

## Standard Vendor Agreement

Version March 2018

This Standard Vendor Agreement (this “**Agreement**”) is 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**”) and is effective upon the date of Vendor’s signature below.

1. Purchase Orders. This Agreement governs Kroger’s purchases of Products from the Vendor. Products means all goods provided to Kroger. Purchase Orders shall not be deemed to waive or modify the terms and conditions contained herein and any modification of this Agreement requires an express, written agreement signed by both parties.
2. Representations, Warranties and Guarantees. The Vendor makes the following representations, warranties and guarantees regarding the Products sold to Kroger:
  - 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 Food Safety Modernization Act (“**FSMA**”) and also comply with, and are not adulterated or misbranded within the meaning of, any states’ food and drug law; do not violate Section 301 or any other provisions of the FDCA; are not articles that may not be introduced into interstate commerce pursuant to Sections 404, 505 of 512 of the FDCA, the Federal Hazardous Substances Act (“**FHSA**”), or otherwise; if meat, poultry and egg products comply with the Federal Meat Inspection Act, Poultry Products Inspection Act and Egg Product Inspection Act respectively; conform to all applicable Consumer Product Safety Act (“**CPSA**”) rules, bans, standards or regulations, and if sold in California, Proposition 65 Standards, and California Air Resources Board 93120 formaldehyde and 94500 et seq. consumer products; and furthermore comply with all other applicable federal, state and local laws, rules and regulations.
  - b. The Products are not produced by Vendor or other businesses acting under any exemptions pursuant to FSMA, including, but not limited to, exemptions for qualified farms and facilities; Vendor will only utilize other vendors and service providers that comply with FSMA and do not claim exemptions even if they are or might be exempt based on the businesses’ size and/or sales within a local marketplace.
  - c. 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 (i) Kroger is the sole person falling within the definition of FSVP Importer and (ii) Kroger has agreed in writing to be designated on the entry documentation as the FSVP Importer.
  - d. 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 do 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 2(d) will be considered an act or default of Vendor, and a defense to any cargo claim resulting from the

condition of vehicles or transportation equipment. 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.

- e. 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 either the Underwriters Laboratory, Inc. or the ETL, and the National Sanitation Foundation (if applicable); and will include a Certificate of Compliance for children's products or a General Compliance Certificate for other CPSA regulated products as required under the Consumer Product Safety Improvement Act of 2008 ("CPSIA") to the extent applicable. 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); Products 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); and meet all applicable Occupational Safety and Health Administration Standards. Vendor warrants that all electric appliances, component parts and wiring purchased shall be listed by either the Underwriters Laboratories, Inc. or the ETL in compliance with applicable electrical codes; that all products purchased containing fabric which are subject to the provisions of the Federal Flammable Fabrics Act shall conform to the provisions of such act; that all products purchased which are subject to the provisions of the applicable state bedding and furniture laws shall conform to the provisions of such laws; and that all textile fiber products furnished shall be properly branded and invoiced in accordance with the Textile Fiber Products Identification Act and all other Federal Statutes applicable to such products. Vendor will provide Kroger copies of all Safety Data Sheets ("SDS") for any applicable products.
- f. For directly Imported Products, Vendor is in compliance with Kroger's trucking security program which includes, at a minimum, the following criteria for compliance: 1) select trucking and dray carriers that are dependable and willing to participate in security measures, 2) have trained personnel inspect all containers and seals prior to departure, 3) designate a direct route to the port of departure or CFS station, 4) estimate travel time for the trip, 5) monitor actual time to destination, 6) provide a gate in receipt for the trip; and 7) state that the factory understands and is cooperating in this Trucking Security Program. Factory must have a program in place and be able to prove compliance on-site, when asked.
- g. 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.
- h. 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.

- i. 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 proportionately equal terms to other customers of Vendor.
  - j. 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.
  - k. Vendor is the lawful owner of the Products, has good right to sell same and convey good and merchantable title, and the Products are and will be conveyed free of any and all claims, liens, security interests or other encumbrances. Vendor represents that unless it has disclosed to Kroger otherwise, it is not a broker or reseller of the Products.
  - l. 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.
  - m. The Products conform in every respect to applicable specifications, instructions, drawings, data, samples and descriptions to the extent required.
  - n. The representations, warranties and guarantees contained in this Section run to Kroger, its customers, and its and their successors and assigns. Vendor incorporates by reference and passes on to Kroger and its customers and its and their successors and assigns the benefits of all warranties and guarantees given to Vendor by persons from whom Vendor purchased any of the Products. Kroger's approval of specifications, drawings, samples and/or other descriptions furnished by Vendor does not relieve Vendor of its obligations. The representations, warranties and guarantees set forth in this Section 2 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.
3. Code of Conduct. Vendor warrants that the Products 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 Products including unsanitary and/or unsafe labor conditions. If Kroger 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 <http://www.thekrogerco.com/docs/statements-policies/code-of-conduct>.
4. 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 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: (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; and (b) comply with all record keeping and product segregation standards required by the Country of Origin Requirements and by Kroger.

5. Indemnification. (a) Vendor will defend, indemnify and hold Kroger, its affiliates and its and their officers, directors and employees, harmless from and against all suits, proceedings at law or in equity, claims, liabilities, costs, payments and expenses (including attorneys' fees) asserted against Kroger or incurred by Kroger, arising out of or in connection with 1) the Products, including Kroger's purchase, use, shipment, storage, delivery, sale, offering for sale, or other handling of the Products, 2) Vendor's actual or alleged breach of any of the representations, warranties, guarantees or other terms and conditions contained herein, or 3) any claim for damages to property or injuries to persons or fines or penalties incurred as a result of or caused by the acts or omissions of Vendor's employees or agents.

