “Country of Origin Requirements”), and will provide to Kroger all reasonable assistance requested by Kroger and information necessary to enable Kroger to comply with the Country of Origin Requirements as they apply to Vendor’s Products. In particular, Vendor will:</p> <ul style="list-style-type: none"> a. label or include with all Products subject to the Country of Origin Requirements (“Covered Commodities”) that are shipped to Kroger all Country of Origin information that Kroger is required to display or maintain with respect to the Covered Commodities; b. comply with all record keeping and product segregation standards required by the Country of Origin Requirements and by Kroger; and c. provide to Kroger at least once each year the results of an audit of the program used by Vendor to comply with the Country of Origin Requirements performed by the USDA or other third party reasonably acceptable to Kroger. <p>Breach of this warranty with respect to the Country of Origin Requirements will trigger the indemnification obligations of the Kroger Purchase Order Terms and Conditions and in any agreement to which they are attached.</p>
<p>15</p>	<p><u>Title and Risk: Shipment.</u> Unless otherwise indicated on the Kroger Purchase Order, title and risk of loss with respect to the Products will remain with Vendor until the Products have been delivered to and accepted by Kroger, or an agent or consignee duly designated by Kroger, at the location specified on the front hereof. A packing slip must accompany each shipment. If a shipment is to a consignee or agent of Kroger, a copy of the packing slip must be forwarded concurrently to Kroger. If no packing slip is sent, the count or weight reported by Kroger or its agent or consignee will be final and binding upon Vendor with respect to such shipment.</p>
<p>16</p>	<p><u>Mechanic’s Liens.</u> Vendor hereby waives its rights to any mechanic’s liens or other such liens under any applicable statutes or otherwise for work done on materials furnished in connection with the Products. As a condition to payment, Vendor will, upon Kroger’s request, furnish Kroger evidence that all subcontractors or materialmen used by Vendor in connection with completion of the Products have been paid in full and have released all mechanic’s liens or other such liens held by such subcontractors or materialmen against the Products. Upon Kroger’s request, Vendor will, at its expense, promptly discharge any mechanic’s liens or other such liens held by Vendor or its subcontractors or materialmen against the Products or obtain a bond to satisfy such liens. In any event, Vendor will indemnify Kroger against and hold Kroger harmless from any and all costs, expenses, liabilities, and damages, including attorneys’ fees, that Kroger may incur in connection with or as the result of the existence or discharge of any such liens.</p>
<p>17</p>	<p><u>Supplier Diversity.</u> Kroger is committed to providing meaningful opportunities for minority-owned businesses (“MBE” – minority-owned business enterprises) and women-owned companies (“WBE” – women-owned business enterprises) to be our business partners. Kroger carries out this commitment in many ways, including on-going efforts to identify and track expenditures with MBEs and WBEs. Vendor will supply to Kroger upon Kroger’s request MBE and WBE information about Vendor’s organization and entities with whom Vendor does business.</p>
<p>18</p>	<p><u>Public Announcements.</u> Vendor will inform and obtain the prior written consent of Kroger prior to making</p>

