

Trading Partner Terms and Conditions

I. Wakefern Food Corp (“Wakefern”) shall place purchase orders (“Orders”) by Electronic Data Interchange (“EDI”), facsimile or by written means. Electronically transmitted Orders must be confirmed by the Vendor within one (1) business day by responding electronically to the mailbox Wakefern has identified and provided for its account. The Vendor’s electronic transmissions of its confirmation shall constitute its Signature. If no electronic transmission is received, it will be Wakefern’s responsibility to contact said vendor or resubmit its Order. The Order shall become a binding agreement (the “Contract”), upon the terms and conditions set forth between Wakefern and Vendor only upon: (1) delivery by Vendor of all or part of the goods covered by this Order (the “Goods”) or (2) receipt by Wakefern of an acceptance from the Vendor. This contract shall constitute the entire agreement between the parties hereto and shall supersede any and all prior or written contracts between the parties hereto relating to the subject matter hereof. Any terms and conditions of Vendor’s invoices, billing statements, acknowledgement forms or similar documents which are inconsistent with or in addition to the terms and conditions contained in this Order shall be of no force and effect and hereby objected to. No conduct, act, failure to act, silence, oral agreement or other understanding on the part of Wakefern, including without limitation Wakefern’s acceptance of the Goods, shall in any way modify or change this order or the terms thereof, or be construed as an acceptance by Wakefern of any additional or inconsistent provisions of Vendor’s sales confirmation or similar document.

II. The Vendor identified within the Order warrants that any goods or services provided pursuant hereto shall be free from all defects of material or workmanship and shall strictly conform to any statements, as to quality, quantity, contents and otherwise, appearing thereon or on the containers thereof and to any descriptions or drawings thereof or specifications thereof on the face hereof, attached hereto or otherwise specified in connection herewith and that such goods and services, their packaging, manufacture and delivery shall comply with the requirements of all governmental bodies and agencies having jurisdiction thereof and shall not constitute unfair competition or a violation or infringement of any rights under any patent, copyrights or trademark and that the title to such goods and any property resulting from such services shall be free and clear to Wakefern and

not transmitted subject to any liens or encumbrance. This warranty and any guarantees or warranties of service by vendor or its suppliers shall be for benefit of Wakefern and its customers and shall survive delivery and inspection by Wakefern.

III. Unless routing or method of shipment is specified, Vendor shall ship the cheapest way depending on weight and classification of item; otherwise Wakefern may take credit against the price of the goods for any excess transportation charges, to the extent it is required to pay same.

IV. Delivery shall be at the time, which is the essence hereof and place referenced on said Order. If delivery or completion is not made when specified, Wakefern may cancel the order without liability and may also purchase elsewhere and hold Vendor accountable thereof. However, if Wakefern accepts late delivery it may, without waiver of its rights against Vendor for such late delivery or breach hereof, delay payment for the goods delivered for as many days as delivery is late.

V. Notwithstanding prior payment, Wakefern may inspect goods, on delivery, or services, on completion, and may reject that same if not conforming. If Wakefern returns non-conforming or over-shipped goods, vendor will pay all transportation and handling charges for delivery and return of such goods.

VI. Vendor, at his own expense, will indemnify, hold harmless and defend Wakefern and its officers, employees, agents and customers, and their respective heirs, executors, administrators, successors and assigns, and each of them, from and against all claims, liabilities, and expenses including reasonable attorneys’ fees, arising or alleged to arise from any breach hereof or in connection with any goods or services provided hereunder, or the manufacturer, delivery or use of the same, (except to the extent caused solely by Wakefern), including without limitation, claims, liabilities and expenses due to death, personal injury, damage to property or failure to comply with the requirements of governmental bodies and agencies or liens on or in connection with such goods and services.

VII. In connection with performance hereunder, Vendor will maintain with insurance companies (a) Single limit comprehensive general liability insurance, in the amount of \$5,000,000 covering

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bodily injury and property damage liability with evidence of coverage for Product Liability, Contractual Liability for this contract and a Vendor's Endorsement naming Wakefern, ShopRite Supermarkets Inc and the shareholders of Wakefern ("ShopRite members") as Additional Insured's. (b) If vendor has access to the premises of Wakefern and/or any of its affiliates or ShopRite members, Automobile Liability insurance with limits of \$2,000,000 each person and \$2,000,000 each occurrence Bodily Injury and \$100,000 Property Damage Liability plus Workmen's Compensation Insurance as required by law are provided. NOTE: General liability and automobile liability minimums may be satisfied in combination with 'excess' or 'umbrella' limits. (c) In addition to the above, if Vendor assumes control or possession of all or any part of the property of Wakefern, all risk property damage, naming Wakefern as property owner, in the full replacement cost of such property and evidence of Completed Operations insurance in lieu of Products Liability and Vendor's endorsement under Vendor's Comprehensive General Liability insurance policy are to be provided.

