

THE KROGER CO.
STANDARD VENDOR AGREEMENT FOR MANUFACTURING PROCUREMENT
March 16, 2010 VERSION
SIGNATURE PAGE

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

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: _____

Vendor Contact Title: _____

Vendor Contact Address: *Street / Suite:* _____

City / St / Zip: _____

Vendor Contact #s:

Phone: _____

Fax: _____

Cell: _____

E-Mail: _____

Vendor Emergency Contact Name: _____

Vendor Emergency Contact Title: _____

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

City / St / Zip: _____

Vendor Emergency Contact #'s:

Phone: _____

Fax: _____

Cell: _____

E-Mail: _____

Name of Signatory (printed): _____

Signatory Signature: _____

Signatory Title: _____

Date Signed by Signatory: _____

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

THE KROGER CO.
STANDARD VENDOR AGREEMENT FOR MANUFACTURING PROCUREMENT
March 16, 2010 VERSION

This Standard Vendor Agreement for Manufacturing Procurement -Version March 16, 2010 (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**”).

Introduction

Scope

The terms and conditions of this Agreement set forth Kroger’s offer and apply to Vendor with respect to Vendor’s provision of goods, supplies and incidental services (“**Products**”) to Kroger. Products include food, ingredients for food, packaging, supplies, and similar items for Kroger manufacturing operations. 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 manufacturing operations and distribution centers currently are conducted under the names listed in Division Address List, which can be viewed at this URL/link

http://thekrogerco.com/operations/operations_manufacturing_documents.htm.

This Agreement includes the terms and conditions of all Exhibits.

Execution of Agreement

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

Purchase Order Information

Vendor’s shipment of Products in response to a Kroger purchase order, whether electronically, orally or hard copy generated, constitutes Vendor’s unconditional acceptance of this Agreement and Conditions.

Terms and Conditions

KROGER’S STANDARD VENDOR AGREEMENT AND ALL PURCHASE ORDERS ARE SUBJECT TO KROGER’S PURCHASE ORDER TERMS AND CONDITIONS (THE “TERMS AND CONDITIONS”), ACCOUNTING OFFICE POLICIES, AND ROUTING AND SHIPPING INSTRUCTIONS, AS REVISED OR AMENDED FROM TIME TO TIME. THE TERMS AND CONDITIONS, ACCOUNTING OFFICE POLICIES, AND ROUTING AND SHIPPING INSTRUCTIONS, WHICH ARE HEREBY INCORPORATED BY REFERENCE INTO THE STANDARD VENDOR AGREEMENT AND ALL PURCHASE ORDERS, ARE LOCATED AND CAN BE VIEWED AT THIS URL/LINK

http://thekrogerco.com/operations/operations_manufacturing_documents.htm

AND VENDOR ACKNOWLEDGES RECEIPT, REVIEW AND ACCEPTANCE OF THE TERMS AND CONDITIONS, ACCOUNTING OFFICE POLICIES, AND ROUTING AND SHIPPING INSTRUCTIONS.

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

Insurance Requirements

Vendor will maintain at all times while providing Products to Kroger, at Vendor’s own cost and expense, insurance coverage of the types and in such amounts as described in **Exhibit A** with a company that has an A.M. Best Co. rating of “A-” or better. Products liability and completed operations insurance must provide coverage in respect of claims involving bodily injury or property damage arising out of or in connection with the Products. Vendor may comply with the required “*per occurrence*” limit through a combination of Primary and Excess Liability insurance policies. The insurance must be primary and not excess or contributing with any insurance or self-insurance maintained by Kroger. The insurance coverage required under this Agreement *must* be maintained by each Vendor for a minimum period of two years following any purchase by Kroger or as long as the Products are still held by Kroger for resale or use, whichever is longer.

Vendor will deliver to Kroger, prior to shipping Products, a Certificate of Insurance including “The Kroger Co. and Kroger’s affiliates and subsidiaries” as Additional Insured Vendors. Such Additional Insured status may be given by either an Additional Insured Vendors Endorsement or blanket Additional Insured Vendors coverage built into the Vendor’s General Liability policy form.

