



# CONTINUING COMMODITY GUARANTY AND INDEMNITY AGREEMENT

## TERMS AND CONDITIONS

### I. Warranty, Guaranty and Indemnity

In consideration of the purchase, from time to time, by Albertsons Companies, Inc., on behalf of itself and its direct and indirect 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 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 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 pass without objection in trade;

**B. Represents and warrants** that it has, or immediately prior to delivery shall have, 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. 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.

**D. Agrees to indemnify**, hold harmless, and, if requested by Buyer, to defend Buyer from and against any and all claims, demands, lawsuits, actions, proceedings, liabilities, fines, penalties, imposts, fees, costs, losses, and expenses (including, but not limited to, reasonable attorney fees and costs) 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 paragraphs IA, IB, or IC above;
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, but not limited to, any judgment rendered against or settlement paid by or on behalf of Buyer in any such action), that arises in the course of (i) Seller's handling, shipment, or

delivery of Goods, 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 or intentional misconduct of Buyer.

**E. 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 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.

**II.** Seller provides no warranty under paragraphs IA or IB (nor indemnity under paragraph ID) of this Agreement against the adulteration or misbranding of any Goods 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 which is found to exist after delivery and which is caused by any defect in the processing or packing of Goods or by any defective condition of any raw materials used in the processing or packing of Goods or by any defect in the container in which Goods are packed by Seller shall be deemed to have existed at the time of delivery);

**III.** 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 IC above.

### IV. Purchase Orders; Documents; Sales

Buyer may, as Buyer and Seller may from time to time agree, 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, 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. Neither the terms of the Order nor this Agreement shall be modified by any terms set forth in an invoice or shipping documents.

### V. General Specifications

**A.** Buyer may, from time to time, post safety, quality, logistical, and other specifications and requirements generally applicable to vendors, products, or services of a particular category or type ("General Specifications") on Buyer's web site, at <http://suppliers.safeway.com> and hyperlinks therefrom. Seller shall comply with any and all applicable General Specifications, the then-current version of which shall be deemed for all purposes to be terms of each Order. Buyer may, from time to time, by providing twenty (20) days' advance notice to Seller either electronically or by U.S. mail, revise such General Specifications; 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, in its sole discretion, of terminating any purchasing arrangement or agreement Buyer may have with Seller, and such termination shall not constitute a breach of any such arrangement or agreement.

**B.** Seller shall, at Seller's expense, package, mark, and document all Goods in accordance with good commercial practices, and shall 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.

## **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 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. Except as otherwise stated in the applicable Order, delivery of the Goods will occur, and risk of loss will pass, only when conforming Goods are received by Buyer or its agent in accordance with the applicable Order and Buyer's employee or agent has signed the bill of lading or other shipping document acknowledging such receipt. 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.

**C.** To the extent requested by Buyer, Seller shall be responsible for making all claims with the carrier for all losses, damages, and rework expenses.

## **VII. Payment**

**A.** Unless otherwise agreed in writing between the parties, payment shall be on the terms stated in the Order and the due date of each payment shall be calculated from the date of delivery.

**B.** Unless otherwise stated, Buyer's purchases for resale and Seller's pricing should not include sales, use, or like taxes. If applicable, 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. If Seller collects a sales or use tax but 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 and Seller shall defend, indemnify and hold Buyer harmless against all losses, fines, penalties,

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

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

Buyer, at its sole option, 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 Goods that at the time of delivery (a) do not conform to Buyer's specifications, (b) do not otherwise conform to the applicable Order, (c) contain defective or inadequate warnings, labeling, instructions, or safety guards, (d) violate any law, regulation, or court or administrative order, (e) fail to comply with applicable import requirements, or (f) infringe any third party's patent, trademark, copyright or other intellectual property right, *provided, however*, that Buyer's 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. Payment of any invoice shall not waive Buyer's right to reject or revoke acceptance of Goods. Seller shall bear all expenses and risks of unpacking, examining, repacking, storing, holding, 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 that 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 Goods, because of a condition which exists at the time of delivery to Buyer (or which results from such condition), are the subject of a recall (or safety notice) initiated by Seller, Buyer, or a government or consumer protection agency, Seller shall be responsible for all reasonable 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 such Goods (and, where applicable, any products with which such Goods have been packaged, consolidated or commingled) at Buyer's net landed cost therefor, including 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.

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

All of Buyers' trademarks, service marks, and trade dress ("Buyer Trademarks") shall be and remain the property of the owner thereof, notwithstanding any provision of this Agreement. Seller shall not use Buyer Trademarks in connection with the sale or endorsement to any third party of any goods or services without the 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. Seller acknowledges that violation of this provision may cause irreparable harm to Buyer, and shall entitle Buyer to equitable relief, including injunction, in addition to all remedies available at law.

## **XI. 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.

## **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 Goods bearing Buyer Trademarks to any third party, including (but not limited to) any insurance company; or (b) offer to sell, transfer or dispose of any such Goods, whether as salvage or otherwise.

## **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 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 regarding 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 Labour 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 XIII.C 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.

## **XIV. 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, 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 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 assure that all of 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.

**XV. 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 California and Seller hereby consents to the *in personam* jurisdiction and venue of the federal and state courts located therein). 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 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. Buyer may, from time to time, upon not less than sixty (60) days prior written notice to Seller, modify any one or more term(s) of this Agreement; if Seller reasonably objects to any such modification, Seller will so notify Buyer and the parties shall use commercially reasonable efforts to negotiate a resolution of such differences; provided, however, that if such resolution is not achieved, Buyer shall have the option, in its sole discretion, of terminating any purchasing arrangement or agreement Buyer may have with Seller, and such termination shall not constitute a breach of any such arrangement or agreement. Shipment of Goods hereunder at any time after such sixty (60) days shall constitute acceptance on the part of Seller of such modification unless Seller has notified Buyer before such shipment of its objection to such modification.

D. 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, 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 supersede any previous Continuing Commodity Guaranty executed by Seller for the benefit of Buyer.

**Please Fill Out Completely**

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

Seller

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

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.

By \_\_\_\_\_

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

Title: \_\_\_\_\_  
(Please observe instructions below)