	any public announcement, through press releases or otherwise, concerning its relationship with Kroger.
19	<p><u>General Provisions.</u> Any rights or remedies granted to Kroger in any part of the Kroger Purchase Order will not be exclusive of, but will be in addition to, any other rights or remedies that Kroger may have at law or in equity. Vendor may not assign its rights and obligations hereunder without the prior written consent of Kroger, which will be in Kroger’s sole discretion. The rights and obligations of the Kroger Purchase Order will inure to the benefit of, and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and permitted assigns. No action, failure of action or delay by either party will constitute a waiver of any of its rights or remedies under the Kroger Purchase Order. Vendor and Kroger are not, and will not be, joint venturers, partners, agents, servants, or employees or fiduciaries of the other, and do not have the power to bind or obligate the other. The waiver of a breach of any provision does not constitute a waiver of a subsequent breach of the same or different provision. The rights and liabilities of the parties under a Kroger Purchase Order are governed in all respects by Ohio law, without reference to or application of its conflicts of law provisions. THE PARTIES HEREBY WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY DISPUTES OR CLAIMS ARISING UNDER THIS AGREEMENT. If Vendor has previously made Kroger an offer with respect to the Products, the Kroger Purchase Order will not operate as an acceptance of Vendor’s offer, but rather will be deemed to be a counter-offer. If any of the terms of the Kroger Purchase Order or agreement in which they are incorporated are subsequently or are now illegal, they will be severed without affecting the remaining terms. The section headings are for reference only and will not be considered controlling as to the content and/or interpretation of any section.</p>
20	<p><u>Mandatory Arbitration.</u> Any controversy, claim or dispute of whatever nature arising between the parties arising out of or relating to the Kroger Purchase Order or any agreement in which they are incorporated, or the breach, termination, enforceability, scope, or validity thereof, whether such claim existed prior to or arises on or after the execution date (a “Dispute”), will be resolved by binding arbitration in Hamilton County, Ohio, USA or other location agreed upon by Kroger. The prevailing party in any such action will be entitled to recover all costs, including reasonable attorneys’ fees, at trial and on any appeal or petition for review, incurred in enforcing the terms of the Kroger Purchase Order or other agreement including these terms.</p> <p>Neither party will commence an arbitration proceeding pursuant to the provisions set forth below unless that party first gives a written notice (a “Dispute Notice”) to the other party setting forth the nature of the Dispute. The parties must attempt in good faith to resolve the Dispute through discussions between the parties’ senior management.</p> <ol style="list-style-type: none"> a. If the Dispute has not been resolved through senior management discussions as provided above within sixty (60) days after receipt of the Dispute Notice, or if a party fails to participate in those discussions, then the Dispute will be determined by binding arbitration. The arbitration will be conducted in accordance with such rules as may be agreed upon by the parties, or failing agreement within thirty (30) days after arbitration is demanded, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”). The Dispute will be determined by one arbitrator, except that if the Dispute involves an amount in excess of \$1,000,000 (exclusive of interest and costs), three arbitrators will be appointed. b. Persons eligible to serve as arbitrators need not be members of the AAA, but they must have professional credentials demonstrating the ability to handle a matter of the scope and complexity of the Dispute. The arbitrator(s) will base the award on the applicable law and judicial precedent that would apply if the Dispute were decided by a United States District Court Judge and the arbitrator(s) will have no authority to render an award, which is inconsistent therewith. The award must be in writing and include the findings of fact and conclusions of law upon which it is based. c. Unless the parties agree otherwise, discovery will be limited to an exchange of directly relevant documents. Depositions will not be taken except as needed in lieu of a live appearance or upon mutual agreement of the parties. The arbitrator(s) will resolve any discovery disputes. The arbitrator(s) and counsel of record will have the power of subpoena process as provided by law. The parties knowingly and voluntarily waive their rights to have any Dispute tried and adjudicated by a judge or a jury. d. The arbitration will be governed by the substantive laws of the State of Ohio, without regard to conflicts-of-law rules, and by the arbitration law of the Federal Arbitration Act (Title 9, U.S. Code).

Judgment upon the award rendered may be entered in any court having jurisdiction. Notwithstanding the foregoing, upon the application by either party to a court for an order confirming, modifying or vacating the award, the court will have the power to review whether, as a matter of law based on the findings of fact determined by the arbitrator(s), the award should be confirmed, modified, or vacated in order to correct any errors of law made by the arbitrator(s). In order to effectuate such judicial review limited to issues of law, the parties agree (and will stipulate to the court) that the findings of fact made by the arbitrator(s) will be final and binding on the parties and will serve as the facts to be submitted to and relied upon by the court in determining the extent to which the award should be confirmed, modified, or vacated.