All such policies shall provide that they may not be cancelled, or coverage materially changed, without ten (10) days prior written notice to Wakefern. Vendor will provide Wakefern with the required insurance policies or certificate(s) prior to start of Vendor's operations and/or performance of contract.

VIII. Vendor may not subcontract any undertaking hereunder without prior written consent of Wakefern and the written agreement of the subcontractor to make the warranties, provide the indemnification and maintain insurance as detailed in paragraphs II, VI and VII hereof and no assignment of Vendors' rights hereunder will be binding on Wakefern unless it has given its written consent thereto.

IX. Vendor shall complete all services performed at the premises of Wakefern promptly and in accordance with the governmental bodies and agencies having jurisdiction and the Rules of the National Board of Fire Underwriters and shall not permit the performance of such services or the providing of goods in connection therewith to create any lien or encumbrance on such premises or goods. If it obtains possession or control of all or any part of the property of Wakefern, Vendor shall be responsible for the

risk or loss to or injuries from such property during the period of such possession or control.

X. Shipments must equal exact amounts ordered unless otherwise specified by Wakefern. In the event, said shipment is less than/short product at the end of a "deal period" and Wakefern receives said shipped, Wakefern retains the right to receive the same amount of "cut" product within 30 days reflective of the stated deal amount at the time of the respective shipment

XI. Unless otherwise stated the price indicated within the purchase order generated by Wakefern shall be F.O.B. delivery point. Any payments for goods or services delivered hereunder are expressly subject to deduction by Wakefern for any set offs or counterclaims it may have against Vendor, however, and whenever arising.

XII. Wakefern's purchase order shall be accepted by the Vendor's execution on the face of a written / facsimile order form or on an EDI acknowledgement transmission, its failure to object hereto in writing to Wakefern within five (5) days after the receipt hereof or its performance hereunder; and as accepted, a Order regardless of form or transmission shall constitute a contract governed by the laws of the State of New Jersey.

XIII. The terms hereto may not be altered in any way except in writing executed by Wakefern; provided, however, the purchase price as stated within the Order form/transmission shall not be increased; for extra work or otherwise, except by a supplemental Order received by Wakefern.

XIX. If Vendor becomes or is adjudged insolvent or bankrupt, makes a general assignment for the benefit of the creditors, takes the benefit of any insolvency act or files a petition under any section of the bankruptcy act or if a receiver is appointed for all or any part so its property, Wakefern may cancel the Order without payment of damages or consideration of any sort; provided, however, that in the event of such cancellation, Wakefern will pay on a pro rata basis, for that portion of the contract which was performed/received.

XX. Wakefern's failure to enforce any right or resort to any remedy on default by Vendor shall not work a waiver of, or prevent, limit, or restrict by estoppel or otherwise subsequent enforcement of such rights or remedies or any other rights or

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remedies which may be available to it and shall not constitute a waiver of such fault.

XXI. Wakefern shall have the right to make, from time to time and without notice to any sureties or assignees, changes as to packing, testing, destinations, specifications, designs, and delivery schedules (postponements only). Vendor shall immediately notify Wakefern of any increases or decreases in costs caused by such changes and an equitable adjustment in prices or other terms hereof shall be agreed upon in a written amendment to Order transmission.

XXII. Any specifications, drawings, notes, instructions, engineering, notices, or technical data referred to in the Order shall be deemed to be incorporated herein by reference as if fully set forth. In case of any discrepancies or questions, Vendor shall refer to Wakefern for decision or instructions or for interpretation.

XXIII. Wakefern shall at all times have title to all drawings and specifications furnished by Wakefern to Vendor and intended for use in connection with the Order. Vendor shall use such drawings and specifications only in connection with the Order, and shall not disclose such drawings and specifications to any person, firm, or corporation other than Wakefern's or Vendor's employees, subcontractors, or government inspectors. Vendor shall, upon Wakefern's request or upon completion of the Order, promptly return all drawings and specifications to Wakefern.

