



THE KROGER CO.

STANDARD VENDOR AGREEMENT

FOR PERISHABLE AGRICULTURAL PRODUCTS

JANUARY 2017

Version 1

THE KROGER CO.
STANDARD VENDOR AGREEMENT FOR PERISHABLE AGRICULTURAL PRODUCTS
VERSION JANUARY 2017
SIGNATURE PAGE

The signature set forth below acknowledges Vendor's agreement with and acceptance of the Standard Vendor Agreement, as negotiated by the parties, for Perishable Agricultural Products.

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 Contact 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 appropriate statement below:

- Vendor has read and agrees to comply with this Agreement, as amended herein.
- Vendor has read and agrees to comply with the terms of this Agreement as amended by Vendor's proposed changes attached to this Signature Page in the form of an addendum. Vendor understands that no addendum 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.

This Agreement may be executed in counterparts and either party may rely on and/or enforce a scanned or other electronic signature on this Agreement as if it were an original.

PLEASE RETURN THIS COMPLETED SIGNATURE PAGE TO KROGER AND RETAIN A COPY FOR YOUR RECORDS.

FAILURE TO CHECK EITHER BOX ABOVE WILL BE DEEMED TO BE ACCEPTANCE BY VENDOR OF THIS AGREEMENT WITHOUT MODIFICATION.

THE KROGER CO.
STANDARD VENDOR AGREEMENT FOR PERISHABLE AGRICULTURAL PRODUCTS

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

1. Scope. The terms and conditions of this Agreement set forth Kroger’s offer, and apply to Vendor with respect to Vendor’s sale of perishable agricultural products (“**Products**”) to Kroger. Except as otherwise provided herein, this Agreement is effective as of the date this Agreement is executed by Vendor and Kroger (the “**Effective Date**”) and applies to any shipment of Products made by Vendor to Kroger from and after the Effective Date. This Agreement includes the terms and conditions of all Exhibits.

2. Purchase Orders. The legal basis for Kroger’s purchase of Products is set forth in its purchase orders (“**Kroger Purchase Order**”) and in this Standard Vendor Agreement between Kroger and Vendor. A Kroger Purchase Order may be transmitted by ITRADE, or other electronic format including facsimile and electronic mail, or in paper format. The terms and conditions applicable to a Kroger Purchase Order, as amended by the parties (the “**P.O. Terms and Conditions**”), attached as **Exhibit A** and incorporated herein, apply to every purchase of Products by Kroger from Vendor. 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 there is an inconsistency between the terms and conditions contained in this Agreement and the terms and conditions contained in other documents relating to the business to be conducted between Kroger and Vendor, the terms and conditions of this Agreement will prevail. Shipment of Products by Vendor constitutes acceptance of this Agreement, including the P.O. Terms and Conditions. Every purchase order will include the number of cases, delivery date, grade, product specification, Kroger division, delivery address, and price, either negotiated for that order, or as determined under contract.

3. Insurance Requirements. Vendor will maintain at all times while providing Products to Kroger, at Vendor’s own cost and expense, insurance coverage of the types and in such amounts as described in **Exhibit B** with a company that has an A.M. Best Co. rating of “A-” or better. Products liability and completed operations insurance must provide coverage in respect of claims involving bodily injury or property damage arising out of or in connection with the Products. Vendor may comply with the required “*per occurrence*” limit through a combination of Primary and Excess Liability insurance policies. The insurance must be primary and not excess or contributing with any insurance or self-insurance maintained by Kroger. 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 Kroger’s subsidiaries, affiliates, directors, officers, agents and employees under the Vendors Additional Insured coverage” as Additional Insured Vendors.

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.

4. Product Recall Policy. In the event of any and all product recalls whether (i) agreed upon between Vendor and Kroger, or (ii) that are required by law, the Products will be inspected and disposed of as provided for in the Perishable

Agricultural Commodity Act (PACA)(7 FRC §46.20 - §46.23) All expenses of recall, unless otherwise agreed in writing between Vendor and Kroger, will be as set forth in attached **Exhibit C** - Division Recall/Withdrawal Charges, to the extent applicable and to the extent supported by documentation of actual costs incurred in accordance with Kroger current procedures. The Purchase Order Terms and Conditions continue to apply to Products that have been recalled.

