



THE KROGER CO.

**STANDARD VENDOR AGREEMENT
FOR MANUFACTURING SOURCING**

OCTOBER 2017

THE KROGER CO.
STANDARD VENDOR AGREEMENT FOR MANUFACTURING SOURCING
October 2017 VERSION
SIGNATURE PAGE

The signature set forth below acknowledges Vendor's agreement with and acceptance of this Standard Vendor Agreement for Manufacturing Sourcing.

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/Title: _____

Vendor Address: *Street / Suite:* _____

City / St / Zip: _____

Vendor Contact #s: *Phone:* _____ *Fax:* _____

Cell: _____ *E-Mail:* _____

Vendor Emergency Contact Name/Title: _____

Vendor Emergency Contact Address: *Street / Suite:* _____

City / St / Zip: _____

Vendor Emergency Contact #s: *Phone:* _____ *Fax:* _____

Cell: _____ *E-Mail:* _____

Name of Signatory/Title: _____

Signatory Signature: _____ **Date Signed** _____

Kroger Representative Contact Name/Title: _____

Kroger Representative Contact Address: *Street / Suite:* _____

City / St / Zip: _____

Kroger Representative Contact #s: *Phone:* _____ *Fax:* _____

Cell: _____ *E-Mail:* _____

Please check the only one 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 amendment. Vendor understands 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 YOUR KROGER REPRESENTATIVE AND RETAIN A COPY FOR YOUR RECORDS, and ATTACH THE SVA IN ITS ENTIRETY IN SMARTSOURCE SUPPLIER CONTRACTS PROFILE.

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 MANUFACTURING SOURCING
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This Standard Vendor Agreement for Manufacturing Sourcing (this “**Agreement**”) is by and between the Manufacturing Division of 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, supplies and incidental services (“**Products**”) to Kroger. Products include food, ingredients for food, food contact substances, packaging, supplies, and similar items for Kroger manufacturing operations. This Agreement is effective as of the date this Agreement is signed by Vendor on page 2 of this Agreement (the “**Effective Date**”) and applies to any shipment of Products made by Vendor to Kroger from and after the Effective Date. Kroger’s manufacturing operations and distribution centers are currently conducted under the names listed in the Division Address List, which can be viewed at this URL/link <http://www.thekrogerco.com/vendors-suppliers/manufacturing>.

This Agreement includes the terms and conditions of all attached Exhibits. If there is any conflict between the terms of this Agreement and any other document signed by parties, the terms of this Agreement shall govern.

Execution of Agreement

By its execution of this Agreement, Vendor 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.

Purchase Order Information

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 and Conditions. A Kroger Purchase Order may be transmitted by Electronic Data Interchange (“**EDI**”), or electronic mail. Additional requirements governing EDI transactions are set forth below in the section captioned “**EDI Transactions**.”

Terms and Conditions

KROGER’S STANDARD VENDOR AGREEMENT AND ALL PURCHASE ORDERS ARE SUBJECT TO KROGER’S PURCHASE ORDER TERMS AND CONDITIONS (THE “TERMS AND CONDITIONS”) attached as EXHIBIT D, ACCOUNTING OFFICE POLICIES attached as EXHIBIT E, AND SHIPPING INSTRUCTIONS, AS REVISED OR AMENDED FROM TIME TO TIME. THE VENDOR STANDARD ROUTING INSTRUCTIONS, WHICH ARE HEREBY INCORPORATED BY REFERENCE INTO THE STANDARD VENDOR AGREEMENT AND ALL PURCHASE ORDERS, ARE LOCATED AND CAN BE VIEWED AT THIS URL/LINK. <http://www.thekrogerco.com/vendors-suppliers/manufacturing>.

AND VENDOR ACKNOWLEDGES RECEIPT, REVIEW AND ACCEPTANCE OF THE TERMS AND CONDITIONS, ACCOUNTING

OFFICE POLICIES, AND ROUTING AND SHIPPING INSTRUCTIONS.

SENDING A WRITTEN ACCEPTANCE AND/OR COMMENCEMENT OF ANY WORK, SERVICES, OR DELIVERY OF GOODS UNDER A KROGER PURCHASE ORDER SHALL CONSTITUTE VENDOR'S ACCEPTANCE OF THE TERMS AND CONDITIONS, ACCOUNTING OFFICE POLICIES, AND ROUTING AND SHIPPING INSTRUCTIONS.

