



THE KROGER CO.

**STANDARD VENDOR AGREEMENT**

FOR MERCHANDISE (PRODUCTS)

JANUARY 2017

**Version 1**

**THE KROGER CO.**  
**STANDARD VENDOR AGREEMENT FOR MERCHANDISE (PRODUCTS)**  
**VERSION JANUARY 2017**  
**SIGNATURE PAGE**

The signature set forth below acknowledges Vendor's agreement with and acceptance of the Standard Vendor Agreement for Merchandise (Products) – Version January 2017.

**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 appropriate statement below:*

- ☐ Vendor has read and agrees to comply with this Agreement.
- ☐ Vendor has read and agrees to comply with the terms of this Agreement as amended by Vendor's proposed changes attached to this Signature Page in the form of an 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.**

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

**THE KROGER CO.**  
**STANDARD VENDOR AGREEMENT FOR MERCHANDISE (PRODUCTS)**  
**VERSION JANUARY 2017**

This Standard Vendor Agreement for Merchandise (Products)-Version January 2017 (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**”).

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## **Introduction**

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

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### **Execution of Agreement**

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

Vendor will promptly deliver an executed original of the signature page of this Agreement signed by a person of authority representing Vendor to its Kroger buyer or other representative (“**Kroger Representative**”), but in no event later than thirty (30) days after Vendor’s receipt of this Agreement. **If Kroger does not receive an executed signature page from Vendor within this timeframe, Vendor’s shipment of Products in response to a Kroger purchase order, whether electronically, orally or hard copy generated, constitutes Vendor’s unconditional acceptance of this Agreement.**

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## General Terms and Conditions

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### Purchase Orders

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

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

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### Special Circumstances

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

In addition, all vendors should review supplemental requirements that may be applicable to them and are outlined on [www.thekrogerco.com/vendors-suppliers](http://www.thekrogerco.com/vendors-suppliers), including but not limited to KOMPASS, Mercury, the corporate in stock initiative and other programs and initiatives that develop from time to time.

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### 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 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.

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#### **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 as 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. Agreed upon returns of slow sellers, overstock, and product recalls that result from defective, dangerous or incomplete merchandise will be returned to Vendor at Vendor’s expense. This expense for the divisions serviced by the Clackamas Reclamation Center, unless otherwise agreed, will include: 1) a 12% handling fee for product consolidation and 2) incoming and return freight charges. Any exceptions to this policy must be in writing and signed by the Kroger Representative prior to the return.

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#### **Price Increase Notification Policy**

Vendor must deliver to its Kroger Representative written notice of any proposed price increases, excluding commodity products (*e.g.*, perishable products and live goods), 1) a minimum of ninety (90) days prior to the effective date of such price increase with respect to general merchandise items, and 2) a minimum of forty-five (45) days’ prior to the effective date of such price increases with respect to Corporate Brand items, and 3) thirty (30) days prior to the effective date of such price increase with respect to all other items. Kroger may establish additional price change notices and other procedures from time to time upon written notice to Vendor. Kroger will not be obligated to pay such price increase for any Products for which Vendor did not timely deliver such written notice.

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**Price Decrease Notification Policy**

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

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**Accounting Office Policies**

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

- ☐ Unique invoice number.
- ☐ Valid Kroger Purchase Order number.
- ☐ Vendor name and “remit to address”.
- ☐ Complete address to which the product was shipped.
- ☐ Net payment before cash discount.
- ☐ Payment terms.
- ☐ Total shipped quantity and total invoiced quantity. (Food product: Case count, Non-food product: Eaches).
- ☐ Invoice date on or after the ship date.

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

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

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

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

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

Vendor must keep full and detailed accounts for a period of not less than five (5) years or such longer periods as required by applicable laws and regulations. Vendor shall 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 five (5) years of Vendor’s books and records at any time with respect to Vendor’s charges, policies, procedures and transactions with Kroger. Any resulting claims will be immediately deducted with or without prior Vendor approval or notice.

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

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

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

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

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## **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 and will mark certain items as confidential when requested. 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.

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## **Store Visits, Merchandise Deliveries and Pickup Requirements**

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

### **Vendor/Supplier Representative Entering And Exiting Store**

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

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

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

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### **Vendor Delivering Merchandise**

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

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

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

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

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

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

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



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## EDI Transactions

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### Use of EDI

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

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

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### EDI Non-Compliance Program (DC Purchase Orders)

Vendors who accept product orders that require shipment to any Kroger distribution center (“DC”) are required to have the ability to receive the issued purchase order via EDI as well as to return the associated invoice via EDI. Vendors not meeting this requirement will be given ninety (90) days to comply. Should Vendor not conduct the transactions via EDI within the ninety (90) days required a \$200.00 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.