5. Accounting Office Policies.

- a. Purchase Orders accepted by Vendor through ITRADE will generate an automatic invoice upon shipment for the final quantity shipped. For Purchase Orders placed other than through ITRADE, Vendor must provide a separate invoice for each Kroger Purchase Order shipped. Each invoice (or sales ticket) must include the following:
 - Serial Number in compliance with PACA (7 CFR §46.19).
 - Kind, grade, quantity, unit price and total selling price.
 - Unique invoice number.
 - Valid Kroger Purchase Order number.
 - Date of Sale.
 - Vendor name and “remit to address”.
 - Complete address to which the product was shipped.
 - Net payment before cash discount (if any).
 - Payment terms.
 - Total shipped quantity and total invoiced quantity.
 - Invoice date on or after the ship date.
- b. Vendor shall invoice Kroger promptly after each shipment of Product. Terms of payment are in accordance with PACA prompt terms. Any discounts will be calculated on the gross amount.
- c. Kroger and Vendor will work diligently to resolve any invoice discrepancies identified in the ITRADE system. With respect to orders not handled through ITRADE, Kroger will notify Vendor of invoice payment discrepancies by advice messages on check stubs. Separate debit memos will not be issued. The deadline for inquiries regarding advice messages is ninety (90) days following issuance.
- d. Vendor must keep full and detailed accounts and records in compliance with PACA (§46.14) 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 reasonable time, upon reasonable prior notice, with respect to Vendor’s charges, policies, procedures and transactions with Kroger. Any resulting undisputed claims will be immediately deducted.
- e. Kroger reserves the right to deduct, set-off or withhold payments determined by the parties 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.

6. Confidential Information.

- a. Each party (as the “**Receiving Party**”) 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 the other party (as the “**Disclosing Party**”), which information has commercial value in the Disclosing Party’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 the Disclosing Party, 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.
- b. The Receiving Party 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. The Receiving Party will not, without the Disclosing Party’s prior written consent, use or disclose any Confidential Information to any person except its authorized employees who require the information in connection with fulfilling the Receiving Party’s obligations to the Disclosing Party. The Receiving Party will not commercially utilize any Confidential Information.

- c. Notwithstanding the foregoing, the Receiving Party 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 the Disclosing Party; (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 the Receiving Party, (v) publicly known through no wrongful act of the Receiving Party, or (vi) required to be disclosed by a court of law, provided that the Receiving Party notifies promptly the Disclosing Party, to the extent permitted by applicable law, prior to such disclosure.
- d. The Receiving Party will return all Confidential Information contained in a tangible form upon termination of its relationship with the Disclosing Party, or at an earlier time at the Disclosing Party's request.

7. UPC/GTIN Policy.

- a. All Products sold to Kroger in consumer units for the purpose of resale including all fixed weight or other reasonably stickered produce, but excluding any Products sold pursuant to a Perishable Corporate Brands Addendum with Kroger, must have a readable UPC or GTIN ("UPC") barcode affixed to the Product or the Product's "sellable" packing.
- b. Vendor must adhere to the UCC specifications for the UPC bar code for format, size, color, location and clarity. Bar codes must be clear, legible, scannable and represent the human readable numeric code located beneath the barcode. The UPC information must be correctly assigned to the Products.
- c. Vendor must communicate to its Kroger Representative, in writing, all changes to current UPC numbers, as well as the addition of new numbers, no less than ninety (90) days prior to shipment of Products to Kroger. As technology changes, Vendor agrees to consider adoption of any reasonable additional labeling or identification requirements that Kroger requests.
- d. If Products are sold to Kroger pursuant to a Corporate Brands Addendum, Kroger shall be responsible for design of all UPC or GTIN barcodes affixed to the Product or the Product's "sellable" packaging.