- e. Except as otherwise required by law, the parties and the arbitrator(s) agree to keep confidential and not disclose to third parties any information or documents obtained in connection with the arbitration process, including the resolution of the Dispute. If either party fails to proceed with arbitration as provided in the Kroger Purchase Order, or unsuccessfully seeks to stay the arbitration, or fails to comply with the arbitration award, or is unsuccessful in vacating or modifying the award pursuant to a petition or application for judicial review, the other party will be entitled to be awarded costs, including reasonable attorney's fees, paid or incurred in successfully compelling such arbitration or defending against the attempt to stay, vacate or modify such arbitration award and/or successfully defending or enforcing the award.

Each party hereby waives any and all rights it may have to receive exemplary or punitive damages with respect to any claim it may have against the other party, it being agreed that no party will be entitled to receive money damages in excess of its actual compensatory damages, notwithstanding any contrary provision contained in the Kroger Purchase Order or otherwise. Notwithstanding any contrary provisions in this Section, the parties recognize that certain business relationships could give rise to the need for one or more of the parties to seek emergency, provisional or summary relief to repossess and sell or otherwise dispose of goods, equipment and/or fixtures, to prevent the sale or transfer of goods, equipment and/or fixtures, to protect real or personal property from injury, or to obtain possession of real estate and terminate leasehold interests, and for temporary injunctive relief. Immediately following the issuance of any such relief, the parties agree to the stay of any judicial proceedings pending mediation or arbitration of all underlying claims between the parties.



PLEASE FORWARD THIS TO YOUR INSURANCE AGENT OR BROKER
Vendor Insurance Requirements

The Kroger Co. and/or Kroger's affiliates and subsidiaries ("Kroger") may require higher insurance coverage limits and/or different coverages for certain product and service providers.

Underwritten by insurance companies rated A- or higher by A.M. Best

Cancellation Days Notice: Thirty (30) Days

Must be shown as additional wording on Certificates: > "The Kroger Co. and Kroger's Affiliates and Subsidiaries are Additional Insureds" > "Primary and Non-Contributory" (except Workers' Compensation) > Waiver of Subrogation in favor of The Kroger Co.	Certificate Holder Name and Address: The Kroger Co. and Kroger's affiliates and subsidiaries C/o Ebix BPO PO Box 881639 San Diego, CA 92168
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Must be shown as additional wording on Certificate: All insurance policies excluding workers compensation must be "primary & non-contributory"

General Liability

Commercial General Liability	\$3,000,000
Occurrence Basis	Yes
Product Liability / Completed Operations	\$3,000,000
Additional Insured – Vendors ISO 2015 11/88	Yes
Advertising Injury	1,000,000
Each Occurrence	\$3,000,000

The following coverages are required if services are provided by Vendor on Kroger premises, or as otherwise required by Kroger:

Auto Liability

Any Auto	Yes
Combined Single Limit – Bodily Injury and Property Damage	\$2,000,000

Note: As it concerns Auto Liability, a combination of "All Owned Autos, Hired Autos & Non-Owned Autos" OR "Scheduled Autos, Hired Autos & Non-Owned Autos" is acceptable

Workers Compensation

Statutory Limits	Yes
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Note: Waiver of subrogation in favor of The Kroger Co. must be shown on the certificate

Employers Liability

Each Accident	\$1,000,000
Disease Policy Limit	\$1,000,000
Disease Each Employee	\$1,000,000

Note: a) Required coverage limits can be achieved through a combination of your each occurrence limit of Primary & Umbrella or Excess Liability Insurance; b) In certain instances, "Claims Made" policies may be acceptable, consult with the Ebix BPO Kroger Certificate Administrator to validate this exception.

ONLY FAX your Compliant Certificate to Kroger's Certificate Administrator at Ebix BPO - 1-888-720-3834.

For questions, please contact:

Contact Name:	Contact Title / Company:	Contact Phone:	Contact e-Mail:
Jim Aalberg	VP Corporate Insurance – Kroger	1-503-797-5300	jim.aalberg@kroger.com
Ed Bird	Insurance Analyst – Kroger	1-503-797-3318	edward.bird@kroger.com
Jan Stage	Kroger Certificate Administrator – Ebix BPO	1-619-407-7348	jan.stage@ebix.com

EXHIBIT C

DIVISION RECALL/WITHDRAWAL CHARGES

Vendors of Products removed from sale due to a recall or withdrawal will be charged the total of the following:

1) Delivered Cost of Products	Charge the greater of invoice or replacement cost.
2) Store Handling Cost	Use average clerk rate, including fringes, (x) the total number of hours involved. (Must be documented with accurate records.)
3) Warehouse Handling Cost	Use average warehouse rate, including fringes, (x) the total number of hours involved. (Must be documented with accurate records.)
4) Shipping Cost to Stores	Use cents per cwt. cost for shipping that product category (x) cwt. shipped to stores and also from stores, if Kroger Division is requested to return the products.
5) Actual Freight for Products Returned	Charge the actual freight cost for the products returned
6) Disposal Cost	Charge any identifiable disposal costs.
7) Special Handling Cost	Charge any identifiable special handling costs.
8) Administrative Cost	Class I Recall - \$500 per recall. Class II Recall - \$300 per recall. Class III Recall & Withdrawals - \$200 per recall or withdrawal.

A record of each transaction is necessary for charging the handling and product costs back to Vendor. Any replacement merchandise must be billed to the Operating Division by Vendor as new merchandise. *(Trading merchandise without a charge or credit in the store or in the warehouse is not permissible.)*

A copy of the recall billing costs must be sent to the designated Recall Contact at Kroger's General Office.

EXHIBIT D

CERTIFICATION FOR PRICE INCREASE

The undersigned hereby represents to The Kroger Co. and its subsidiaries and affiliates (collectively, "Kroger"), that the pricing reflected in the documentation attached hereto is no greater than the pricing offered to any competitor of Kroger, including Wal-Mart. In the event that lower pricing is offered to any other person or entity, that price and the basis for the lower price is set forth on the attachment hereto.

Company Name

Signature

Date

EXHIBIT E

STANDARD VENDOR AGREEMENT NON-COMPLIANCE FEE SCHEDULE

Base Fee		
\$ 100.00	Per Incident (Note: The Base Fee is waived when Flat Fees are charged.)	
Hourly Fee		
\$ 45.00	Per hour	
Flat Fee*		
\$ 500.00		ASN Incorrect or Not Provided
\$ 200.00	Per shipment	Case Labeling Errors
\$ 500.00	Per shipment	Case Pack Errors
\$ 500.00		Flat fee for non-conforming and illegible UCC-128 labels
\$ 500.00		Hazardous material improperly labeled
\$ 500.00		Improper Application of Hangers
\$ 1,000.00		Improper or no Hazardous Material shipping papers when required
\$1,000.00	Per item per division	Items discontinued without 60 days written notice
\$ 1,000.00	Plus all extra outbound transportation costs, plus any applicable \$ 250.00 Traffic Department service charge(s)	Late or Incorrect Ad Merchandise
\$ 500.00	Plus all extra inbound and outbound transportation costs, plus any applicable \$ 250.00 Traffic Department Service charge(s)	Merchandise shipped early / late (shipped before ship on extra inbound and date or shipped after cancel date as specified on purchase order, or received early / late before first requested arrival date, or received after requested arrival date)
\$1,000.00	Per item per division	New products not in inventory at distribution center after item availability date
\$ 150.00	Per PO / Invoice	Non-Compliance for EDI Usage
\$ 250.00	Plus extra freight costs	Not following Traffic Department routing instructions (collect shipments), or shipping an order Collect that was Supposed to be prepaid
\$ 250.00	Plus the cost of unloading	Not providing the unloading services on a prepaid shipment
\$ 200.00	Per shipment	Packing List Errors / No Packing List
\$ 100.00	Per pallet, plus extra handling cost	Poor Pallet Quality or Incorrect Pallets
\$1,000.00	Per item per division	Product attributes (e.g. GTIN, case GTIN, case pack, size, item dimensions, description) charged with out 60 days written notice
\$ 1,000.00	Per PO	UPC Violations – General Merchandise procured by Fred Meyer
\$ 5,000.00	Per item / per division	UPC Violations – All Other
\$ 500.00		Unapproved Backorder (approved backorders are only approved if in writing from buyer)

* This may be in addition to an hourly fee and may be administered on a per Kroger Purchase Order basis applicable to multiple Kroger Purchase Order shipments.