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 A** 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. All policies will include a Waiver of Subrogation. All defense costs are the responsibility of the Vendor as required by the Additional Insured Vendor's Coverage ISO 20 15 07 04 or equivalent coverage. The insurance coverage required under this Agreement must be Occurrence coverage and maintained by each Vendor for a minimum period of five (5) years following any purchase by Kroger or as long as the Products are still held by Kroger for resale or use, whichever is longer. Alternatively, claims made coverage is acceptable with automatic five (5) year tail coverage.

Vendor will deliver to Kroger, prior to shipping Products, a Certificate of Insurance including "The Kroger Co. and its subsidiaries, affiliates, directors, officers, agents and employees under the Vendors Additional Insured coverage.

The Certificate of Insurance must identify all self-insured retentions and/or deductibles to the current ISO general liability policy. Vendor must provide a minimum of thirty (30) calendar days advanced written notice should said insurance be cancelled (voluntarily or otherwise) materially changed or expire. 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 ten (10) calendar 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 Product Recall Procedures. This expense, unless otherwise agreed in writing between Vendor

and Kroger, will be set forth in attached **Exhibit C – Kroger Billing Policy for Recalls and Withdrawals**. The Purchase Order Terms and Conditions continue to apply to Products that have been recalled. Any exceptions to this policy must be in writing and signed by the Kroger Representative prior to the return.

Price Change Notification

Except in the case of exchange traded commodities, Vendor must deliver to its Kroger Representative written notice of any proposed price increase at least forty-five (45) days prior to the effective date of such price increase. Written notice of any proposed price decrease must be delivered at least thirty (30) days prior to the effective date of such price decrease.

Production Process Changes

Vendor shall notify Kroger a minimum of 120 days in advance of making any changes to items/materials provided by Vendor, or raw materials/formulations/feedstocks used to produce items/materials or changes to the production process, or production equipment, suppliers and/or locations. Vendor shall obtain Kroger's written consent that such changes do not render the materials supplied hereunder unsuitable for Kroger's use prior to instituting such changes.

Vendors shall fill out a Raw Materials/Packaging Change request for (Exhibit F) describing proposed changes (including product deletes and/or discontinued items) and submit to pchange@kroger.com 120 days in advance of making any changes.

Kroger will review the requested change and if authorized by Kroger, Vendor must obtain Kroger's written consent that such changes do not render the materials supplied hereunder unsuitable for Kroger's use prior to instituting such changes.

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

Ownership of Intellectual Property

Unless otherwise agreed to in writing by Kroger and Vendor, any inventions developments, improvements, processes, methods, formulae, specification, ideas, trade secrets, know how, discoveries or the like concerning or in relation to any aspect of, or as a result of, the production of the Products by Vendor, including any data, results, information and notes deriving from and relating thereto (collectively, “**Intellectual Property**”) which is conceived, reduced to practice, discovered, invented and/or developed pursuant to or is a result of this Agreement whether by Vendor, by Kroger, or jointly by Kroger and Vendor, will be owned solely by Kroger. Without limiting the foregoing, any work of Vendor’s authorship relating to the Products or parts thereof is “work made for hire.” Vendor hereby assigns, transfers and sets over and onto and will assign, transfer and set over and onto Kroger all such Intellectual Property, including all rights, interests and proprietary claims, in the world.

Without limiting the generality of the foregoing, in the event that any Kroger owned Intellectual Property (including any formula, method, specifications or process) is altered, revised, reformulated or improved in any manner (“**Improvement**”), the resulting Intellectual Property (including such formula, method, specifications or process) will be owned solely by Kroger. As set out above, Vendor hereby assigns, transfers and sets over any and all rights, interests and claims therein to Kroger.

Vendor agrees to do any and all acts, and to execute any and all instruments, that Kroger may request to secure to itself the ownership rights of the Intellectual Property addressed above.

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.inter-americanproducts.com/edisupplier.htm>

EDI Non-Compliance Program

Vendors are required to have the ability to receive the issued PO 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 \$250.00 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.

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.

Standards

Kroger utilizes the standards of ANSI X12 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 value 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. 824 rejection notices are required to be audited. Necessary corrections and retransmission of rejected invoices are required for invoice to autopay.

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

Bill of Lading

Vendors are required to prepare Bill of Lading as specified below:

- Prepare a Bill of lading for each Kroger Purchase Order to include the Kroger Purchase Order number, Vendor style/stock number, Kroger Line Number, quantity ordered, quantity shipped, and customer address.
-

Product Labeling

Product labeling is required to meet Kroger specifications. All product should be labeled legibly using the label format guidelines below, and include the following information:

- Vendor name;

- Vendor item number (list all styles in mixed cases) and Kroger Line Number;
- Manufacture Date (Open Date);
- Lot or Batch Number;
- Best If Used By Date, as applicable (Open Date);
- Storage Instructions;
- Product Name with Complete Product Description (Including Flavor and Color);
- Product Ingredient Statement and Allergens Present;
- Net Contents/Weight; Gallons, Fluid Ounces, or Pounds) and Metric Equivalent; Country of Origin;
- 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.
- Label all pallets delivered to a Kroger facility that contain an allergen with a bright colored label that is at least of 3" x 5" in size.