8. Case Labeling. Case labeling for Kroger requires that UCC-128 bar code be applied to every case with the following information:

- a. Shipper identification
- b. Item identification
- c. Pack or weight of case
- d. Lot number
- e. Pack/Harvest date or Out date

This information must be human readable as well as bar coded on a minimum one side of the case. Information must be applied in such a manner as to not be effected by water or handling that would prevent scanning.

9. Notices. Any notices required or permitted by this Agreement must be in writing and sent, in the case of Kroger to the Kroger Representative and in the case of Vendor to the Vendor Contact designated on the signature page of this Agreement. Notices will be deemed given on the date three (3) days following deposit in the mail, if mailed, or received, if delivered in any other manner.

10. Pricing Contracts. Any pricing agreements will be set forth on **Exhibit D**, and effective if signed by both Kroger and Vendor.

11. Item Traceability. Vendor will implement reasonable item traceability solutions as required by Kroger and agreed upon by Vendor.

12. Corporate Brand Products. Vendor will execute the Kroger Corporate Brand Addendum and comply with the Kroger Corporate Brand Vendor Certification Policy if any Products sold by Vendor to Kroger are Kroger corporate brand products.

EXHIBIT A

KROGER PURCHASE ORDER TERMS AND CONDITIONS

1. Purchase Order. These Kroger Purchase Order Terms and Conditions apply to all orders (“**Kroger Purchase Orders**”) of products and incidental services (“**Products**”) by The Kroger Co. and its affiliates (collectively, “**Kroger**”) from Vendor. If Vendor attempts to deliver the Products before the designated delivery date, Kroger in its sole discretion, may accept the early delivery of the Products, or refuse the shipment, and Vendor will re-deliver on the designated delivery date. Any actual, out-of-pocket costs associated with the re-delivery will be borne by the Vendor. If a delivery date or completion date is not specified on the Kroger Purchase Order, a reasonable time will be allowed. Any and all loads created at Vendor’s dock must be segregated by individual Kroger Purchase Order.

2. Non-Conforming Product. Kroger will have no obligation to accept or pay for any Product shipped that does 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. In rejecting non-conforming Product, Kroger will follow all Perishable Agricultural Commodities Act, as amended (“**PACA**”) requirements including inspection by the United States Department of Agriculture (“**USDA**”) to support that the Product does not meet the terms of the contract. If Kroger rejects non-conforming produce in compliance with all PACA requirements and within the applicable timeframe, the rejection will be considered rightful under PACA.

If Kroger promptly notifies Vendor of such non-conforming produce and 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 out-of-pocket expenses, including but not limited to transportation, inspection, receipt, ticketing, re-ticketing, recall, care and custody of the Product, and notice to Vendor incurred as a result of such non-conformity or non-compliance. Kroger will have no obligation to accept or to pay for any substituted goods or excess shipment of any Product made without Kroger’s prior approval, which shall not be unreasonably withheld or delayed.

3. Unordered Product. Kroger will have no obligation to accept or pay for any unordered Product. Rejection of Unordered Product will be considered a rightful rejection under PACA.

If Kroger takes delivery of such order, or any part of such an order, Kroger reserves the right to deduct from its payment all actual or reasonable out-of-pocket expenses, including but not limited to transportation, inspection, receipt, ticketing, re-ticketing, recall, care and custody of the Product, and notice to Vendor incurred as a result of or non-compliance. If Kroger takes delivery of any unordered Product, Kroger may, with notice to Vendor of such fact, ship the unordered or non-complying Product 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 Product made without Kroger’s prior approval, which shall not be unreasonably withheld or delayed.

4. Right of Inspection. Kroger shall have a reasonable time to inspect and reject non-conforming product in compliance with PACA, but quality concerns shall be brought to Vendor’s attention within twenty-four (24) hours after delivery, and chill damage concerns shall be brought to Vendor’s attention within seventy-two (72) hours of delivery (for Kroger processed loads).