The Certificate of Insurance must identify all self-insured retentions and/or deductibles to the current ISO general liability policy. The Certificate of Insurance must evidence that the stated insurance will not be cancelled (voluntarily or otherwise) without at least thirty (30) days advance written notice to Vendor’s Kroger Representative. 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 thirty (30) days in advance of the effective date of such cancellation or expiration. Failure to provide such proof of insurance will result in payments being withheld by Kroger until such time as such proof of replacement insurance is received. If payment to Vendor is delayed by Vendor’s failure to furnish Kroger with acceptable proof of insurance, Vendor acknowledges that no discount terms previously negotiated with Kroger will be lost, revoked, denied or reduced, and Kroger will continue to enjoy such negotiated discounts to such extent as if payment were made within the time period necessary to obtain them.

Product Recall Policy

In the event of any and all product recalls that are either (i) agreed upon between Vendor and Kroger, or (ii) that are required (either by law or in the commercially reasonable judgment of Kroger) because Kroger has reason to believe the Products are defective, dangerous, incomplete, infringe upon intellectual property rights, or are not in compliance with applicable laws or regulations, the unused Products will be returned to Vendor at Vendor’s expense, and the finished goods containing the Product will be disposed of at store level. All costs associated with the recall, including but not limited to the retail cost of disposed finished goods and labor costs, will be paid by Vendor. The Purchase Order Terms and Conditions continue to apply to Products that have been recalled.

Price Change Notification:

Except in the case of exchange traded commodities, Vendor must deliver to its Kroger Representative written notice of any proposed price increase at least 30 days prior to the effective date of such price increase.

Confidential Information

Vendor acknowledges that it may from time to time possess Confidential Information that has been created, discovered, developed by or provided to it by or on behalf of Kroger, which information has commercial value in Kroger's business and which is not in the

public domain. As used herein, "**Confidential Information**" means all information (whether oral, observed, or written) that is marked or treated as confidential, restricted, or proprietary by Kroger, including but not limited to customer information, pricing information, product information, employee information, information regarding business planning and operations, and administrative, financial and marketing activities.

Vendor will protect Confidential Information with the same degree of care that it uses in protecting its own confidential information, but not less than reasonable care. Vendor will not, without Kroger's prior written consent, use or disclose any Confidential Information to any person except its authorized employees who require the same in connection with fulfilling Vendor's obligations to Kroger. Vendor will not commercially utilize any Confidential Information without Kroger's express prior written consent.

Notwithstanding the foregoing, Vendor will have no obligation under this Section with respect to any Confidential Information that it can prove is: (i) received from a third party having a bona fide right to such information and not under an obligation of confidentiality; (ii) approved for release in writing by Kroger; (iii) developed independently without reliance on any Confidential Information; (iv) published or becomes generally available through no act or failure to act on the part of Vendor, (v) publicly known through no wrongful act of Vendor, or (vi) required to be disclosed by a court of law, provided Vendor notifies Kroger prior to such disclosure.

Vendor will return all Confidential Information contained in a tangible form upon termination of its relationship with Kroger, or at an earlier time at Kroger's request. Unless otherwise agreed in writing, Vendor shall not make copies of any Confidential Information.

Logistics Requirements

Bill Of Lading

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

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

Product Labeling

Product labeling is required to meet Kroger specifications. Label Product legibly, as required, to include the following information:

- ❑ Vendor name and address;
- ❑ Vendor item number (list all styles in mixed cases) and Kroger Line Number;
- ❑ Manufacture Date (Open Date);
- ❑ Lot or Batch Number;
- ❑ Best If Used By Date, as applicable (Open Date);
- ❑ Storage Instructions;
- ❑ Product Name with Complete Product Description (Including Flavor and Color);

- ❑ Product Ingredient Statement and Allergens Present;
 - ❑ Net Contents/Weight; Gallons, Fluid Ounces, or Pounds) and Metric Equivalent;
 - ❑ Country Of Origin
 - ❑ Label hazardous substances in compliance with the Federal Hazardous Substance Labeling Act and transportation method; I.D.T.A., DOT CRF-49, I.M.D.G. as may apply.
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Returns

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

General

Vendor Certification Policy

Vendor shall at all times comply with the Kroger Vendor Certification Policy attached hereto as Exhibit B.