Product label format example:

Vendor Name:	Vendor Item Number, Product Description:
Kroger Line Number (KLN#) :	Item # 1234567, Pineapple Juice Concentrate
560009	
Bar Code :	LOT # :
Optional	RA4G24N04
MFG Date :	EXP Date :
MM/DD/YYYY	MM/DD/YYYY
Net Contents/Weight:	Storage/Handling Requirements:
	*Hazard Requirements *Ambient/Refrig/Frozen specification limits
Country Of Origin:	
Kosher Symbol:	
ALLERGEN TYPE (Fish, Nut, Dairy, Etc.)	

Returns

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

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.)
- Call Kroger's Logistics Department's Neil Henkes (513) 762-1408 or Brandy Pence (513) 762-4216 for correct routing instructions. 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 noncompliance 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 inland 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 pick-up 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.

General

Vendor Certification Policy Vendor shall at all times comply with the Kroger Vendor Certification Policy attached hereto as **Exhibit B** and made a part of this Agreement.

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 notice called for in this Agreement must be in writing, sent to the contacts designated on the signature page of this Agreement and may be given by personal delivery, first class mail, overnight delivery service or electronic mail. Notices given by personal delivery will be effective on delivery; by overnight services on the next business day, by first class mail three business days after mailing; and by electronic mail when acknowledged as received. Either party may designate another notice address in a notice given pursuant to this Section

TABLE OF EXHIBITS

The following documents are incorporated into this Agreement:

EXHIBIT A	VENDOR INSURANCE REQUIREMENTS
EXHIBIT B	KROGER VENDOR CERTIFICATION POLICY
EXHIBIT C	KROGER BILLING POLICY FOR RECALLS AND WITHDRAWALS
EXHIBIT D	KROGER PURCHASE ORDER TERMS AND CONDITIONS
EXHIBIT E	ACCOUNTING OFFICE POLICIES
EXHIBIT F	SUPPLIER RAW MATERIAL/PACKAGING CHANGE REQUEST FORM
EXHIBIT G	STANDARD VENDOR AGREEMENT NON-COMPLIANCE SCHEDULE



EXHIBIT A

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.

Coverage provided by Insurance Carriers rated A- or higher by A.M. Best

The following wording must be included in the Description of Operations box on all Certificates:

- > “The Kroger Co. and its subsidiaries, affiliates, directors, officers, agents and employees are Additional Insureds with respect to General Liability and Auto Liability”
- > “All insurance policies (excluding Workers’ Compensation) are Primary and Non-Contributory to any other insurance owned, secured or in place by The Kroger Co.”
- > A Waiver of Subrogation in favor of The Kroger Co. applies to all coverage evidenced on the Certificate of Insurance

Certificate Holder Name and Address:
 The Kroger Co. and Kroger’s affiliates and subsidiaries
 C/o The Kroger Co.
 1014 Vine Street
 Cincinnati, OH 45202

General Liability

Each Occurrence	\$2,000,000
Damage to Rented Premises	\$300,000
Products / Completed Operations Aggregate	\$2,000,000
Additional Insured Vendors Coverage	CG 20 15 07 04 or its equivalent
Personal & Advertising Injury	1,000,000
General Aggregate	\$2,000,000

Auto Liability

Any Auto	Yes
Combined Single Limit – Bodily Injury and Property Damage	\$1,000,000

Workers Compensation

Statutory Limits	Yes
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Employers Liability

Each Accident	\$500,000
Disease Policy Limit	\$500,000
Disease Each Employee	\$500,000

Note: a) Required coverage limits can be achieved through a combination of your Primary & Excess Liability coverage b) In certain instances, “Claims Made” policies may be acceptable with automatic tail coverage of 5 years.

Self-funding or self-insurance of liability, other than workers’ compensation and/or automobile liability is allowed, so long as Vendor or Vendor’s parent maintains a net worth of at least \$100,000,000.

Please UPLOAD your compliant certificate to your vendor record within Kroger’s Supplier Information Management (SIM) program. If a certificate is uploaded to your vendor record, a paper copy of the certificate is not required to be mailed. If you have not yet registered in the program, please visit www.thekrogerco.com to begin the supplier self-registration process.

