

## CONTINUING COMMODITY GUARANTY AND INDEMNITY AGREEMENT TERMS AND CONDITIONS

### I. Warranty, Guaranty and Indemnity

In consideration of the purchase, from time to time, of various goods, including, without limitation, food, drugs, packaging materials, ingredients which will be incorporated into products (as defined below), and other commodities ("Goods") from the undersigned ("Seller") on behalf of itself, its employees, agents, affiliates, parents, and subsidiaries ("Seller Parties"), by Safeway Inc., a Delaware corporation, and/or any other entity which is now or hereafter becomes its direct or indirect affiliate or subsidiary (collectively "Buyer"),  
**Seller:**

**A. Represents, warrants, and guarantees** that, as of the date of delivery, the Goods shall: (i) not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, and regulations adopted thereunder (the "FD&C Act"); (ii) not be articles that are prohibited, under the provisions of Section 404 or 505 of the FD&C Act, or any successor thereto, from being introduced into interstate commerce; (iii) not be 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; (iv) be in compliance with all other applicable Federal, state and local laws and regulations; and (v) be merchantable and fit for their intended purpose, and shall pass without objection in trade;

**B. Represents and warrants** that it has, or immediately prior to delivery shall have, title to the 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. Agrees to indemnify**, hold harmless, and, if requested by Buyer, to defend Buyer from and against any and all claims, demands, actions, proceedings, lawsuits, fees, costs, and expenses (including reasonable attorney fees and expenses) brought against or incurred by or on behalf of Buyer and/or Goods:

1. Arising out of or pertaining to any breach or alleged breach by Seller of the warranties set forth in paragraphs IA or IB above, including, without limitation, all liabilities, fines, penalties, imposts, losses, costs, fees, and expenses incurred by Buyer as a result thereof;
2. For or because of the injury, illness and/or death of any person or animal, or loss of or damage to any property (including, without limitation, any judgment rendered

against or settlement paid by or on behalf of Buyer in any such action), that arises out of or pertains to (i) the handling, shipment, delivery, consumption or use of any Good sold or delivered by Seller Parties to Buyer, or (ii) any work performed by Seller Parties on Buyer's premises.

**3.** Notwithstanding any provision hereof to the contrary, Seller provides no indemnity under this Agreement against liability arising out of the sole negligence of Buyer.

**D. Agrees** that, in the event that the 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 shall repurchase from Buyer, at Buyer's cost, Goods that Buyer cannot reasonably and lawfully sell or use as contemplated due to such infringement or violation.

**The following additional provisions shall apply to this Continuing Commodity Guaranty and Indemnity Agreement ("Agreement")**

- II. Seller provides no warranty under paragraphs IA or IB (nor indemnity under paragraph IC) hereof against the adulteration or misbranding of any Good within the meaning of the FD&C Act or any other applicable laws or ordinances which occurs after delivery to Buyer and is not caused by any act or failure to act on the part of Seller (provided that any adulteration or misbranding which is found to exist after delivery and which is caused by any defect in the processing or packing of the Good or by any defective condition of any raw materials used in the processing or packing of the Good or by any defect in the container in which the Good is packed by Seller shall be deemed to have existed at the time of delivery);
- III. Buyer shall provide reasonable notice to Seller of any seizure of the Goods or service of process in any proceeding or action alleging any act or omission contrary to the requirements of paragraphs IA or IB above.
- IV. **Purchase Orders; Documents; Sales**

Buyer may place purchase orders hereunder ("Purchase Orders") by Electronic Data Interchange (EDI), by facsimile or by other written means. Seller shall comply with all Buyer billing, payment and document rules, as they may be revised from time to time. Neither the terms of the Purchase Order nor this Agreement shall be modified by any terms set forth in an invoice or other shipping document.

expenses (including reasonable attorneys' fees) related in any way to such unpaid tax or fee.

## V. General Specifications

Seller hereby acknowledges that it has received and reviewed Buyer's General Specifications, and Seller agrees to comply with such General Specifications, as they may be amended from time to time in Buyer's sole discretion, to the full extent that such General Specifications are applicable to Seller's performance of this Agreement.

## VI. Shipment; Delivery

**A.** The "Ship To Arrive By Date" may be changed only with the written consent of Buyer. Buyer may cancel, without cost or further obligation to Seller, any shipment not actually delivered in accordance with the applicable purchase 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 back orders and late shipments only to the extent expressly authorized, in each instance, by Buyer.