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### Standards

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

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### Transmissions

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

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### 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.

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#### **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.

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#### **Termination**

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

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### **Logistics Requirements**

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Vendor will comply with the following logistics requirements:

#### **UPC/GTIN Policy**

- ❑ All Products sold to Kroger in consumer units for the purpose of resale must have a readable UPC or GTIN ("UPC") barcode affixed to the Product or the Product's "sellable" packing. The exceptions are items that have been declared exempt, such as newspapers, bulk items, produce, etc. All produce sold to Kroger must have a PLU code affixed to the Product. See your Kroger Representative for further clarification.
- ❑ Vendor must adhere to the UCC specifications for the UPC bar code for format, size, color, location and clarity.
- ❑ Bar codes must be clear, legible, scannable and represent the human readable numeric code located beneath the barcode.
- ❑ Vendor must e-mail its Kroger Representative for authorization prior to making substitutions for the Products appearing on the Kroger Purchase Order.
- ❑ Vendor must communicate to its Kroger Representative, in writing, all changes to current UPC numbers, as well as the addition of new numbers, no less than ninety (90) days prior to shipment of Products to Kroger.
- ❑ Vendor covenants that: 1) the UPC on the labels or packaging for all Products will be imprinted in an accurately scannable manner; and, 2) the UPC information will be correctly assigned to the Products. For the breach of either or both of these covenants, Kroger will charge Vendor in accordance with the Non-Compliance Fee Schedule attached as **Exhibit D**.
- ❑ As technology changes, Vendor agrees to adhere to any additional labeling or identification requirements that Kroger requires.

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## Product Preparation

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

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

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## Packing Lists

Vendors are required to prepare packing lists as specified below:

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

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## Case Labeling

Minimum requirements for case labeling may differ, depending on the following factors:

- Product category
- Sourcing (domestic vs. import)
- Facility shipped to

- Usage of carton level GS1-128 label with approved ASN

Printing must be legible, and easily visible in a warehouse environment (at least 4 feet from the product). Preprinted or pressure sensitive labels may be used in lieu of direct ink application. Case labels to be positioned so they are visible from the outside of the finished pallet. Any applied label must meet content, positioning, and legibility requirements set forth in this standard.

All cases must display the following:

- Case GTIN/Barcode – the barcode must be scan readable according to GS1 standards.
- Product GTIN number in human readable format.
- Product name, including brand
- Pack count and size
- Code date (best by, sell by, etc.) The shipping case must be printed with the same date code as the retail package. Open dating is required on all packages.
- 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.

The following case labeling is required unless a GSI-128 carton label meeting Kroger specifications is used with an approved ASN transmission. Label cases legibly, as required, to include the following information:

- ☐ Kroger name, address and Kroger Purchase Order number.
- ☐ Vendor name and invoice number.
- ☐ Vendor style/stock number (list all styles in mixed cases).
- ☐ Case-pack information by style, size breakdown, color, quantity, and lot code.
- ☐ For Softgoods Products, mark the carton number and the total number of cartons on each carton in multiple carton shipments. (For example: 1 of 26, 2 of 26, etc.).  
**Note:** If Products are one full pallet of the same item (all the same SKU), only one case label per pallet is required, unless shipping to the Chehalis Retail Service Center.

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.

Clackamas/Chehalis General Merchandise and Peyton General Merchandise specific Case Labeling instructions are set forth in the attached **Exhibit F**. Vendors shipping product to other Distribution Centers should contact their Kroger representative for the appropriate case labeling requirements for that Center.

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## Code Date Guidelines

Minimum shelf life and Code Date requirements are now required for all Grocery, HBC/Natural Foods, packaged Produce, packaged Deli/Bakery and packaged Meat/Seafood products entering our Distribution Centers. Minimum and

maximum shelf life is required on all New Item forms. Code Date Requirements are shown in **Exhibit H**.

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## **Product Packaging**

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

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## **Case Packaging**

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

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

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## **Routing and Shipping Instructions**

Vendor will list all Kroger Purchase Order numbers on the Bill of Lading. (This service may be performed by the carrier on the freight bill.)

- ❑ Mark all cartons and Bills of Lading with *complete* shipping address. Pack, mark and describe shipment on Bill of Lading in accordance with the National Motor Freight classifications, including I.D.T.A., DOT CRF-49, I.M.D.G.
- ❑ Call Kroger's Logistics Department for correct routing instructions on FOB origin shipments when the shipping point will be other than that shown on the Kroger Purchase Order. Any excess charges due to Vendor's failure to do so will be charged to Vendor.
- ❑ Provide Kroger with a contact name, address, and phone number, for each of Vendor's ship points, to receive updates to standard routing instructions.
- ❑ Follow the Kroger Logistics Department standard routing instructions for all collect shipments.
  - Kroger Routing Instructions are found at <http://www.thekrogerco.com/vendors-suppliers/document-library>.
  - For Fred Meyer routing information, please visit [www.fmroutinginstructions.com](http://www.fmroutinginstructions.com).
- ❑ Ship Products according to the date specified on a Purchase Order. Prepaid orders are expected to arrive on the ship-to-arrive date and collect orders are expected to adhere to the ship-cancel window specified on the Purchase Order. Products shipped to arrive after the cancel date (without written prior-approval by the

Kroger Representative) are considered non-compliant and are subject to a non-compliance base fee charge. Products shipped to Peyton that arrive before the “due on” date are also non-compliant.

- ❑ Ship Kroger Purchase Orders complete in one departure – backorders are not allowed unless the Kroger Representative gives prior written approval. Failure to do so will result in a chargeback for shipping costs associated with a backorder.
- ❑ Ship pre-approved backorders prepaid, FOB our dock at FOB Vendor expense plus applicable off invoice amounts.

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

### **Scheduling, Delivery, Unloading and Pallet Requirements**

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

To facilitate scheduling of inbound delivery appointments, Vendor and its shippers and carriers must use One Network Enterprise’s online web-based scheduling [www.onenetwork.com](http://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.

Scheduling and delivery contact information may be found at <http://www.thekrogerco.com/vendors-suppliers/document-library>.

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### **Customer Pickup Fuel Allowance Policy**

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

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**Returns**

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

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**General**

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**Salvage Terms**

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

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

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**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.

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**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.

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## **TABLE OF EXHIBITS**

<b>SCHEDULE 1:</b>	LIST OF CURRENT KROGER BANNER NAMES
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<b>EXHIBIT B:</b>	VENDOR INSURANCE REQUIREMENTS
<b>EXHIBIT C:</b>	KROGER BILLING POLICY FOR RECALLS AND WITHDRAWALS
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<b>EXHIBIT H:</b>	PACKAGED GOODS CODE DATE REQUIREMENTS



## SCHEDULE 1

### LIST OF CURRENT KROGER BANNER NAMES

#### **Grocery and Mass Merchandise Stores**

Kroger  
Kroger Fresh Fare  
Kroger Marketplace  
Baker's Supermarkets  
City Market  
Copps  
Dillon Stores  
Dillons Marketplace  
Food 4 Less  
Foods Co.  
Fred Meyer  
Fred Meyer Marketplace  
Fry's  
Fry's Marketplace  
Gerbes  
Harris Teeter  
Jay C Food Stores  
Kessel Food Markets  
King Soopers  
King Soopers Marketplace  
Local Mkt  
Mariano's  
Metro Market  
Owen's  
Pay Less Super Markets  
Pick'n Save  
Price Rite  
QFC  
Ralphs  
Ruler Foods  
Scott's  
Smith's  
Smith's Marketplace

#### **Convenience Stores**

Kwik Shop  
Loaf 'N' Jug  
Quick Stop  
Tom Thumb Food Stores  
Turkey Hill Minit Markets

#### **Distribution, Procurement And Other Entities**

Peytons  
WESCO  
Inter-American Products  
Vitacost

#### **Manufacturing Facilities**

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

Bakery: Anderson Bakery  
Clackamas Bakery  
Columbus Bakery  
Country Oven Bakery  
Indianapolis Bakery  
KB Specialty Foods  
King Soopers Bakery  
La Habra Bakery  
Layton Dough

Dairy: Centennial Farms Dairy  
Compton Creamery  
Crawfordsville Cheese  
Crossroad Farms Dairy  
Heritage Farms Dairy  
Hunter Farms Dairy  
Jackson's Hutch Dairy  
Layton Dairy  
King Soopers Dairy  
Mountain View Foods  
Michigan Dairy  
Riverside Creamery  
Rochester Cheese  
Swan Island Dairy  
Tamarack Farms Dairy  
Tolleson Dairy  
Turkey Hill Dairy  
Vandervoort Dairy  
Westover Dairy  
Westover Dairy  
Winchester Farm Dairy

Meat: King Soopers Meat  
Vernon Meat

## EXHIBIT A

### KROGER PURCHASE ORDER TERMS AND CONDITIONS

1	<p><u>Purchase Order; Cancellation.</u> These Kroger Purchase Order Terms and Conditions apply to all orders (“<b>Kroger Purchase Orders</b>”) of goods, merchandise and incidental services (“<b>Products</b>”) by The Kroger Co. and its affiliates (collectively, “<b>Kroger</b>”) from Vendor. Vendor shall deliver the Products on the delivery date specified in the Kroger Purchase Orders. Kroger reserves the right to cancel a Kroger Purchase Order without penalty by notice to Vendor on or before the given cancellation date and at any time if the completion or delivery date is not met or if prior to such date, Kroger had reason to demand adequate assurance of due performance and such assurance is not forthcoming within ten (10) days after the date of Kroger’s demand. If a delivery date or completion date is not specified on the Kroger Purchase Order a reasonable time will be allowed. Kroger may cancel the unreceived portion of a Kroger Purchase Order at any time if delivery of the Products is not timely. If Vendor can fulfill its delivery obligation only by shipping by premium routing, the premium charges will be prepaid by Vendor. If no cancellation date appears on the front of the Kroger Purchase Order, the cancellation date will be a reasonable period of time prior to the shipment of the Products. If Vendor ships the Products before the “ship on” date, after the cancellation date, or after actual cancellation, Kroger may, in the exercise of its sole discretion, refuse the shipment, or Kroger may accept the Products and charge Vendor in accordance with Kroger’s Non-Compliance Fee Schedule. Any and all loads created at Vendor’s dock must be segregated by individual Kroger Purchase Order.</p>
2	<p><u>Non-Conforming or Unordered Products.</u> Kroger will have no obligation to accept or pay for any unordered Products or Products shipped that do not conform to, or comply with, the terms and conditions of the Kroger Purchase Order or the terms and conditions of any agreement to which these Kroger Purchase Order Terms and Conditions are attached, including shipping and routing instructions and dates of shipment and delivery. If Kroger takes delivery of such nonconforming order, or any part of such an order, Kroger reserves the right to deduct from its payment all actual or reasonable expenses, including but not limited to transportation, inspection, receipt, ticketing, re-ticketing, recall, care and custody of the Products, and notice to Vendor incurred as a result of such non-conformity or non-compliance. If Kroger takes delivery of any unordered or non-complying Products, Kroger may, without notice to Vendor of such fact, ship the unordered or non-complying Products to Vendor at Vendor’s cost and expense. Kroger will have no obligation to accept or to pay for any substituted goods or excess shipment of any Products made without Kroger’s prior written approval. Vendor will not backorder any Products subject to the Kroger Purchase Order without Kroger’s prior written consent. Vendor must pay all shipping costs associated with a backorder. All backorders should receive the best of pricing and terms at either the time of original order or at the time of actual shipment. All terms and conditions of the Kroger Purchase Order apply to any Products on backorder.</p>
3	<p><u>Right of Inspection.</u> Kroger will have the right to inspect the Products and reject any nonconforming Products within sixty (60) days of delivery. This right of inspection, whether exercised or not, will not affect Kroger’s right to revoke acceptance or pursue other remedies if defects or nonconformities are discovered at a later date, notwithstanding that any defect or nonconformity could have been discovered upon inspection. Payment by Kroger will not be construed as an acceptance of Products, or as a waiver or limitation of any of Kroger’s rights as set forth herein. In no event will Vendor sell or distribute to third parties any Products that contain logos, trade names, trademarks or labels of Kroger, even if rejected by Kroger as nonconforming.</p>
4	<p><u>Shipment Constitutes Acceptance of Agreement.</u> Shipment of Products by Vendor constitutes acceptance of these Kroger Purchase Order Terms and Conditions and the terms and conditions set forth in any agreement to which the Kroger Purchase Order Terms and Conditions are attached, unless Kroger has agreed to a change in writing prior to shipment.</p>
5	<p><u>Retail Pricing.</u> Kroger makes no representation regarding the maintenance of any specific retail price for Products purchased for resale.</p>

6	<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"> <li>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, (“<b>FDCA</b>”), including, without limitation, the Food Additives Amendment as further amended and Food Safety Modernization Act (“<b>FSMA</b>”) 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 (“<b>FHSA</b>”), 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 (“<b>CPSA</b>”) rules, bans, standards or regulations, and if sold in California, Proposition 65 Standards, and California Air Resources Board 93120 formaldehyde emissions; and furthermore comply with all other applicable federal, state and local laws, rules and regulations.</li> <li>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.</li> <li>c. Vendor expressly agrees to serve as the Foreign Supplier Verification Program (“<b>FSVP</b>”) Importer as that term is defined in 21 CFR § 1.500 (“<b>FSVP Importer</b>”), 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.</li> <li>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) (“<b>SFTA</b>”) 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 6(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.</li> <li>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); 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 (“<b>CPSIA</b>”); 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); will conform to the applicable flammability standards under the Federal Flammable Fabrics</li> </ol>
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Act; and meet all applicable Occupational Safety and Health Administration Standards. Vendor warrants that all electric appliances, component parts and wiring purchased shall be listed by either the Underwriters Laboratories, Inc. or the ETL in compliance with applicable electrical codes; that all merchandise purchased containing fabric which is subject to the provisions of the Federal Flammable Fabrics Act shall conform to the provisions of such act; that all merchandise purchased which is subject to the provisions of the applicable state bedding and furniture laws shall conform to the provisions of such laws; and that all textile fiber products furnished shall be properly branded and invoiced in accordance with the Textile Fiber Products Identification Act and all other Federal Statutes applicable to such products. Vendor will provide Kroger copies of all Safety Data Sheets (“SDS”) for any applicable products.