If Kroger cannot make a thorough inspection due to adverse weather conditions or applies for but cannot obtain a Federal inspection before the end of the applicable period, and so notifies Vendor within the applicable period, the period shall be extended until weather conditions permit inspection or until Federal inspection is made, as the case may be, plus two hours after either an oral or written report of the results of such inspection is made available to the receiver.

In no event will Vendor sell or distribute to third parties any Product that contain logos, trade names, trademarks or labels of Kroger, even if rejected by Kroger as nonconforming.

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

- a. The Products shipped, as of the date of shipment, comply with, and are not adulterated or misbranded within the meaning of, the Federal Food, Drug and Cosmetic Act, as amended, (“FDCA”), including, without limitation, the Food Additives Amendment as further amended and also comply with, and are not adulterated or misbranded within the meaning of, any states’ food and drug law; if applicable comply with the California leafy greens marketing agreement; and furthermore comply with all other applicable federal, state and local laws, rules and regulations. All produce represented by Vendor as organic complies with the Organic Foods Product Act of 1990, as amended, and all other applicable state and federal regulations.
- b. Except to the extent that specifications for or the packaging and labels for the Products are prepared or provided to Vendor by Kroger, 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.
- c. 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 similarly situated customers of Vendor.
- d. 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.
- e. 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.
- f. The Products are of merchantable quality, comply with grade specification and pack or weight, and are free from adulteration or misbranding.
- g. The representations, warranties and guarantees contained in this Section 5 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. The representations, warranties and guarantees set forth in this Section 5 are continuing in nature, survive Kroger’s payment, acceptance, inspection or failure to inspect the Products. Vendor hereby disclaims any implied warranties other than as specifically set forth herein.
- h. It will in every manner of its business related to the Kroger Purchase Order comply with and conform to all applicable laws, rules and regulations, both domestic and foreign.

6. Code of Conduct. 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.

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 <https://www.thekrogerco.com/wp-content/uploads/2017/09/code-of-conduct.pdf>

7. Acceptance of Terms. **Kroger’s offer to purchase is expressly subject to Vendor’s acceptance of these Kroger Purchase Order Terms and Conditions (as amended by the parties) 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 (as amended by the parties) 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.

8. Payments Subject to Claims/Defenses. All amounts payable to Vendor will be subject to all claims and defenses of Kroger, whether arising from the Kroger Purchase Order or any other transaction. Kroger has the right to set off and deduct against any such amounts all undisputed present and future indebtedness of Vendor to Kroger and may exercise this right up to two years from the date of the last shipment by Vendor. Vendor will be deemed to have accepted each debit amount or vendor chargeback within ninety (90) days following receipt of notice of same, unless Vendor notifies Kroger's Accounts Payable Department (marked "**Correspondence**") in writing during such period as to why the deduction should not be made and provides sufficient documentation of the reason(s) given.

9. Taxes and Other Charges. Unless otherwise agreed in writing, the contract price includes all federal, state and local taxes, tariffs, import duties, commissions and other charges, except taxes Vendor is required by law to collect from Kroger. Such taxes, if any, will be separately stated in Vendor's invoice and will be paid by Kroger unless an exemption is available. Vendor will obtain and pay for any licenses, permits, or inspections by public bodies required in connection with the manufacture, completion, or delivery of the Products.

10. Force Majeure. TIME IS OF THE ESSENCE. However, Kroger excuses Vendor from nonperformance or delays in delivery caused by acts of God, unforeseeable occurrences or other force majeure events beyond the reasonable control of Vendor. Kroger may cancel the unreceived portion of a Kroger Purchase Order at any time if delivery of the goods is not timely. 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 acts of God, unforeseeable occurrences or other force majeure events.