**B.** Except as otherwise stated in a Purchase Order, Seller's delivery of the Good will occur, and risk of loss will pass, only when conforming Goods are delivered to the "Ship To" address and Buyer's employee or representative has signed the bill of lading or other shipping document acknowledging such receipt. If the Purchase Order designates an FOB sale with delivery to a navigable port or carrier for shipment, the terms of sale and delivery will be FOB Vessel Incoterms 2000.

**C.** To the extent requested by Buyer, Seller will be responsible for making all claims with the carrier for all losses or damages and/or rework expenses regardless of whether Buyer arranges carriage, designates the carrier or pays the freight.

## VII. Payment

**A.** Unless otherwise agreed in writing between the parties, payment shall be on the terms stated in the Purchase Order and the due date of each payment shall be calculated from the date of delivery. The date of delivery shall be the date Goods are actually received at the "Ship To" address.

**B.** Unless otherwise stated, Buyer's purchase is for resale and Seller's pricing should not include sales, use or like taxes. If Buyer claims such sales tax exemption, Buyer will provide Seller, upon request, valid tax exemption (resale) certificates for those states where deliveries are to be made. Seller's invoicing Buyer for any tax or fee shall constitute a warranty that Seller is duly registered with the agency which levies the tax or fee. If Seller does not remit the tax or fee to the appropriate agency, or if the same tax or fee is subsequently assessed against Buyer, Seller shall reimburse Buyer for all amounts of tax or fee Buyer has remitted to Seller and Seller shall defend, indemnify and hold Buyer harmless against all losses, fines, penalties, interest and

## VIII. Rejection (Revocation of Acceptance) of Non-Conforming Goods

Buyer, at its sole option, may reject (or revoke acceptance of) and either return to the Seller or hold at Seller's risk and expense any Goods that at the time of delivery (a) do not conform in any material respect with Buyer specifications, (b) are shipped contrary to the applicable Purchase Order, (c) contain any defect or inadequate warnings, labeling, instructions, or safety guards, (d) violate any law, regulation, or court or administrative order, (e) fail to comply with applicable Customs requirements, or (f) infringe any third party's patent, trademark, copyright or other intellectual property right. Payment of any invoice shall not be deemed a waiver of Buyer's right to reject or revoke acceptance. Seller shall bear all expenses and risks of unpacking, examining, repacking, storing, holding and/or reshipping, returning and any Customs actions regarding any Goods rejected (or whose acceptance is revoked) by Buyer. Buyer's right to reject (or revoke acceptance of) and to return or hold Goods shall, without limiting such right, extend to Goods returned by Buyer's customers for any reason stated in this Section. At Buyer's option, with respect to any Goods that Buyer rejects or revokes acceptance of hereunder, Seller shall refund or credit to Buyer, or Buyer may offset against amounts it owes to Seller, the cost of such rejected Goods. In the event Seller's payment terms include a cash discount or rebate, such discount or rebate shall not be deemed earned by Buyer with respect to such rejected Goods

## IX. Recalls; Tainted Products Claims

**A.** If a Good, because of a condition which existed at the time of delivery (or which results from such condition), is the subject of a recall (or safety notice) initiated by Buyer, Seller, or a government or consumer protection agency, Seller shall be responsible for all costs and expenses associated with the recall or notice and shall reimburse Buyer for all reasonable costs and expenses incurred by Buyer in recalling, publishing notices about, shipping and/or destroying the Good (and, where applicable, any products with which the Good has been packaged, consolidated or commingled), including refunds to customers and Buyer's net landed cost of unsold Good.

**B.** In the event of a credible claim or potential credible claim of any defect regarding Goods or of any tampering with Goods, Seller agrees to promptly notify Buyer and to contact the FDA and/or other appropriate government agency and immediately conduct at its expense a full and complete analysis of said Goods upon Seller's receipt of notice of the claim.

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

**X. Trademarks; Trade Dress; Service Marks**

All trademarks, service marks, and trade dress of Buyer (the "Trademarks") shall be and remain the property of the owner thereof, notwithstanding any provision of this Agreement. Seller shall not use Buyer's Trademarks in connection with the sale or endorsement to any third party of any goods or services without the express prior written consent of Buyer. Seller shall issue no press release, article, or other publication with respect to transactions under this Agreement without the prior approval of such publication by Buyer. Violation of this provision will constitute an infringement of Buyer's trademark(s) and/or service mark(s), and shall entitle Buyer to equitable relief, including injunction, in addition to all remedies available at law.