- f. For directly Imported Products, comply 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, and that the prices charged for the Products shipped are the lowest lawful prices available from 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.
- n. Vendor shall notify Kroger a minimum of thirty (30) days in advance before sourcing from any new supplier.
- o. The representations, warranties and guarantees contained in this Section 6 run to Kroger, its customers, and its and their successors and assigns. Vendor incorporates by reference and passes on to Kroger and its customers and its and their successors and assigns the benefits of all warranties and guarantees given to Vendor by persons from whom Vendor purchased any of the Products. Kroger’s approval of specifications, drawings, samples and/or other descriptions furnished by Vendor does not

	<p>relieve Vendor of its obligations. The representations, warranties and guarantees set forth in this Section 6 are in addition to all other express, implied or statutory warranties, are continuing in nature, survive Kroger's payment, acceptance, inspection or failure to inspect the Products.</p> <p>p. It will in every manner of its business related to the Kroger Purchase Order obey and conform to all applicable laws, rules and regulations, both domestic and foreign.</p>
7	<p><b><u>Code of Conduct.</u></b> 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.</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 <a href="http://www.thekrogerco.com/docs/statements-policies/code-of-conduct">http://www.thekrogerco.com/docs/statements-policies/code-of-conduct</a>.</p>
8	<p><b><u>Customer Returns.</u></b> If Kroger has purchased Products hereunder for the purpose of resale and Kroger's customers return any of the Products to Kroger due to any actual or alleged defect, or the Products in any way fails to comply with these Kroger Purchase Order Terms and Conditions, Kroger may tender back such Products to Vendor on an F.O.B. origin basis. Vendor will promptly accept such Products, pay all shipping and handling expenses and give full, unconditional credit or cash refund, at Kroger's option, for the cost of the Products to Kroger. Perishable food Products need not be returned in order to obtain full credit.</p>
9	<p><b><u>Acceptance of Terms.</u></b> <b>Kroger's offer to purchase is expressly subject to Vendor's acceptance of these Kroger Purchase Order Terms and Conditions and any agreement to which these Kroger Purchase Order Terms and Conditions is attached. Vendor's execution of Kroger's Standard Vendor or other Purchase Agreement (or Vendor's shipment of Products in response to a Kroger Purchase Order) constitutes Vendor's acceptance of these Kroger Purchase Order Terms and Conditions and any Agreement to which the Kroger Purchase Order Terms and Conditions is attached, and precludes Vendor's objection to any such terms and conditions and/or Vendor's inclusion of any different or additional items, terms or conditions in any resulting order except as set forth in written amendment referencing these Kroger Purchase Order Terms and signed by both Kroger and Vendor.</b> By accepting a Kroger Purchase Order or by shipping Products in response to a Kroger Purchase Order, Vendor agrees that Kroger is not bound by any other term or condition of Vendor in any written acknowledgment, invoice or otherwise, that is inconsistent with or in addition to the terms and conditions hereof. All sections of the Uniform Commercial Code that expressly or implicitly protect Kroger and are not inconsistent with any term hereunder are hereby incorporated by reference, whether it be construed as an offer or acceptance.</p>
10	<p><b><u>Payments Subject to Claims/Defenses.</u></b> All amounts payable to Vendor will be subject to all claims and defenses of Kroger, whether arising from the Kroger Purchase Order or any other transaction. Kroger has the right to set off and deduct against any such amounts all present and future indebtedness of Vendor to Kroger (which includes all of its affiliates) and may exercise this right up to three (3) years from the date of the last shipment by Vendor. Vendor will be deemed to have accepted each debit amount or vendor chargeback within ninety (90) days following receipt of notice of same, unless Vendor notifies Kroger's Accounts Payable Department (marked "<b>Correspondence</b>") in writing during such period as to why the deduction should not be made and provides sufficient documentation of the reason(s) given.</p>