Contact Name:	Contact Title / Company:	Contact Phone:	Contact e-Mail:
Supplier Information Management Team	Supplier Information Management - Kroger	1-855-707-4202	supplierinformationmanagement@kroger.com

EXHIBIT B

KROGER VENDOR CERTIFICATION POLICY.

PROCEDURE

The following must be met in order to gain and maintain approval as a supplier of Product to Kroger:

1. Vendor Approval. Vendors are subject to review and approval by Kroger. Vendor will provide to Kroger any financial reports and information requested and must notify Kroger in the case of a change of control in ownership. Vendor may not assign or otherwise transfer any of its rights or delegate any of its obligations.
2. Facility Approval.
 - a. New Vendor. All facilities used by Vendor to manufacture Product must pass a facility audit conducted by a Kroger representative or an approved outside agent. Facilities must comply with all applicable laws, regulatory requirements, Kroger specifications and FDA Good Manufacturing Practices. Costs associated with the inspection are the responsibility of Vendor.
 - b. Product Line Extension: Kroger, at its discretion, will determine whether a facility audit will be necessary for a line extension. If a facility audit is required, Vendor is responsible for costs of the inspection.
3. Food Safety. Kroger requires that all Vendors that manufacture/produce Kroger private label (Our Brands) ingredients and food contact items be certified to a Global Food Safety Initiative (“GFSI”) benchmarked audit scheme for EACH manufacturing plant producing such ingredients and food contact items. The GFSI supports audit schemes that are focused on determining if food processing facilities are compliant with internationally recognized and accepted standards for food safety and quality. Vendor can choose to be certified under any of the approved schemes such as, but not limited to, BRC, SQF, IFS, and FSSC 22000. The certification will be made available to Kroger annually. Copies of full audits, including nonconformances and corrective actions, shall be made available to Kroger upon demand. Currently GFSI only recognizes schemes for the production of food packaging materials and not other food contact substances including, but not limited to, cookware, utensils, dinnerware and food manufacturing equipment. For these items certificates of compliance with applicable U.S. regulatory requirements shall be made available to Kroger upon demand.
4. Non-Compliant Vendors. Kroger may designate Vendor as a Problem Supplier based on poor quality Product, an unsatisfactory facility audit, excessive customer complaints, regulatory problems, lack of adherence to Kroger specifications, or other problems determined by Kroger in its sole discretion. Kroger will provide Vendor with written notice providing the reasons for designation as a Problem Supplier. The cost of added inspections, testing or reformulation necessary to correct the problem to Kroger’s satisfaction will be at Vendor's expense. Vendor’s refusal to pay these charges or to correct the problem to Kroger’s satisfaction will be grounds for terminating Vendor as a supplier to Kroger.
5. Approved Vendor Evaluations. Kroger from time to time may deem it necessary to conduct subsequent plant evaluations, Product audits, and/or grading trips at Vendor’s expense.
6. In addition Vendor must:
 - a. Provide Kroger with quality Product that meets all current specifications;
 - b. Maintain facilities, products, records, and procedures that comply with applicable

- laws and regulatory requirements for food, safety and quality;
- c. Have in place recall procedures acceptable to Kroger;
 - d. Maintain adequate code dating, quality, and shipping records that ensure expeditious and successful withdrawal of nonconforming Product. Kroger strongly prefers that all Product be “Open Dated” and must approve any exceptions;
 - e. Respond promptly with an appropriate explanation to information requests or questions by Kroger;
 - f. Respond promptly and maintain records on all Product complaints identified by Kroger;
 - g. Report complaints or inquiries from any health or governmental authority regarding Vendor, its facilities or Product;
 - h. Maintain finished Product and packaging inventories reasonably necessary to provide Kroger with an ongoing supply of Product per the agreed-upon order lead-time;
 - i. Keep Kroger fully informed of difficulties encountered or anticipated in quality, financing, production or shipping, which could result in lost sales, profits or customer dissatisfaction; and
 - j. Have a documented and implemented Food Security/Defense Program.

