

CONTINUING COMMODITY GUARANTY AND INDEMNITY AGREEMENT TERMS AND CONDITIONS

I. Warranty, Guaranty, and Indemnity

In consideration of the purchase by Albertsons Companies, Inc., its affiliates, and subsidiaries (collectively "**Buyer**"), of goods and services (together, "**Goods**") from the undersigned ("**Seller**"), Seller, on behalf of itself, its employees, agents, affiliates, parents, affiliates, and subsidiaries ("**Seller Parties**"), hereby makes, undertakes, and enters into this Continuing Commodity Guaranty and Indemnity Agreement ("**Agreement**"). **Seller hereby:**

A. Represents, warrants, and guarantees that, as of the time of delivery, all Goods will not be: (i) prohibited, adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, and regulations adopted thereunder (the "**FD&C Act**") or any successor thereto, from being introduced into interstate commerce; or (ii) adulterated or misbranded within the meaning of, or in violation of, any disclosure or warning required under the pure food and drug or health, safety or environmental laws, regulations or ordinances of any state or other government authority which are applicable to such shipment or delivery. All goods will be in compliance with all other applicable federal, state, and local laws and regulations; and merchantable and fit for their intended purpose and pass without objection in trade.

B. Represents and warrants that it has title to all Goods and all rights necessary to transfer such rights and title to Buyer free of any lien, pledge, hypothecation or other encumbrance, including but not limited to all patent, copyright, trademark, service mark, and trade secret (collectively, "**Intellectual Property**") rights required or appropriate for its manufacture of Goods, sale of Goods to Buyer, and use or sale of Goods, as contemplated, by Buyer;

C. Represents and warrants that it shall comply with all applicable federal, state, and local laws, rules, and regulations regarding its performance under this Agreement.

D. The warranties set forth in paragraphs IA-IC above do not apply to the adulteration or misbranding of any Goods occurring after

delivery to Buyer except to the extent caused by Seller. Any adulteration which is found to exist after delivery caused by any defect in the processing or packing of Goods or defective condition of any raw materials used in the processing, packaging or packing of Goods shall be deemed to have existed at the time of delivery)

E. Agrees to provide, with respect to all Goods, all warnings required under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Section 25249.5, et seq. ("**Proposition 65**") (which requires that anyone who, in the course of doing business in California, knowingly or intentionally exposes an individual to chemicals known to the State to cause cancer or reproductive toxicity, give clear and reasonable warning of the presence of such chemicals) and any similar applicable law.

F. Agrees to indemnify, hold harmless, and, if requested by Buyer, to defend Buyer from and against all third-party claims, demands, lawsuits, actions, proceedings, liabilities, fines, penalties, imposts, fees, costs, losses, and expenses (including, but not limit to, reasonable attorney fees and costs), including claims for injury, illness and/or death of any person or animal or loss of or damage to any property brought against or incurred by or on behalf of Buyer and/or Goods to the extent caused by Seller's (a) breach of this Agreement, (b) negligent acts or omissions in the manufacture, packaging, handling or shipment and delivery of the Goods, and/or (c) any work or services performed by Seller on Buyer's premises.

G. Agrees that, in the event that Goods, or any of them, violate or infringe upon the Intellectual Property rights of a third party, Seller shall obtain for Buyer all rights necessary for Buyer to lawfully continue using or selling the Goods as contemplated (or shall obtain for Buyer the opinion of an attorney acceptable to Buyer that such use or sale is lawful), and Buyer will return for a full refund that cannot reasonably and lawfully sold or used due to such infringement or violation.

II. Buyer will provide reasonable notice to Seller of any seizure of Goods or service of

process in any proceeding or action alleging any act or omission contrary to the requirements of paragraphs IA, IB, or ID above.