11	<p><u>Taxes and Other Charges.</u> Unless otherwise agreed in writing, the contract price includes all federal, state and local taxes, tariffs, import duties, commissions and other charges, except taxes Vendor is required by law to collect from Kroger. Such taxes, if any, will be separately stated in Vendor's invoice and will be paid by Kroger unless an exemption is available. Vendor will obtain and pay for any licenses, permits, or inspections by public bodies required in connection with the manufacture, completion, or delivery of the Products.</p>
12	<p><u>Force Majeure.</u> TIME IS OF THE ESSENCE. However, Kroger excuses Vendor from nonperformance or delays in delivery caused by acts of God, unforeseeable occurrences or other force majeure events, but Vendor agrees it is not excused by unexpected difficulty or commercial impracticality of any degree. Kroger may cancel the unreceived portion of a Kroger Purchase Order at any time if delivery of the goods is not timely. If Vendor can fulfill its delivery obligation only by shipping by premium routing, the premium charges shall be prepaid by the Vendor or, if not prepaid, then Kroger reserves the right to issue chargebacks relating to the additional freight costs and administrative costs. Kroger reserves the right to reject any shipment of any order of goods from Vendor and shall have no obligation to pay for the rejected shipment in the event that Kroger's business or operations are discontinued in whole or part by reason of fire, flood, earthquake, war, civil disorder or any other act or event beyond Kroger's reasonable control.</p>
13	<p><u>Indemnification.</u> Vendor will protect, defend, indemnify and hold harmless Kroger, its subsidiaries and affiliates, and its and their directors, officers, employees, agents, contractors, successors and assigns from and against any and all claims and actions (including those in strict liability), demands, liabilities, losses, costs and expenses (including attorney's fees,) including, without limitation, liabilities arising from any actual or alleged injury to or death of any person, damage to any property, and any other damage or loss, by whomsoever suffered, including Vendor's or Kroger's agents or employees, resulting or claimed to result, directly or indirectly, from 1) the Products, including Kroger's purchase, use, shipment, storage, delivery, sale, offering for sale, or other handling of the Products, or 2) Vendor's actual or alleged breach of any of the representations, warranties, guarantees or other terms and conditions contained herein, except as to 1) and 2) above, if such liability is caused by the sole negligence or willful misconduct of Kroger or its employees. In addition to the foregoing, if any of the Products purchased or any part thereof is alleged or held to constitute infringement, Vendor, at its own expense, will either (i) procure for Kroger, its successors, assigns, and customers the right to continue using such Products, (ii) replace the Products with non-infringing items or (iii) only if options (i) and (ii) are impracticable, refund the purchase price for the Products and pay all related expenses.</p> <p>As to any claim made against Kroger, Vendor expressly waives any insulation from liability or immunity from suit with respect to injuries to Vendor's employees that may be extended to Vendor as a result of any payments made by Vendor to such employees or under any applicable worker's compensation statute or similar law or judicial decision. It is further agreed and affirmed that Vendor will hold harmless Kroger from and against any claims made by any of Vendor's employees, contractors or representatives working in the course and scope of their employment by Vendor or provision of services to Vendor while at any Kroger location (the term "location" not being limited to any store, manufacturing plant or distribution center, but encompassing Kroger and all of its affiliates and subsidiaries and their facilities), unless such claim was the sole and proximate result of the gross negligence and/or willful misconduct of Kroger. Further, Kroger will be held harmless from any worker's compensation liens incurred from Vendor's insurance carrier, third party administrator or self-administered, self-insured claims program(s). Vendor acknowledges that this provision is a reasonable request from Kroger and being agreed to by Vendor in order to give Vendor employees, contractors and representatives access to Kroger locations.</p>
14	<p><u>Limitation of Liability.</u> Neither party, nor any of its directors, officers or employees, shall be liable to the other party for any special, indirect, consequential or incidental damages, including, but not limited to, lost profits, however caused, except for damages associated with express indemnification provisions set forth in this Standard Vendor Agreement and any addendum associated therewith. This limitation shall apply even if such party has been advised of the possibility of such damage or the damages were otherwise foreseeable.</p>

15	<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, “<b>Country of Origin Requirements</b>”), and will provide to Kroger all reasonable assistance requested by Kroger and information necessary to enable Kroger to comply with the Country of Origin Requirements as they apply to Vendor’s Products. In particular, Vendor will:</p> <ul style="list-style-type: none"> <li>a. label or include with all Products subject to the Country of Origin Requirements (“<b>Covered Commodities</b>”) that are shipped to Kroger all Country of Origin information that Kroger is required to display or maintain with respect to the Covered Commodities;</li> <li>b. comply with all record keeping and product segregation standards required by the Country of Origin Requirements and by Kroger; and</li> <li>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.</li> </ul> <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>
16	<p><u>Title and Risk: Shipment.</u> Unless otherwise indicated on the Kroger Purchase Order or import letter of credit, 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 to 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>
17	<p><u>Supplier Diversity.</u> It is the policy of Kroger that certified Minority-Owned Business Enterprises (“<b>MBEs</b>”), Women-Owned Business Enterprises (“<b>WBEs</b>”) and other Diverse-Owned Business Enterprises (e.g. Veteran-Owned Business Enterprises; Service Disabled Veteran-Owned Business Enterprises; Lesbian, Gay, Bisexual &amp; Transgender-Owned Business Enterprises) (“<b>DBEs</b>”) 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 including 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>
18	<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>
19	<p><u>General Provisions.</u> Any rights or remedies granted to Kroger in any part of the Kroger Purchase Order will not be exclusive of, but will be in addition to, any other rights or remedies that Kroger may have at law or in equity. Vendor will allow Kroger or a third party auditor selected by Kroger to audit Vendor’s compliance with the Code of Conduct and FSMA. 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</p>