EXHIBIT C

KROGER BILLING POLICY FOR RECALLS AND WITHDRAWALS

Vendors of recalled or withdrawn Products removed from sale, returned for refund or used in the preparation of other products will be charged the total of the following:

1) Delivered Cost of Products	Cost of Products will be billed using the most recent FCB cost times the number of retail units submitted through the Quick Recall application. Products used in additional in-store preparations shall be billed at the finished product cost.						
2) Administrative Cost	<p><u>Divisions</u> Administrative costs will be based on the number of stores included in the recall multiplied by 20% of the fair wage rate established by each Kroger Division. Class I recalls are calculated using a 30% rate to reflect the more intense follow-up required for those recalls.</p> <p><u>Distribution Centers</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 70%;">Class I Recall</td> <td style="text-align: right;">\$500 per recall</td> </tr> <tr> <td>Class II Recall</td> <td style="text-align: right;">\$300 per recall</td> </tr> <tr> <td>Class III/Recalls/Withdrawals</td> <td style="text-align: right;">\$200 per recall/Withdrawal</td> </tr> </table> <p><u>General Office Administrative Costs</u> In addition, any General Office administrative costs associated with IVR and register tape messaging shall be billed to Vendor on a costs per occasion basis.</p>	Class I Recall	\$500 per recall	Class II Recall	\$300 per recall	Class III/Recalls/Withdrawals	\$200 per recall/Withdrawal
Class I Recall	\$500 per recall						
Class II Recall	\$300 per recall						
Class III/Recalls/Withdrawals	\$200 per recall/Withdrawal						
3) Store Handling Cost	Store labor costs will be based on the time each store spends on the recall/withdrawal (one hour minimum) multiplied by the fair wage rate established by each Kroger Division. Time includes receiving the recall/withdrawal, checking shelves, back stock, markdowns, incoming shipments, posting signs, notifying front desk personnel, responding to the recall/withdrawal through the application, etc.						
4) Warehouse Handling Cost	Use average warehouse rate, including fringes, multiplied by the total number of hours involved. (Must be documented with accurate records).						
5) Shipping Cost to Stores	If Kroger Division is requested to return products, use cents per cwt. cost for shipping that product category times cwt. shipped to stores and also from stores.						
6) Actual Freight for Products Returned	Charge the actual freight cost for the products returned to Vendor, if Kroger has to arrange.						
7) Disposal Cost	Charge any identifiable disposal costs.						
8) Special Handling Cost	Charge any identifiable special handling costs.						
9) Customer Refunds	Charge any customer refunds for returned Products.						
10) Manufacturing Downtime	$(\# \text{ of widgets produced per minute} / \# \text{ of widgets in a case}) * 60 \text{ minutes} * \text{variable overhead rate per case.}$						
11) Manufacturing Finished Product	Charge any identifiable non saleable Manufactured Finished Product.						
12) Manufacturing Work in Progress	Charge any identifiable non saleable Manufactured Work in Progress.						

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/withdrawal billing costs except for Peyton's, must be sent to the designated Recall Contact at either Kroger's General Office or Fred Meyer's Portland Oregon office. Peyton's will handle the recall/withdrawal costs associated with their operations.

EXHIBIT D
KROGER MANUFACTURING PURCHASE ORDER TERMS AND CONDITIONS

1	<p><u>Purchase Order; Cancellation.</u> These Kroger Manufacturing Purchase Order Terms and Conditions apply to all orders (“Kroger Purchase Orders”) of goods, merchandise and incidental services (“Products”) by The Kroger Co. Manufacturing Division 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 noncomplying 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>Productivity Gains and Cost Reductions.</u> Throughout this Agreement, Vendor and Kroger will actively seek quality improvements, productivity gains and cost reductions and these shall be shared on a mutually agreeable basis as they occur.</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 the Food Safety Modernization Act (“**FSMA**”) 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; do not violate Section 301 or any other provisions of the FDCA; are not articles that may not, pursuant to Sections 404, 505 or 512 of the FDCA, the Federal Hazardous Substances Act (“**FHSA**”), or otherwise, be introduced into interstate commerce; if meat, poultry and egg products comply with the Federal Meat Inspection Act, Poultry Products Inspection Act and Egg Product Inspection Act respectively; and comply with all other applicable federal, state and local laws, rules and regulations. If Vendor is providing color additives subject to batch certification, Vendor is to complete the separate guarantee in **Exhibit H** for each shipment of products.