III. Purchase Orders; Documents; Sales

Buyer may place purchase orders (“Orders”) hereunder by Electronic Data Interchange (EDI), by facsimile, or by other written means. Seller shall comply with all Buyer billing, payment, pricing, and document rules (“Rules”), as set forth in the Supplier Handbook (which may be downloaded at a hyperlink from <http://www.safeway.com/suppliers>) as it may be revised from time to time. If Seller is providing Goods governed by alcoholic beverage regulatory agencies having jurisdiction over the parties and the transaction (collectively, “ABC Laws”) and any Rule promulgated by Buyer is found not to comply with applicable ABC Laws, Buyer Rules shall be deemed amended to the minimum extent necessary to comply with such ABC Laws. Neither the terms of the Order nor this Agreement shall be modified by any terms set forth in an invoice or shipping documents.

IV. General Specifications

Buyer may post, and Seller will comply with, safety, quality, logistical, and other specifications, and requirements applicable to vendors, products, or services of a particular category or type (“General Specifications”) on Buyer’s website, at <http://suppliers.safeway.com>. Buyer will provide reasonable notice to Seller of any changes to the General Specifications and Seller shall promptly notify Buyer of any revised General Specifications with which it is unable to comply. Except as the parties may otherwise agree, in writing, if Seller is not able, or otherwise fails, to comply with any General Specification, Buyer shall have the option of terminating any purchasing arrangement or agreement Buyer may have with Seller, and such termination shall not constitute a breach of any agreement.

A. Seller shall package, mark, and document all Goods in accordance with good commercial practices, and be responsible for any additional cost Buyer may incur resulting from Seller’s failure to do so. Seller shall use only GMA four-way entry pallets for purposes of its performance hereunder, and shall ensure that all containers,

pallet tags, bills of lading, and invoices include proper information, in accordance with Buyer’s specifications, including (but not limited to) Order number, product number, quantity, shipment date, names and addresses of Seller and Buyer, item description, and UPC’s.

V. Shipment; Delivery

A. The “Ship to Arrive by Date” may be changed only with the written consent of Buyer and Buyer may cancel without penalty, any shipment not actually delivered in accordance with the applicable Order by its “Ship to Arrive by Date.” Seller shall notify Buyer promptly if any part of any Order cannot be delivered to the delivery point by its “Ship to Arrive by Date.” Seller shall ship late or back-ordered shipments only to the extent expressly authorized, in each instance, by Buyer.

B. Seller shall be responsible for all expenses of delivering the Goods to the “Ship-To” address, stacked, sorted, segregated, and palletized on Buyer’s loading dock and risk of loss will remain with Seller until Buyer’s employee or agent has signed the bill of lading or other shipping document acknowledging such receipt. Seller shall be responsible for making all claims with the carrier for all losses, damages, and rework expenses. If the Order designates an FOB sale with delivery to a navigable port or carrier for shipment, the terms of sale and delivery will be DDP Vessel Incoterms 2000.

VI. Payment

A. Payment due dates contained in the Order. will be calculated from date of delivery.

B. Buyer’s purchases for resale should not include sales, use, or like taxes. Buyer will provide Seller, upon request, tax exemption (resale) certificates for those states where deliveries are to be made. Seller’s invoicing of Buyer for any tax or fee shall constitute Seller’s warranty that it is duly registered with the agency which levies the tax or fee and will indemnify Buyer against all costs, expenses, fines, and penalties for taxes collected and not timely or accurately remitted by Seller.

consent of the other.

VII. Rejection (and Revocation of Acceptance) of Non-Conforming Goods

Buyer may (within a reasonable time after it has had an opportunity to inspect) reject (or revoke acceptance of) and either return to the Seller or hold at Seller's risk and expense any non-conforming Goods (including Goods returned by Buyer's customers), *provided, however*, that Buyer's payment of invoices or failure to reject (or to revoke acceptance of) any Goods shall not relieve Seller of responsibility for any warranty with respect to such Goods under this Agreement or otherwise. Seller will be responsible for all costs associated with return of non-conforming Goods and shall issue a full refund to Buyer therefor.

VIII. Recalls and Withdrawals, Tainted Products Claims

A. Seller shall be responsible for all reasonable costs and expenses incurred by Buyer for any recall, withdrawal, or safety notice initiated by Seller, Buyer, or a government or consumer protection agency and shall reimburse Buyer for all associated costs, including but not limited to recalling, publishing notices, shipping and/or destroying Goods at Buyer's net landed cost, plus Buyer's reasonable administrative fees and refunds to customers.