Scanning/Faxing

The parties agree that in the event Vendor returns the signature page of this Agreement via fax or other electronic means, Kroger will be entitled to rely on and enforce that version of the Agreement as if it were an original. Either party may rely on and/or enforce a scanned version of this Agreement as if it were an original.

Notices

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

TABLE OF EXHIBITS

The following attached documents are incorporated into this Agreement:

EXHIBIT A: VENDOR INSURANCE REQUIREMENTS

EXHIBIT B: KROGER VENDOR CERTIFICATION POLICY

APPENDIX

The following documents are incorporated into this Agreement:

1. Kroger Purchase Order Terms and Conditions
2. Accounting Office Policies
3. Division Address List
4. Routing and Shipping Instructions

and can be found at following URL/link

http://thekrogerco.com/operations/operations_manufacturing_documents.htm

**EXHIBIT A
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.

Underwritten by insurance companies rated A- or higher by A.M. Best

Cancellation Days Notice: Thirty (30) Days

Additional Insured & Certificate Holder: “The Kroger Co. and Kroger’s affiliates and subsidiaries”	Certificate Holder Address: The Kroger Co. and Kroger’s affiliates and subsidiaries C/o Aon Certificate Tracking PO Box 1128 Glenview, IL 60025
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Must be shown as additional wording on Certificate: All insurance policies must be “primary & non-contributory”

General Liability

Commercial General Liability	Yes
Occurrence Basis	Yes
Product Liability / Completed Operations	Yes
Additional Insured – Vendors	Yes
Each Occurrence	3,000,000

Warehouse Legal Liability

If product is being stored for and owned by Kroger	1,000,000
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The following coverages are required if services are provided by Vendor on Kroger premises, or as otherwise required by Kroger:

Auto Liability

Any Auto	Yes
Combined Single Limit	2,000,000

Note: As it concerns Auto Liability, a combination of “All Owned Autos, Hired Autos & Non-Owned Autos” OR “Scheduled Autos, Hired Autos & Non-Owned Autos” is acceptable

Workers Compensation

Statutory Limits	Yes
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Note: Waiver of subrogation in favor of The Kroger Co. must be show on the certificate

Employers Liability

Each Accident	1,000,000
Disease Policy Limit	1,000,000
Disease Each Employee	1,000,000

Note: Required coverage limits can be achieved through a combination of Primary & Excess or Umbrella Liability Insurance.

FAX your Compliant Certificate to Kroger’s Certificate Administrator – Aon CertTracking @ 1-866-311-7586.

For Questions, please contact:

Contact Name:	Contact Title / Company:	Contact Phone:	Contact e-Mail:
Jennifer Siewe	Procurement Manager	1-513-244-3708	Jennifer.siewe@kroger.com
Jim Aalberg	VP Corporate Insurance – Kroger	1-503-797-5300	jim.aalberg@kroger.com
Ed Bird	Insurance Analyst – Kroger	1-503-797-3318	edward.bird@kroger.com
Jan Stage	Kroger Certificate Administrator – Aon	1-877-542-6724 (toll free)	janet_stage@ars.aon.com
		1-847-953-5352 (direct)	

EXHIBIT B KROGER VENDOR CERTIFICATION POLICY

OBJECTIVE

This Kroger Vendor Certification Policy (this “Policy”) establishes requirements of The Kroger Co. and its affiliates and subsidiaries (“Kroger”) for a vendor (“Vendor”) of Kroger Manufacturing (“Product”). These requirements are in addition to those set forth in Kroger’s Standard Vendor Agreement.

PROCEDURE

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

1. **Vendor Approval**

Vendors are subject to review and approval by Kroger. Vendor will provide to Kroger any financial reports and information requested and must notify Kroger in the case of a change of control in ownership. Vendor may not assign or otherwise transfer any of its rights or delegate any of its obligations.