11. Indemnification. Vendor will protect, defend, indemnify and hold harmless Kroger, its subsidiaries and affiliates, and its and their directors, officers, employees, agents, contractors, successors and assigns from and against any and all claims and actions (including those in strict liability), demands, liabilities, losses, costs and expenses (including reasonable 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 Vendor's actual or alleged breach of any of the representations, express warranties, express guarantees or other terms and conditions contained herein, except if such liability is caused by the negligence or wilful misconduct of Kroger or its employees or agents. 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 and at its own option, 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) refund the purchase price for the Products and pay all related actual, documented, out-of-pocket expenses. If Kroger provides Vendor with approved artwork and specifications for the packaging of the Products and Vendor complies with such artwork and specifications, Kroger agrees to protect, defend, indemnify and hold harmless Vendor, 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 reasonable attorney's fees,) including, without limitation, any damage or loss, by whomsoever suffered, including Vendor's or Kroger's agents or employees, resulting or claimed to result, directly or indirectly, from any claim that the packaging, advertising, labels and other materials contained on, with, or relating to the Products infringe any patent, copyright, trademark, trade name or other proprietary interest of any third party and comply with the Federal Trade Commission Act and all other applicable laws, rules and regulations.

In order to give Vendor employees, contractors and representatives access to Kroger locations, Vendor agrees to the following provision and acknowledges that this provision is a reasonable request from Kroger. 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 result of the 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).

12. Country of Origin Requirements. Vendor warrants to Kroger that it complies (or prior to the Effective Date will be in full compliance) with all federal, state and local Country of Origin labeling and related requirements, including those required by the U.S. Customs Service, those contained in the Agricultural Marketing Act, as amended by the 2002 Farm Bill, and the implementing regulations (collectively, "**Country of Origin Requirements**"), and will provide to Kroger all reasonable assistance requested by Kroger to enable Kroger to comply with the Country of Origin Requirements as they apply to Vendor's Products. In particular, Vendor will:

- 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
- 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; provided that Kroger makes such audit request in advance and in writing.

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.

13. Title and Risk: Shipment. 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 placed in the possession and control of or accepted by Kroger, or an agent or consignee duly designated by Kroger. A bill of lading must accompany each shipment. If a shipment is to a consignee or agent of Kroger, a copy of the bill of lading must be forwarded concurrently to Kroger. Count or weight as reported by the vendor in the ITRADE application, as compared to actual receipt by Kroger or its agent or consignee, will be final and binding upon Vendor with respect to such shipment.

14. General Provisions. 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, other than to a corporate affiliate of Vendor, without the prior written consent of Kroger, which will be in Kroger's sole discretion. The rights and obligations of the Kroger Purchase Order will inure to the benefit of, and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and permitted assigns. No action, failure of action or delay by either party will constitute a waiver of any of its rights or remedies under the Kroger Purchase Order. Vendor and Kroger are not, and will not be, joint venturers, partners, agents, servants, or employees or fiduciaries of the other, and do not have the power to bind or obligate the other. The waiver of a breach of any provision does not constitute a waiver of a subsequent breach of the same or different provision. The rights and liabilities of the parties under a Kroger Purchase Order are governed in all respects by Ohio law, without reference to or application of its conflicts of law provisions. **THE PARTIES HEREBY WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY DISPUTES OR CLAIMS ARISING UNDER THIS AGREEMENT.** If 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.

15. PACA Formal Complaint. Claims meeting the statutory requirements of PACA should first be brought to the attention of the other party. If a resolution cannot be obtained a claim shall be filed with the PACA office and the claim shall be resolved in accordance with the PACA regulations.

16. Mandatory Arbitration.

- 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 B
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 C

DIVISION RECALL/WITHDRAWAL CHARGES

Vendors of Products removed from sale due to a recall or withdrawal will be charged Kroger's actual documented out-of pocket costs, plus the administrative costs listed in item (8) below, up to the total of the following:

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

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

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

EXHIBIT D

PRICING

1. Term of Pricing Agreement

2. Volume Requirements

3. Pricing Structure

4. Promotional Items

THE KROGER CO.

By: _____
Printed Name: _____
Title: _____

VENDOR

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____