B. Upon learning or receiving notice of a credible claim or potential claim of a defect in, or tampering with, any Goods, Seller shall promptly notify Buyer and, if appropriate, contact the FDA and/or other appropriate government agency, and shall immediately conduct at its expense sufficient analyses of such Goods to reliably determine the accuracy of such claim and the cause of any such defect or tampering.

C. The parties shall assist each other in all reasonable ways to resolve any claims involving Goods subject to a recall or safety notice.

IX. Trademarks; Trade Dress; Service Marks

Each party's trademarks, service marks, and trade dress ("**Trademarks**") shall be and remain the property of the owner thereof. Neither party shall use the other's Trademarks in connection with the sale or endorsement to any third party of any goods or services without the prior written

X. Labeling and Packaging

Seller shall not pack Buyer-branded goods until Buyer has approved the applicable package and label design ("**Approved Packaging**"). In the event that changes to the Approved Packaging are required by Buyer or by applicable law, or in the event that Seller ceases, for any reason, supplying certain Buyer-branded Goods hereunder, Seller shall cease ordering or producing the discontinued Approved Packaging ("**Discontinued Packaging**") except as may be reasonably necessary to complete production and packaging of Goods as ordered by Buyer, and shall make good faith efforts to terminate any Orders for Discontinued Packaging previously made but not yet delivered.

XI. No Salvage

No Goods bearing Buyer Trademarks shall be sold, transferred, or otherwise conveyed to a third party without Buyer's written consent.

XII. Compliance with Laws and Standards

A. Seller represents and warrants that: (i) it is a legal entity duly organized and in good standing under the laws of the state (or other governmental entity) of its organization, with full capacity to sue and to be sued; (ii) it is authorized to enter into and be bound by the terms of this Agreement; and (iii) neither this Agreement nor Seller's performance hereof shall be a violation of applicable law or the terms of any material contract, instrument or agreement to which Seller is subject.

B. Seller represents and warrants that the Seller Parties (i) shall comply with all applicable laws and local government regulations, including but not limited to laws and regulations regarding alcoholic beverages, labor, child labor, minimum wage, living conditions, overtime, working conditions, and the environment, and (ii) shall not use forced prison labor or the labor of children under the age of 14. Seller further agrees to comply with the Vendor Code of Conduct set forth in the Supplier Handbook, as it may be amended from time to time.

Seller hereby certifies, as of the date of this Agreement and the date of each delivery of Goods hereunder, that no involuntary labor (including, but not limited to, prison labor or slave labor) or child labor (as defined by applicable law or the Conventions of the International Labor Organization) has been used in manufacture, sale, or delivery of such Goods.

C. Supplier acknowledges and agrees, for purposes of 21 C.F.R. §1.500, that at the time of delivery into the United States, Supplier was the U.S. owner or consignee of Goods (if any) having a foreign source, and (except as otherwise agreed by Albertsons in writing) is "importer" of such Goods for purposes of 21 C.F.R. §1.500. As such importer, Supplier is responsible for compliance, with respect to such Goods, with the U.S. FDA's Foreign Supplier Verification Program, as set forth at 21 C.F.R. §1.500, *et seq.*

D. Seller agrees to provide such information as Buyer may reasonably request to enable Buyer to comply, and to facilitate Buyer's compliance, with applicable federal, state, and local statutes, rules, regulations, ordinances, orders, and other imperatives (collectively, "**Requirements**"). Seller further agrees to comply with such rules as may be promulgated by Buyer with respect to such Requirements. Seller warrants, now and as of the time of each shipment of Goods hereunder, that such information as it shall provide to Buyer under this Section shall be true, accurate, and complete in all material respects.

E. Seller agrees to notify Buyer, in writing, of any Goods that contain a chemical listed by the State of California pursuant to Proposition 65 that is not exempt from the warning requirement under Section 25249.10, and such notice shall include: the product name; the listed chemical(s); and the warning statement that Seller shall provide with such Goods.