2. **Facility Approval**

A. **New Vendor:** All facilities used by Vendor to manufacture Product must pass a facility audit conducted by a Kroger representative or an approved outside agent. Facilities must comply with all applicable laws, regulatory requirements, Kroger specifications and FDA Good Manufacturing Practices. Costs associated with the inspection are the responsibility of Vendor.

B. **Product Line Extension:** Kroger, at its discretion, will determine whether a facility audit will be necessary for a line extension. If a facility audit is required, Vendor is responsible for costs of the inspection.

3. **Food Safety**

A. Kroger requires **ANNUAL** 3rd party Food Safety / Quality Systems Audits be completed at **EACH** manufacturing plant producing food ingredients and food contact packaging materials sold to The Kroger Co. Suppliers/manufacturers of certain food ingredients deemed by the Kroger Co. to be “high risk” (e.g., eggs, peanuts, tree nuts, fresh vegetables) will be required to be GFSI certified. (NOTE: For SQF, this requires achieving at minimum Level 2 Compliance) This GFSI certification must be maintained annually. Copies of these audits will be made available to The Kroger Co.

B. **HACCP:** Each production line producing Product is required to have a documented HACCP program in place with fully supportive pre-requisite programs. The pre-requisite programs must include personal hygiene practices (GMPs), prevention of cross contamination, cleaning & sanitizing, integrated pest management, preventative maintenance of equipment and facilities and a complete training program. The HACCP program must identify critical control points throughout the entire process.

C. **Food Allergen Safety Program:** A Food Allergen Safety Program is required for any manufacturing facility producing Product. At a minimum, the program must include steps to identify and eliminate the introduction of potential allergens into foods that are not labeled to contain these ingredients.

4. **Problem Suppliers**

Kroger may designate Vendor as a Problem Supplier based on poor quality Product, an unsatisfactory facility audit, excessive customer complaints, regulatory problems, lack of adherence to Kroger specifications, or other problems determined by Kroger in its sole discretion. Kroger will provide

Vendor with written notice providing the reasons for designation as a Problem Supplier. The cost of added inspections, testing or reformulation necessary to correct the problem to Kroger's satisfaction will be at Vendor's expense. Vendor's refusal to pay these charges or to correct the problem to Kroger's satisfaction will be grounds for terminating Vendor as a supplier to Kroger.

5. **Approved Vendor Evaluations**

Kroger from time to time may deem it necessary to conduct subsequent plant evaluations, Product audits, and/or grading trips at Vendor's expense.

6. **Additional Vendor Responsibilities**

Vendor must provide an annual audit from one of the third party audit companies listed below:

ASI
NSF (Cook & Thurber)
Silliker
Randolph & Associates
GMA-Safe (Formerly FPA)
AIB

Any certified auditor firm or independent auditor conducting an audit under an approved GFSI auditing scheme (BRC, SQF, IFS, Dutch HACCP, FSSC 22000, ISO 22000)

FRESH PRODUCE/AGRICULTURAL PRODUCTS

USDA
Primis
Cal Davis
Global GAP
SQF 1000

In addition vendor must:

- A. Provide Kroger with quality Product that meets all current specifications;
- B. Maintain facilities, products, records, and procedures that comply with applicable laws and regulatory requirements for food, safety and quality;
- C. Have in place recall procedures acceptable to Kroger;
- D. Maintain adequate code dating, quality, and shipping records that ensure expeditious and successful withdrawal of nonconforming Product. Kroger strongly prefers that all Product be "Open Dated" and must approve any exceptions;
- E. Respond promptly with an appropriate explanation to information requests or questions by Kroger;
- F. Respond promptly and maintain records on all Product complaints identified by Kroger;
- G. Report complaints or inquiries from any health or governmental authority regarding Vendor, its facilities Or Product;
- H. Maintain finished Product and packaging inventories reasonably necessary to provide Kroger with an ongoing supply of Product per the agreed-upon order lead-time; and
- I. Keep Kroger fully informed of difficulties encountered or anticipated in quality, financing, production or shipping, which could result in lost sales, profits or customer dissatisfaction.
- J. Have a documented and implemented Food Security/Defense Program.