

WAKEFERN FOOD CORPORATION E.D.I. TRADING PARTNER POLICY

1. Whenever Wakefern Food Corp. (herein after “Wakefern”) receives an electronically transmitted invoice, it will Confirm the invoice within one (1) business day by responding electronically to the mailbox Vendor has identified and provided for its account. Wakefern’s electronic transmission of its confirmation shall constitute its Signature. Vendor must notify Wakefern of any lack of confirmation within one (1) business day. Wakefern considers any failure to object within the specified time period as ***conclusive evidence*** that the invoice is authentic and that the electronic transmission of said invoice constitutes Vendor Signature. Each party expressly agrees that the Signatures as described herein shall be sufficient to verify that such party originated such document. If Vendor receives no such confirmation, it is the Vendor’s responsibility to contact Wakefern or to resubmit invoice.

2. Vendor agrees that its properly transmitted invoice constitutes a “writing” and that, when such invoice is sent as provided in Paragraph 1, it is a “Signed Document”. Vendor also acknowledges that its invoice constitutes an “original” when printed from electronic files or from records established in the normal course of business. The parties agree that Signed Documents may be introduced as evidence on paper in any judicial or other proceedings to the same extent and under the same conditions as other business records originated and maintained in documentary form.

3. Whenever Wakefern sends an electronically transmitted purchase order, it expects confirmation the order was received within one (1)business day by responding electronically to the mailbox Wakefern Food Corporation has identified and provided for its account. The Vendor’s electronic transmission of its confirmation shall constitute its Signature. Wakefern will notify Vendor of any lack of confirmation within one (1) business day. If Wakefern receives no such confirmation, it will be Wakefern’s responsibility to contact the Vendor or to resubmit its order.

4. Wakefern agrees that its properly transmitted purchase order constitutes a “writing” and that, when such order is sent as provided in Paragraph 3, it is a signed document. Wakefern specifically agrees to be bound by its “Signed Document”. Wakefern also acknowledges that its order constitutes an

“original” when printed from electronic files or from records established in the normal course of business. **Vendor agrees to be bound by the following E.D.I. Purchase Order terms and conditions.**

The E. D. I. Purchase Order (“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 any part of the goods covered by this Order (the “Goods”) or (2) receipt by Wakefern of an electronic acknowledgement from the Vendor. This contract shall constitute the entire agreement between the parties hereto and shall supersede any and all prior oral or written contracts between the parties hereto relating to the subject matter hereof. Any terms or 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 are 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.

4. The Vendor identified within the E. D. I. Purchase 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 services by vendor or its suppliers shall be for the benefit of buyer and its customers and shall survive delivery and inspection by buyer.

5. 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.
6. Delivery shall be at the time, which is the essence hereof and place referenced on the E.D.I. Purchase 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 was late.
7. Notwithstanding prior payment, Wakefern may inspect goods, on delivery, or services, on completion, and may reject the same if not conforming. If Wakefern returns non-conforming or over-shipped goods, vendor will pay all transportation and handling charges for the delivery and return of such goods.
8. Vendor, at its 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 or services.
10. In connection with performance hereunder, Vendor will maintain with insurance companies, licensed to do business in the State of New Jersey, (a) Single limit Comprehensive General Liability Insurance, in the amount of \$5,000,000 covering Bodily Injury and Property Damage liability with evidence of coverage for Products Liability, Contractual Liability for this specific contract and a Vendor's Endorsement naming Wakefern, ShopRite Supermarkets, Inc., and the shareholders of Wakefern ("ShopRite members") as Additional Insureds. (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 \$1,000,000 each person and \$1,000,000 each occurrence Bodily Injury and \$100,000 Property Damage Liability plus Workmen's Compensation Insurance, as required by law are to be provided, (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 coverages materially changed, without ten (10) days prior written notice to buyer. Vendor will provide Wakefern with the required insurance policies or certificate(s) prior to start of Vendors' operations and/or performance of contract.

9. 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 the insurance required by paragraphs 1, 5 and 6 hereof and no assignment of Vendors' rights hereunder will be binding on Wakefern unless it has given its written consent thereto.
12. Vendor shall complete all services performed at the premises of Wakefern promptly and in accordance with the requirements of 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.
13. Shipments must equal exact amounts ordered unless otherwise specified by buyer.
14. Unless otherwise stated, the price indicated within the E.D.I. Purchase Order shall be F.O.B. delivery point. Any payments for goods or services delivered

are expressly subject to deduction by Wakefern for any set offs or counterclaims it may have against vendor, however, and whenever arising.

15. This E. D. I. purchase order shall be accepted by Vendor's execution on the face of an E.D.I. acknowledgement transmission, its failure to object to the E.D.I. purchase order transmission hereto in writing to Wakefern within five (5) days after the receipt hereof or its performance hereunder; and as accepted, this E.D.I. purchase order shall constitute a contract governed by the laws of the State of New Jersey.
16. The terms hereof may not be altered in any way except in writing executed by Wakefern; provided, however, the purchase price as stated within the E. D. I. Purchase Order transmission shall not be increased; for extra work or otherwise, except by a supplemental purchase order issued by Wakefern.
17. If Vendor becomes or is adjudged insolvent or bankrupt, makes a general assignment for the benefit of 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 of its property, Wakefern may cancel the E. D. I. Purchase 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 has been performed.
18. 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 remedies which may be available to it and shall not constitute a waiver of such default.
19. 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 the E. D. I. Purchase Order transmission.
20. Any specifications, drawings, notes, instructions, engineering, notices, or technical data referred to in the E. D. I. Purchase 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.

21. 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 E. D. I. Purchase Order. Vendor shall use such drawings and specifications only in connection with the E. D. I. Purchase Order transmission, 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 E. D. I. Purchase Order, promptly return all drawings and specifications to the buyer.
22. Wakefern shall not be bound by any assignment of Vendor's rights hereunder.
23. The provisions hereof shall bind and benefit the successors and assigns of Vendor and Wakefern.
24. 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.
25. When the E. D. I. Purchase Order transmission calls for goods bearing Wakefern Food Corp. trademarks (private label), the transmission 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.

26. Wakefern requires driver unloading of all palletized and non-palletized shipments, and requires the driver to obtain unloading assistance for nonpalletized 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.

| <u>Buying Division</u> | <u>Assistance will be required for Non-palletized loads</u> |
|------------------------|---|
| Grocery | 800 Pieces |
| Non-Foods | 800 Pieces |
| Bake-Gro | 800 Pieces |
| Bakery | 400 Pieces |
| Frozen Foods | 400 Pieces |
| Dar-i-Deli | 400 Pieces |
| Produce | 400 Pieces |
| Meats | 400 Pieces |

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.

27. Upon proper receipt of transmission, each party is responsible for storing the transmission according to IRS/National archive guidelines. However, in the event that dispute arises after Vendor has discarded its data, Vendor agrees that such dispute will be controlled exclusively by Wakefern is stored data.
28. Each party shall be liable to the other for the acts or omissions of its Third Party Service Provider with respect to that Third Party Service Provider's conduct in connection with such party's performance under this Agreement.
28. If any problem impedes either party from communicating electronically with the other, the party seeking to communicate agrees: (1) to alert the other party or its Third Party Service Provider; and (2) to communicate all transactions by the most expeditious and commercially reasonable means available until the problem is solved.
30. Neither party shall be liable to the other for any special, incidental, exemplary or consequential damages arising or resulting from any delay, omission or error in the electronic transmission or receipt of any documents pursuant to this Agreement, even if either party has been advised of the possibility of such damages.
31. Non-Disclosure: Shared Data

Vendor shall be liable for any special, incidental, exemplary or consequential damages arising or resulting from any delay, omission, error or breach of confidentiality in E. D. I. Shared Data transmissions or receipt of any documents in regards to Shared Data pursuant to this agreement. Any generation of purchase orders as a result of Shared Data will be governed by this agreement.

32. Either Party may modify its election to use, not use or change Third Party Service Provider upon 30 days prior written notice.
33. Each Party is responsible for the costs of any Third Party Service Provider with which it contracts unless otherwise set forth in writing and signed by both parties.