XIII. Insurance

A. Seller shall obtain and maintain, at its expense for so long as it shall provide Goods hereunder, a policy or policies of Commercial General Liability insurance (including product and completed operations, personal and advertising injury and contractual liability coverages) covering the Seller Parties written on

an occurrence form with minimum limits of \$2,000,000 per occurrence/\$4,000,000 aggregate (which limits may be satisfied by the combination of underlying and excess (umbrella) policies). Each such policy shall be underwritten by insurers rated "A-" or better by A.M. Best Company. If Seller's employees will enter Buyer's premises or perform work on Buyer's behalf, Seller shall obtain and maintain a policy or policies of Workers' Compensation insurance with statutory limits and Employers' Liability (Stop-Gap Liability) insurance with minimum limits of \$2,000,000 and Automobile Liability Insurance with minimum limits of \$2,000,000 for each accident, including owned, non-owned, and hired vehicles.

B. Seller will provide Certificates of Insurance naming Buyer as "Additional Insured," with respect to General Liability and Auto Liability policies and shall cause a Broad Form Vendor's Endorsement (ISO Form CG2015) in favor of Buyer to be attached to such policies. Seller shall provide such Certificates of Insurance upon execution hereof and shall provide updated Certificates of Insurance when coverage is renewed or materially changed and as may be requested from time to time by Buyer.

C. Policy limits will not be reduced, terms changed, or policy canceled upon less than thirty (30) days prior written notice to Buyer. Seller's insurance will be primary with respect to all Seller obligations under this Agreement. Seller shall ensure that all its agents, representatives, subcontractors, and independent contractors comply with the foregoing insurance requirements. Insurance coverage and limits referred to above will not in any way limit the liability of the Seller.

XIV. General Terms

A. This Agreement shall be governed by and construed in accordance with the laws of the U.S. state where Goods are to be delivered hereunder, exclusive of the conflict of laws provisions thereof (provided however that, with respect to Goods delivered to Buyer outside of the U.S., this Agreement shall be governed by and construed in accordance with the laws of the State of Idaho and Seller hereby consents to the *in personam* jurisdiction and venue of the federal and state courts located therein). If any term or provision

hereof is held by a court having competent jurisdiction to be invalid or unenforceable, such term or provision shall be deemed severable, and the remainder hereof shall remain in full force and effect. Seller shall remain bound by this Agreement notwithstanding any assignment or attempted assignment by Seller of its interests herein. This Agreement shall be and remain binding upon the parties hereto and their respective successors and assigns.

B. No amendment, modification, or waiver of any term of this Agreement shall be effective unless set forth in writing and signed by an authorized representative of the party against which such amendment, modification or waiver is sought to be enforced. This Agreement applies in addition to, and not in lieu of, any other applicable representations, warranties, guarantees, indemnities, or other agreements between Buyer and

Seller, and shall not be deemed to be modified or otherwise affected by any agreement hereafter entered into by Seller and Buyer unless specific reference to this Agreement is therein made and such modification is signed by duly authorized representatives of Seller and Buyer.

C. This Agreement shall be effective as of the date of execution by Seller and shall continue in effect with respect to all Goods purchased or ordered by Buyer from Seller until revoked in writing. Notice of the acceptance of this Agreement is hereby waived by Seller. When executed (without modification) by Seller and delivered to Buyer, this Agreement shall supersede any previous Continuing Commodity Guaranty executed by Seller for the benefit of Buyer.

Dated: _____, 20____

By Seller

COMPANY NAME: _____

(Signature)

Name (print): _____

Title: _____

Address of Seller:

(Street and Number)

(City) (State) (Zip)

Instructions:

1. If Seller is an individual, sign individual name as the proprietor and give tradename, if any.
2. If Seller is a partnership, one general partner must sign in the partnership name.
3. If Seller is a corporation, an officer must sign and indicate title.
4. In all cases, the Agreement must be dated, and the Seller's address filled in.
5. Following execution of this Agreement, please return it to Buyer.