(b) 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. (c) Kroger shall indemnify, defend and hold Vendor harmless from liability resulting from Kroger's breach of this agreement, or any acts or omissions of Kroger or its employees, but only to the extent such liability is not caused by any acts or omissions of Vendor. 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 and expressly waives any insulation from liability or immunity from suit with respect to injuries to Vendor's employees that may be extended to Vendor under any applicable workers' compensation statute or similar law, unless such claim was the sole and proximate result of the gross negligence and/or willful misconduct of Kroger. Kroger will be held harmless from any workers' compensation liens incurred by such claims. Vendor acknowledges that this provision is a reasonable request from Kroger in order to give Vendor employees, contractors and representatives access to Kroger locations.

6. 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. 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."

7. Mandatory Arbitration.

- a. 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 governed by the substantive laws of the

State of Ohio, without regard to conflicts-of-law rules, and 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, or such other commercial arbitration process as may be mutually agreed upon by the parties. The dispute will be determined by one arbitrator, except that if the dispute involves an amount in excess of \$1,000,000 (exclusive of interest and costs), three arbitrators will be appointed. Each party shall bear its own attorney's fees, costs and expenses, and an equal share of the arbitrators' and administrative fees of arbitration.

- b. Neither party will commence an arbitration proceeding pursuant to this provision 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' 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. 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.
- c. If the Dispute has not been resolved 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. All arbitrations 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").
- d. 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 the value of the case, Rule 26 of the Federal Rules of Civil Procedure and AAA Procedures for cost-effective arbitration of Large, Complex Commercial Disputes.
- e. 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. Any award of damages in excess of three million dollars shall 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.
- 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.
- g. Notwithstanding any contrary provisions in this Section, the parties recognize that certain business relationships could give rise to the need for one or more of the parties to seek emergency, provisional or summary equitable relief to repossess and sell or otherwise dispose of goods, equipment and/or fixtures, to prevent the sale or transfer of goods, equipment and/or

fixtures, to protect real or personal property from injury, or to obtain possession of real estate and terminate leasehold interests, and for temporary injunctive relief. Immediately following the issuance of any such relief, the parties agree to the stay of any judicial proceedings pending mediation or arbitration of all underlying claims between the parties.

8. Confidentiality. Both Kroger and Vendor acknowledge that each party may from time to time possess Confidential Information of the other party. 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 other 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. Each party will protect Confidential Information of the other party with the same degree of care that it uses in protecting its own confidential information, but not less than reasonable care. Neither party will disclose any Confidential Information to any person except those employees who have a need to know and except as otherwise agreed to in writing by the non-disclosing party. Confidential Information will remain the property of the disclosing party and will only be used for the benefit of the disclosing party. Confidential Information does not include information that the receiving party 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) developed independently without reliance on any Confidential Information; (iii) publicly known or readily ascertainable through no wrongful act of the disclosing party, or (iv) required to be disclosed by a court of law, provided the disclosing party notifies the receiving party prior to such disclosure. Both parties will return all Confidential Information contained in a tangible form upon termination of its relationship, or at an earlier time at the other party's request.
9. Conflict. In the event of any conflict between the terms of this Agreement and any previously executed Standard Vendor Agreement between Vendor and Kroger, the terms of the previously executed Standard Vendor Agreement shall prevail.

ACCEPTED AND AGREED:

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Vendor Name

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Signature

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Print Name

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Title

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Date

**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.

<b>Coverage provided by Insurance Carriers rated A- or higher by A.M. Best</b>
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<p><b>The following wording must be included in the Description of Operations box on all Certificates:</b></p> <ul style="list-style-type: none"> <li>&gt; “The Kroger Co. and its subsidiaries, affiliates, directors, officers, agents and employees are <b>Additional Insureds</b> with respect to <b>General Liability and Auto Liability</b>”</li> <li>&gt; “All insurance policies (excluding Workers’ Compensation) are <b>Primary and Non-Contributory</b> to any other insurance owned, secured or in place by The Kroger Co.”</li> <li>&gt; A <b>Waiver of Subrogation</b> in favor of The Kroger Co. applies to all coverages (excluding Professional Liability) evidenced on the Certificate of Insurance</li> </ul>	<p><b>Certificate Holder Name and Address:</b>  <b>The Kroger Co. and Kroger’s affiliates and subsidiaries</b>  <b>C/o The Kroger Co.</b>  <b>1014 Vine Street</b>  <b>Cincinnati, OH 45202</b></p>
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**General Liability**

Each Occurrence	<b>\$3,000,000</b>
Damage to Rented Premises	<b>\$300,000</b>
Products / Completed Operations Aggregate	<b>\$3,000,000</b>
Additional Insured Vendors Coverage	<b>CG 20 15 07 04 or its equivalent</b>
Personal & Advertising Injury	<b>\$1,000,000</b>
General Aggregate	<b>\$3,000,000</b>

**Auto Liability** (for any supplier whose employees or agents will be driving onto any premise owned or leased by The Kroger Co. or making delivery on behalf of The Kroger Co.)

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

**Workers Compensation**

Statutory Limits	<b>Yes</b>
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**Employers Liability**

Each Accident	<b>\$500,000</b>
Disease Policy Limit	<b>\$500,000</b>
Disease Each Employee	<b>\$500,000</b>

*Note: a) Required coverage limits can be achieved through a combination of Primary & Excess Liability coverage. Excess coverage must “drop down” for exhausted underlying aggregate limits of 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 Supplier or Supplier’s Parent maintains a net worth of at least \$100,000,000.

Please upload your certificate of insurance onto your vendor record within Kroger’s Supplier Hub. If you have questions about Kroger’s Supplier Hub, please contact Supplier Integrity Team at 1-844-277-6165, option 2.