- b. Vendor expressly agrees to serve as the Foreign Supplier Verification Program (“**FSVP**”) Importer as that term is defined in 21 CFR § 1.500 (“**FSVP Importer**”), identify itself pursuant to 21 CFR § 1.509 as the **FSVP Importer** in each line entry of Products offered for importation, and perform all other applicable requirements pursuant to 21 CFR Part 1 Subpart L. In all circumstances where both Vendor and Kroger fall within the definition of **FSVP Importer**, Vendor agrees to serve as the **FSVP Importer**. This provision shall not apply in circumstances where Kroger is the sole person falling within the definition of **FSVP Importer**.
- c. Vendor acknowledges Kroger shall reject any load of Products (including Products subject to the Perishable Agricultural Commodities Act) for violations of the Sanitary Food Transportation Act (Section 416 of the FDCA) (“**SFTA**”) of which Kroger is aware of, including failure to maintain required records. Vendor assumes responsibility for ensuring loads of Products rejected by Kroger are not sold or distributed unless a qualified individual determines the Products are not unsafe consistent with 21 CFR § 1.908. Vendor must not use any vehicles or transportation equipment that does not meet sanitary specifications for such food being transported as communicated in writing to shippers, carriers, loaders or receivers as appropriate pursuant to **SFTA**. Vendor’s failure to fulfill the obligations under **SFTA** under this Section 5(c) will be considered an act of default of Vendor, and a defense to any cargo claim. None of the provisions in this Agreement in any way limit Vendor’s obligation to mitigate its damages. Vendor acknowledges Kroger shall not serve as shipper, carrier or loader as those terms are defined in 21 CFR § 1.904 unless otherwise agreed to in writing.
- d. 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. The Products will comply in all material respects with all applicable Federal and State product safety laws and regulations and all applicable and mandatory product safety rules, bans and standards that are enforced by the U.S. Consumer Product Safety Commission, including any failure of a Certificate of Compliance supplied by the Vendor or maintained on Vendor’s internet accessible electronic platform to comply with applicable requirements of the **CPSIA** §14(a). Vendor warrants that all electric appliances, component parts and wiring purchased shall be listed either by the Underwriters Laboratories, Inc. or the **ETL** 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. Vendor will provide Kroger copies of all material safety data sheets (“**MSDS**”) for any applicable products.
- e. Vendor is in full compliance with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, including but not limited to the US Foreign Corrupt Practices Act, the US Travel Act, the UK Bribery Act 2010, and any and all similar provisions in the jurisdiction(s) in which it operates, that it has not and will not engage in any activity, practice or conduct which would constitute an offense under those requirements, and that it has in place its own policies and procedures adequate to ensure compliance with these anti-bribery and anti-corruption provisions by its officers, employees, agents and any other third party or person associated with Vendor in the performance of services or shipment of Products to Kroger.
- f. 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

	<p>proprietary interest of Kroger or any third party and comply with the Federal Trade Commission Act and all other applicable laws, rules and regulations.</p> <ul style="list-style-type: none"> g. 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. h. 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. i. 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. j. 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. k. The Products conform in every respect to applicable specifications, instructions, drawings, data, samples and descriptions. l. The representations, warranties and guarantees contained in this Section 5 run to Kroger, its 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 5 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. 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. m. 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.
6	<p><u>Code of Conduct.</u> Vendor warrants that the Merchandise and services are produced in compliance with (i) all applicable requirements of the Fair Labor Standards Act, as amended, including Sections 18 and 28 thereof, and of regulations and orders of the United States Department of Labor issued under Section 6 thereof; (ii) the Occupational Safety and Health Act; (iii) all federal civil rights, equal opportunity, discrimination, harassment, retaliation, and other workplace laws, including but not limited to Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, as amended, the Americans with Disabilities Act, as amended, and the Family and Medical Leave Act, as amended; (iv) the Immigration Reform and Control Act and other applicable immigration laws; (v) related state and local laws; and (vi) the workers' compensation laws. Vendor represents and warrants that Vendor, its company personnel 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 Merchandise involving unsanitary and/or unsafe labor conditions. If Customer determines that Vendor, its company personnel or its contractors have failed to comply with the foregoing, Kroger will be entitled to immediately terminate this Agreement without liability.</p> <p>The Code of Conduct is an Integral part of this Agreement, the terms of which must be followed by Vendor, its Vendor Personnel and its contractors. The Kroger Code of Conduct can be found at http://www.thekrogerco.com/docs/statements-policies/code-of-conduct:</p>
7	<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</p>

	<p>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. Supplier may only back charge Kroger for any missed or incorrect charges up to one (1) year from the date of the receipt in question.</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</p>

	<p>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 requirements, including those required by the Tariff Act (19 USC Ch. 4), as amended by the Customs Modernization Act , 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> <ol 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>
13	<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>
14	<p><u>Mechanics’ Liens.</u> Vendor hereby waives its rights to any mechanics’ 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 mechanics’ 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 mechanics’ 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>