**XI. Labeling and Packaging**

**A.** 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 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.

**B.** Provided that Seller is not then in material breach of this Agreement or any agreement between the parties hereto, Buyer shall purchase from Seller, at Seller's cost (on a FIFO basis and substantiated to Buyer's reasonable satisfaction), Seller's unused inventory of Discontinued Packaging, but Buyer shall not be required to purchase from Seller more than ninety days supply, at average sales volume, of Discontinued Packaging, unless the parties shall have otherwise agreed in writing. Seller shall promptly destroy any Discontinued Packaging not purchased by Buyer.

**C.** In order to address surpluses and shortages of packaging materials, Buyer may, from time to time, request that Seller transfer or accept transfer of certain packaging materials with third parties. Seller agrees to use its best efforts to comply with such requests and to negotiate in good faith compensation for such transfers based upon the actual cost of such packaging materials to Seller and such third party.

**XII. No Salvage**

Seller shall not, and Seller shall instruct its carrier and agents that they shall not, without the prior written consent of Buyer: (a) cause, suffer or permit the transfer, sale or disposal of any of

Goods bearing Trademarks to any third party, including, without limitation, any insurance company; or (b) offer to sell, transfer or dispose of any such Goods, whether as salvage or otherwise, *provided, however*, that this provision shall not apply to Goods that do not bear any Trademarks.

**XIII. 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 between Seller and any third party.

**B.** Seller represents and warrants that the Seller Parties (i) will comply with all applicable laws and local government regulations regarding labor, child labor, minimum wage, living conditions, overtime, working conditions, and the environment, and (ii) do not use forced prison labor or the labor of children under the age of 14. Seller also agrees to comply with Buyer's Vendor Code of Conduct, as amended from time to time.

**C.** Seller acknowledges the country of origin requirements of the Farm Security and Rural Investment Act of 2002, and agrees to comply, and to provide such information as may be necessary or appropriate to assist Buyer in its efforts to comply, with such requirements. Seller further agrees to comply with such rules as may be promulgated by Safeway 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 Buyer hereunder shall be true and accurate in all material respects.

**XIV. California Proposition 65:**

Seller acknowledges receipt of, and agrees to comply with and be bound by, Buyer's California Proposition 65 Warranty.

**XV. 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 coverage) covering the Seller Parties, with a minimum of \$2,000,000 per occurrence and a minimum of \$2,000,000 per occurrence Products and Completed Operations written on an occurrence form. For Sellers whose employees enter Buyer's premises, Seller shall also obtain and maintain, at its expense and for so long as such employees shall conduct such operations, 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 a minimum of \$2,000,000 coverage limits for each accident, including owned, non-owned and hired vehicles.

**B.** Seller will provide Certificates of Insurance at all times naming Buyer as "Additional Insured," with respect to General Liability and Auto Liability policies, and shall cause the Broad Form Vendor's Endorsement (ISO Form CG2015) executed in favor of Buyer to be attached to such policies. Seller's insurers shall be rated "A-" or better by A.M. Best Company. Seller shall provide the Certificates of Insurance, evidencing the required coverage, prior to receiving a Purchase Order from Buyer, and shall provide updated Certificates of Insurance when coverage is renewed or materially changed, or as may otherwise be requested from time to time by Buyer.

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

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 each party hereto.

**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 prior to the receipt of written notice of its revocation by Buyer. 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 supercede any previous Continuing Commodity Guaranty executed by Seller for the benefit of Buyer.

**XVI. General Terms**

**A.** This Agreement shall be governed by and construed in accordance with the laws of the state where Goods are to be delivered hereunder, exclusive of the conflict of laws provisions thereof. In the event that 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

**Please Fill Out Completely**

Dated: \_\_\_\_\_, 20\_\_\_\_

By \_\_\_\_\_

Seller

\_\_\_\_\_  
(Company, Partnership or Business Name—please print or type)

\_\_\_\_\_  
(Type or Print Name of Seller's Representative)

Address of Seller

\_\_\_\_\_  
Title:

\_\_\_\_\_  
(Street and Number)

(Please observe instructions below)

\_\_\_\_\_  
(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:

