

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. 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>Representations, Warranties and Guarantees.</u> By acceptance of the Kroger Purchase Order, Vendor makes the following representations, warranties and guarantees:</p> <ol style="list-style-type: none">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 and any other amendment thereto, and comply with, and are not adulterated or misbranded within the meaning of, any state food and drug law, including but not limited to California Proposition 65; are not articles that may not, pursuant to

Sections 404 or 505 of the FDCA, the Federal Hazardous Substances Act (“FHSA”), or otherwise, be introduced into interstate commerce; if meat and poultry products comply with the Federal Meat Inspection Act and the Poultry Products Inspection Act; and 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, 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 meets 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; 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.
- 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 commercially reasonable 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.
- 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.

<p>6</p>	<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 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.
<p>7</p>	<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 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>

8	<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). 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>
9	<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>
10	<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>
11	<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 normal 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 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>
12	<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</p>

	<p>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>13</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>14</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 attorney’s fees, that Kroger may incur in connection with or as the result of the existence or discharge of any such liens.</p>
<p>15</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>16</p>	<p><u>Public Announcements.</u> Vendor will inform and obtain the prior written consent of Kroger prior to making any public announcement, through press releases or otherwise, concerning its relationship with Kroger.</p>
<p>17</p>	<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</p>

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.

18 Mandatory Arbitration. 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.

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.

- 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.