15	<p><u>Supplier Diversity.</u> It is the policy of Kroger that certified Minority-Owned Business Enterprises (“MBEs”), Women-Owned Business Enterprises (“WBEs”) and other Diverse-Owned Business Enterprises (e.g. Veteran-Owned Business Enterprises; Service Disabled Veteran-Owned Business Enterprises; Lesbian, Gay, Bisexual & Transgender-Owned Business Enterprises) (“DBEs”) have the opportunity to participate in the performance of Kroger contracts. In support of the policy, Kroger encourages all our suppliers to provide meaningful contracting and sub-contracting opportunities to M/W/DBEs. Utilization of M/W/DBE suppliers and/or service providers throughout the course of the contract is one of the non-pricing factors that Kroger evaluates during the bid award selection process. Upon request, vendors will be required to track and report their expenditures with diverse-owned companies as it relates to the products and/or services provided to Kroger.</p>
16	<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>
17	<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 specifically exclude the Convention for International Sales of Goods (CISG). 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>
18	<p><u>Mandatory Arbitration.</u></p> <ol style="list-style-type: none"> a. Except as otherwise provided in this Agreement any disagreement, dispute, controversy or claim with respect to the validity of this Agreement or arising out of or in relation to this Agreement or a Kroger purchase order or any agreement in which either is incorporated, or breach hereof, shall be finally settled by arbitration in Cincinnati, Hamilton County, Ohio, USA or other location agreed upon by Kroger, in accordance with articles of the American Arbitration Association for Commercial Arbitration. 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 (“Complex Case” or “Complex Cases”)), three arbitrators will be appointed. In a Complex Case, each party will select an arbitrator from the AAA National Roster and, unless the parties agree upon the selection of a third arbitrator, the two party-appointed arbitrators will select a third arbitrator from the AAA National Roster to serve as the chairperson of the panel within thirty (30) days of the last party-appointed arbitrator, otherwise the AAA may appoint the chairperson. b. 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 agree to try in good faith to settle the dispute 1) first through discussions between the parties’ senior management and then 2) non-binding mediation conducted by a mediator mutually agreeable to the parties before resorting to arbitration. If the parties cannot agree on a mediator within forty-five (45) days of the Dispute Notice, mediation shall be conducted

pursuant to the AAA commercial mediation procedures. Failure to submit the Dispute Notice shall be grounds to dismiss any arbitration filed by either party. The parties agree to mediate within sixty 60 days of the Dispute Notice, unless extended by mutual agreement of the parties. However, pre-arbitration mediation will not be required in Complex Cases, as defined in this section. If the parties mutually agree to mediate a Complex Case, such mediation shall be conducted in accordance with the provisions contained in this section. The mediation shall be conducted in Cincinnati, Hamilton County, Ohio, USA or other location agreed upon by Kroger. The parties agree to exchange any relevant, non-privileged documents that support their claims or defenses not later than two weeks before the scheduled mediation. The mediator's fees will be paid equally by the parties and each party shall bear its own attorney's fees and expenses.

If the Dispute has not been resolved through mediation as provided above, or otherwise resolved, within ninety (90) days after receipt of the Dispute Notice, or any mutually agreed upon extension, then the Dispute will be determined by binding arbitration. The arbitration shall be commenced within fifteen 15 days after the termination of mediation or, if mediation is not conducted, within sixty 60 days of the Dispute Notice. 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").

- c. Except in Complex Cases, 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. Provided, however, that the arbitrator shall have the discretion to order limited examination by deposition of witnesses, and/or limited written discovery, to the extent the arbitrator deems such additional discovery relevant and appropriate, or for good cause shown by either party. In any event, depositions shall be limited to a maximum of three per party. In Complex Cases, discovery will be limited to avoid unnecessary expense and undue burden, but the arbitrators have discretion to determine the extent of discovery that may be allowed consistent with Rule 26 of the Federal Rules of Civil Procedure and AAA Procedures for cost-effective arbitration of Large, Complex Commercial Disputes.
- d. The arbitrator(s) shall have the authority to grant all appropriate relief available under the Ohio rules of civil procedure and under Ohio law including, but not limited to, sanctions. However, except in a case of gross negligence and/or willful misconduct, neither party shall be entitled to recover any indirect, incidental, special, consequential, exemplary, punitive or reliance damages (including, without limitation, lost or anticipated revenues, lost business opportunities or lost sales or profits, whether or not either party has been advised of the likelihood of such damages) or for any attorney's fees (whether incurred in a dispute or an action against the other, or as alleged damages that any party incurred in any third-party dispute, or otherwise). Any award of damages in excess of three million dollars (exclusive of interest and costs) be subject to AAA Appellate Arbitration Rules. Each party shall bear its own attorney's fees, costs and expenses, and an equal share of the arbitrators' and administrative fees of arbitration.
- e. In cases where the alleged damages equal or exceed five million dollars (exclusive of interest and costs) either party may opt out of the requirement to arbitrate the Dispute and proceed with action in U.S. Federal District Court in Cincinnati, Hamilton County, Ohio which shall be the exclusive venue for such opt-out cases, and the opt-out cases shall be governed by the substantive laws of the State of Ohio, without regard to conflicts-of-law rules. The parties knowingly and voluntarily waive their rights to a jury. Except in a case of gross negligence and/or willful misconduct, neither party shall be entitled to recover any indirect, incidental, special, consequential, exemplary, punitive or reliance damages (including, without limitation, lost or anticipated revenues, lost business opportunities or lost sales or profits, whether or not either party has been advised of the likelihood of such damages) or for any attorney's fees (whether incurred in a dispute or an action against the other, or as alleged damages that any party incurred in any third-party dispute, or otherwise). Each party shall bear its own attorney's fees and costs.
- f. Notwithstanding the foregoing, any disagreement, dispute, controversy, claim, or cause of action arising in whole or in part under the antitrust laws of the United States or any State or Territory thereof shall not be arbitrable and is hereby expressly excluded from the scope of this arbitration provision.