	<p>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 the laws of the United States of America and the laws of the state of Ohio, 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>
20	<p><u>Mandatory Arbitration.</u></p> <ol style="list-style-type: none"> <li>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 \$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.</li> <li>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 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”).</li> <li>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</li> </ol>



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) 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.
- 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

<p><b>The following wording must be included in the Description of Operations box on all Certificates:</b></p> <p>&gt; "The Kroger Co. and its subsidiaries, affiliates, directors, officers, agents and employees are Additional Insureds with respect to General Liability and Auto Liability"</p> <p>&gt; "All insurance policies (excluding Workers' Compensation) are Primary and Non-Contributory to any other insurance owned, secured or in place by The Kroger Co."</p> <p>&gt; A Waiver of Subrogation in favor of The Kroger Co. applies to all coverage evidenced on the Certificate of Insurance</p>	<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>\$2,000,000</b>
Damage to Rented Premises	<b>\$300,000</b>
Products / Completed Operations Aggregate	<b>\$2,000,000</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>\$2,000,000</b>

#### Auto Liability

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 your Primary & Excess Liability coverage b) In certain instances, "Claims Made" policies may be acceptable with automatic tail coverage of five (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](http://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	<a href="mailto:supplierinformationmanagement@kroger.com">supplierinformationmanagement@kroger.com</a>

Last Revision: October 26, 2016

## 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> <tr> <td>Class I Recall</td><td>\$500 per recall</td></tr> <tr> <td>Class II Recall</td><td>\$300 per recall</td></tr> <tr> <td>Class III/Recalls/Withdrawals</td><td>\$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.						

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

### STANDARD VENDOR AGREEMENT NON-COMPLIANCE FEE SCHEDULE

Base Fee		
\$ 100.00	Per Incident (Note: The Base Fee is waived when Flat Fees are charged.)	
Hourly Fee		
\$ 45.00	Per hour	
Flat Fee*		
\$ 500.00		ASN Incorrect or Not Provided
\$ 200.00	Per shipment	Case Labeling Errors
\$ 500.00	Per shipment	Case Pack Errors
\$ 500.00		Flat fee for non-conforming and illegible GSI-128 labels
\$ 500.00		Hazardous material improperly labeled
\$ 500.00		Improper Application of Hangers
\$ 1,000.00		Improper or no Hazardous Material shipping papers when required
\$1,000.00	Per item per division	Items discontinued without 60 days written notice
\$ 1,000.00	Plus all extra outbound transportation costs, and applicable Traffic Department service charge(s)	Late or Incorrect Ad Merchandise
\$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
\$ 200.00	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 item per division	Product attributes (e.g. GTIN, case GTIN, case pack, size, item dimensions, description) changed without 60 days written notice
\$ 1,000.00	Per PO	UPC Violations – General Merchandise procured by Fred Meyer
\$ 5,000.00	Per item / per division	UPC Violations – All Other
\$ 500.00		Unapproved Backorder (approved backorders are only approved if in writing from buyer)

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

#### Fee Collection

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

## **EXHIBIT E**

### **EDI TECHNICAL REQUIREMENTS AND ADVANCE SHIPMENT NOTIFICATION**

#### **Technical Requirements**

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

#### **Operational Requirements**

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

#### **Physical Requirements**

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

#### **Additional Preferred Requirements**

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

Please refer to <http://edi.kroger.com> for additional details and requirements.

**Kroger's Peyton Distribution Center does not require ASN's.**

## EXHIBIT F

### CASE LABELING INSTRUCTIONS

#### **FRED MEYER CHEHALIS AND CLACKAMAS GENERAL MERCHANDISE**

##### **Fred Meyer General Merchandise and Apparel**

For Direct Import products, please see specific information in the Import Shipping Manual, located on-line at <http://www.thekrogerco.com/docs/default-document-library/import-shipping-manual>.

#### **DOMESTIC VENDORS**

##### **Shipping to Fred Meyer Retail Service Center, Chehalis, WA:**

###### **Conveyable, store-ready cartons**

Minimum: 3" H x 6" W x 9" L, at least 2 lb

Maximum: 30" H x 27" W x 47" L, no more than 75lb

\*Please place the carton label on the long side or top of carton, ensuring that the barcode does not wrap around a corner or cross over the seam between box flaps.