Fee Collection

Kroger will deduct the amount due from any outstanding invoice. If there are monies due Kroger that have not been deducted within sixty (60) days, Vendor must pay by check. **These amounts are in addition to, and not in lieu of, Vendor's indemnification and other obligations to Kroger. Vendor agrees that all amounts set forth in this fee schedule are reasonable liquidated damages and do not constitute a penalty.**

EXHIBIT F

ADVANCE SHIPMENT NOTIFICATION VENDOR REQUIREMENTS

Technical Requirements

1. An 856 EDI transaction must be generated and sent to Kroger. The 856 EDI transaction must comply with Kroger's requirements as listed on edi.kroger.com.
2. The Advance Shipment Notification ("ASN") must be generated when the truck leaves the plant.
3. The EDI process times should occur at least as frequently as the travel time it takes for the truck to get to the warehouse. This will insure that the data transmission will arrive before Products arrive.

Operational Requirements

1. Sample labels must be sent to the Kroger DC for review.
2. The items' tiers and highs on the ASN should be sent to the Kroger Distribution Center.
Note: The T i x HI is helpful for ASN set up and review. Negotiable as a requirement on data transfer.

Physical Requirements

1. One piece of wood or slip-sheet for every load of product is required for ASN receiving.
2. The label must be placed in the upper right hand corner of the pallet.
3. The label must be placed on the outside of the shrink-wrap.
4. The labels should comply with the UCC SSCC-18 Standard (<http://www.uc-council.org>).
5. The label should be temperature sensitive (to prevent smearing in freezing conditions).

Additional Preferred Requirements

1. The SSCC-18 label should have the last six characters at least one inch in height.
2. A single SSCC-18 label should not be placed on mixed pallets (a pallet with two or more items).
3. Usage of wrap around labels is recommended (One label with two SSCC-18 ID's extending from the upper right hand corner of one side to the upper left hand corner of the other).

Please refer to edi.kroger.com for additional details and requirements.

EXHIBIT G

CUSTOMER PICKUP FUEL ALLOWANCE POLICY

Kroger requires all Vendors to provide a 'fair and equitable' market-based Customer Pickup ("CPU") diesel fuel allowance on all Kroger backhaul shipments of Products. This allowance should be applied to each individual Kroger Purchase Order invoice. The total allowance amount will be based on the U.S. Government's weekly Department of Energy's (DOE) National Diesel Fuel Index. Calculation logic is as follows:

- Miles are calculated between origin and delivery location zip codes using PC Miler.
- The Kroger Purchase Order pickup date will be cross-referenced to the U.S. Government's D.O.E. Weekly National Diesel Fuel Index to pinpoint the price of diesel fuel for each individual backhaul shipment. http://tonto.eia.doe.gov/oog/info/wohdp/diesel_detail_report.asp
- The D.O.E. Weekly Diesel Fuel Index price per gallon is then cross referenced to Kroger's CPU Fuel Index Scale to determine the weekly fuel subsidy per mile.
- Kroger's DOE fuel index scale's 'neutral zone' is \$1.15--\$1.1999. Every +/- \$.05 change in the National DOE Index will equate to +/- \$.01/mile vendor fuel allowance per backhaul shipment. Kroger's scale is uncapped.
- The Kroger Fuel Index Scale will be multiplied by each Kroger Purchase Order's total mileage to determine total \$\$ subsidy applied to each Kroger Purchase Order invoice.