EXHIBIT E

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); and
- Invoice date on or after the ship date.

Vendor must notify Kroger’s Accounts Payable department at RASCdataintegrity@kroger.com 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.

Vendor must notify Sourcing Manager at time of Purchase Order receipt when unit cost on PO is different than Vendor billing/invoice cost.

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.

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. 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. In addition, Vendor may only back invoice any amounts incorrectly billed up to two (2) years prior to the original invoice date.

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’s current guidelines, a copy of which is available from the Kroger Representative.

EXHIBIT F

Supplier Raw Material/Packaging Change Request Form

Requested changes must be submitted to pchange@kroger.com a minimum of 120 days in advance of making any changes.

Date of Request: x/xx/xx	Planned effective date: x/xx/xx
Supplier Name :	Supplier Contact Name:
Supplier Contact Phone Number: (xxx-xxx-xxxx)	Kroger Sourcing Manager Name:
Kroger Corporate Technology Contact Name:	Kroger Packaging Engineering Contact Name:
<u>Kroger Line # (KLN)</u> - (for multiple items, please attach file). List below:	Supplier Item #
<u>Product Description:</u>	
<u>Type of change requested</u> (Ingredient/Packaging/Label/ Other – including product deletes and/or discontinued items). Describe below:	
<u>Reason for requested change</u> Describe below:	
<u>How will change impact current operations?</u> Describe below: (Change in equipment/formula/supplier/mfg facilities/Other)	
<u>Kroger MFG Facilities impacted</u> List below:	

EXHIBIT G

Standard Vendor Agreement Non-Compliance 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*		
\$200.00	Per shipment	Product Labeling Errors.
\$500.00	Per shipment	Case Pack Errors.
\$500.00		Hazardous material improperly labeled.
\$1,000.00		Improper or no Hazardous Material shipping papers when required.
\$200.00	Per shipment	Failure to schedule or miss a scheduled delivery appointment.
\$500.00	Plus all extra inbound and outbound transportation costs, and any applicable 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).
\$200.00	Per shipment	Failure to mark cartons/Bills of Lading with correct, complete shipping address. Failure to list the Purchase Order number on the bill of lading.
\$1,000.00	Per item per division	New products not in inventory at distribution center after item availability date.
\$250.00	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.
\$2,000.00	Per shipment	Production Process - changes to items/materials (including discontinued product), or raw materials/formulations/feedstocks used to produce items/materials or changes to the production process, or production equipment and/or locations without written consent.
\$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 H

Color Additive Guarantee

Domestic Manufacturer

[Name of Manufacturer] hereby guarantees that all color additives listed herein were manufactured by him, and if such additives require certification, are from batches certified in accordance with the applicable regulations promulgated under the Federal Food, Drug and Cosmetic Act.

Manufacturer

Manufacturer Address

By: _____

Name: _____

Title: _____

Date: _____

Foreign Manufacturer

[Name of Manufacturer] and [Name of U.S. Agent] hereby severally guaranty that all color additives listed herein were manufactured by [Name of Manufacturer], and if such additives require certification, are from batches certified in accordance with the applicable regulations promulgated under the Federal Food, Drug and Cosmetic Act.

Manufacturer

Manufacturer Address

By: _____

Name: _____

Title: _____

Date: _____

U.S. Agent

U.S. Agent Address

By: _____

Name: _____

Title: _____

Date: _____