###### **With approved carton level ASN/GS1-128 label**

- ☐ Packed and marked for stores
- ☐ Full case marked for DC

Note: Email [EDIBIZ@fredmeyer.com](mailto:EDIBIZ@fredmeyer.com) for testing and approval of ASNs and GS1-128 labels. Mapping, program descriptions and GS1-128 label specs at [edi.kroger.com/programs](http://edi.kroger.com/programs) and requirements.

###### **Without approved carton level ASN/GS1-128**

###### **Basic carton marks**

- ☐ Fred Meyer name, address and Fred Meyer Purchase Order number
- ☐ Vendor name and invoice number
- ☐ Vendor style/stock number
- ☐ Case-pack information by style, size breakdown, color, quantity and lot code.
  - For Softgoods Products, mark the carton number and the total number of cartons on each carton in multiple carton shipments. (For example: 1 of 26, 2 of 26, etc.)
- ☐ UPC barcodes
  - Preapproved labels purchased from label vendor
  - Created at vendor facility – email [EDIBIZ@fredmeyer.com](mailto:EDIBIZ@fredmeyer.com) for approval information

###### **Non conveyable goods, master packs with non-conveyable inner packs. Includes product shipping to 226 or 234 Maurin Road addresses:**

- ☐ Fred Meyer name, address and Fred Meyer Purchase Order number
- ☐ Vendor name and invoice number
- ☐ Vendor style/stock number (list all styles in mixed cases).
- ☐ Case-pack information by style, size breakdown, color, quantity and lot code.

- ❑ For Softgoods Products, mark the carton number and the total number of cartons on each carton in multiple carton shipments. (For example: 1 of 26, 2 of 26, etc.)
- ❑ 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.

**Shipping to Fred Meyer Clackamas General Merchandise Distribution Center**

Basic Carton Marks:

- ❑ Fred Meyer name, address and Fred Meyer Purchase Order number
- ❑ Vendor name and invoice number
- ❑ Vendor style/stock number (list all styles in mixed cases)
- ❑ Case-pack information by style, size breakdown, color, quantity and lot code.
- ❑ For Softgoods Products, mark the carton number and the total number of cartons on each carton in multiple carton shipments. (For example: 1 of 26, 2 of 26, etc.)
- ❑ Note: If Products are one full pallet of the same item (all the same SKU) only one case label per pallet is required.
- ❑ Label hazardous substances in compliance with the Federal Hazardous Substance Labeling Act and transportation method; I.D.T.A., DOT CRF-49, I.M.D.G. as may apply.
- ❑ FedEx or UPS shipments must include either a packing slip for the contents of each package or an approved GSI-128 label on each package, along with the EDI transmission of an approved Advanced Ship Notice (“ASN”)

**Shipping to Kroger’s Peyton Distribution Centers:**

Domestic-Legible UPC is required

For Direct Import products, see specific information in the Import Shipping Manual located online at <http://www.thekrogerco.com/docs/default-document-library/import-shipping-manual>.

## EXHIBIT G

### CUSTOMER PICKUP FUEL ALLOWANCE POLICY

Kroger requires all Vendors to provide a ‘fair and equitable’ market-based Customer Pickup (“CPU”) diesel fuel allowance on all Kroger managed shipments of Products. This allowance should be applied to each individual Kroger Purchase Order invoice. In the event Vendor is unable to reflect applicable fuel surcharge either as an additional line item or as part of the agreed upon customer pick-up allowance on the individual Kroger Purchase Order Invoice, the total allowance amount will be based on the U.S. Government’s weekly Department of Energy’s (“DOE”) National Diesel Fuel Index. Calculation logic is as follows:

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



## EXHIBIT H

### Packaged Goods Code Date Requirements

**The new Code Date (item and case) guidelines for all products & net weight items include:**

- **Type of Code Date**
  - Open date (Sell by, Best Before, Expiration, Use By)
- **Location**
  - Perishable items (<60 days) should have the code date printed on the Primary Display Panel (ideally top right quadrant,) depending upon space.
  - Code Date for non-perishable items should be printed on an easily-viewable location (consistent with category norms)
- **Text**
  - **EASILY** readable
  - Same size as panel text (package graphics) depending upon packaging and label limitations
  - Minimum of 12-point font depending upon packaging and label limitations
  - Contrast between text color; background must be legible
- **Shelf Ready Packaging**
  - Code Date on the front of the package and on the product
- **Multi-use Items**
  - Code Date should not be printed on packaging that is removed when the product is opened (lid or tear strip). Code Date should be printed on the inner packs and consumer units
- **Single-use Items (i.e. single serve yogurt)**
  - Code Date on lid is acceptable placement