XXIV. Wakefern shall not be bound by any assignment of Vendor's rights hereunder.

XXV. The provisions hereof shall bind and benefit the successors and assigns of Vendor and Wakefern

XXVI. In the event Wakefern, in its sole discretion, determines that any product furnished it by Vendor hereunder is or may be defective or harmful to the users or consumers of the same, Wakefern or ShopRite members in addition to exercising any rights or obligations provided by law may recall such product from its stores and notify, through appropriate means, including, without limitation, press releases, newspaper advertisements, radio and television announcements, purchasers of such product from Wakefern or ShopRite members, of the possible defective condition or dangerous effect of such

product and Vendor hereby releases Wakefern and the ShopRite members from any and all claims it may have against buyer or its members by reason of taking any of the aforesaid actions even though the product involved is ultimately proven to be without defect and not dangerous or harmful.

XXVII. When the Order calls for goods bearing Wakefern Food Corp. trademarks (private label), the Order is being submitted, and all merchandise shall be furnished and accepted, in accordance with the terms and provisions of the Vendor Agreement, which are expressly incorporated by reference.

XXVIII. Wakefern requires driver unloading of all palletized and non-palletized shipments, and requires the driver to obtain unloading assistance for non-palletized shipments of amounts specified below. Wakefern and Vendor responsibilities with respect to arranging and providing compensation for driver unloading are as follow:

a. Exempt Commodities

Wakefern purchases items exempt from ICC jurisdiction (fresh fruits and vegetables, plants, eggs, milk and fish, including shellfish) on either a delivered or collected basis. The delivered and collect price shall include the cost of driver unloading, and assistance if required. Unloading assistance shall be required for non-palletized loads of over 400 pieces.

b. Non-Exempt Commodities

i. Delivered Basis

If non-exempt commodities are purchased on a delivered basis, the delivered price shall include the cost of driver unloading, and assistance if required. Unloading assistance shall be required for non-palletized loads as described below by buying division.

Buying Division

Grocery	800 pieces
Non Foods/HABA	800 pieces
Bakery	400 pieces
Frozen	400 pieces
Dari-Appy	400 pieces
Produce	400 pieces
Seafood	400 pieces
Meats	400 pieces

Assistance will be required for Non-palletized loads exceeding

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ii. Vendor Arranges Transportation

If the Vendor arranges transportation for the account of Wakefern, the Vendor shall also arrange for loading and unloading of goods. When arranging transportation, the Vendor will make a good faith effort to have unloading included in the cost of transportation at no extra charge to Wakefern.

iii. Wakefern Arranges Transportation

If Wakefern arranges its own transportation, it shall also arrange for unloading.

c. Vendor shall clearly convey the unloading responsibilities to the driver prior to driver's arrival at Wakefern's unloading dock and, except where Wakefern is responsible for arranging transportation, shall arrange to compensate the driver for all unloading services performed.

XXIX. Wakefern has the right to audit Vendor records maintained by said Vendor that relate to our account. This includes but is not limited to account statements, etc. In addition, Wakefern also has the right to insure that no conflict of interest exists between said Vendor and any associate employed within Wakefern and/ or Shop Rite membership.

XXX. All invoicing requirements must be adhered to as outlined in our Accounts Payable section of the Wakefern Food Corp Supplier Guidelines and Policies Manual. Vendor is responsible to review and adhere to said requirements. Wakefern reserves the right to updates/revise said requirements as deemed necessary and with no required notice to Vendor.

XXXI. Wakefern calculates the Vendor invoice due date based on either the invoice date or the receipt of goods, whichever is later, and based upon the most favorable of the Order or invoice terms. If an Invoice due date falls on a weekend or holiday (State/Federal/Banking), invoices are paid on the next available business day. If Wakefern does not accept an invoice due to an inaccuracy or incompleteness on the part of the Vendor, the terms will be calculated based on the receipt date of the corrected invoice or Receipt of goods, whichever is more favorable for Wakefern.

XXXII. Cash discount is calculated on GROSS amount prior to discounts and allowance.

XXXIII. Wakefern reserves the right to use the lower of the price presented on the Order or indicated on the Vendor invoice that is submitted for payment. Should the Vendor not agree with said pricing presented on the Order, Vendor is to adhere to the notification requirements as detailed in paragraph XII.