

## SAVE MART SUPERMARKETS SUPPLIER AGREEMENT-ALCOHOLIC BEVERAGES

This **Supplier Agreement** ("Agreement") is made and entered into as of \_\_\_\_\_ ("Effective Date") by and between \_\_\_\_\_ ("Supplier") and Save Mart Supermarkets ("Save Mart"). Supplier and Save Mart are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

**WHEREAS**, Save Mart is in the business of providing fungible and non-fungible goods, merchandise and products ("Goods") directly to consumers; and,

**WHEREAS**, Supplier is a manufacturer or distributor of fungible or non-fungible goods desiring to accept orders and sell and distribute such Goods to Save Mart;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

**1. Indemnification:** Supplier agrees to defend, indemnify, and hold Save Mart and its directors, trustees, officers, employees, counsel, other advisors and agents harmless to the full extent allowed by law or equity, to the fullest extent permitted by general laws and the alcoholic beverage laws of the state in which the alcoholic beverage products are being sold, from and against any and all liabilities, losses, damages, civil penalties, costs to replace, reinstall or repair, assessments, fines, product recalls, decrees, fees, judgment, awards (whether compensatory, exemplary or punitive but (excluding special, consequential or incidental)), expenses, costs including reasonable attorney's fees and interest ("Damages") incurred in connection with any actual or threatened claim, litigation, appeal, investigation, proceeding or action in any court or before any regulatory, administrative or other body, which in any way relate to, arise out of, or are in connection with: i) the engagement or performance of any services provided by Supplier to Save Mart; ii) any transactions involving goods or products ("Goods") manufactured, processed, handled, branded or otherwise delivered by Supplier to Save Mart for use or resale; iii) any actual or alleged failure to provide adequate warnings, labeling, instructions or any actual or alleged improper construction or design of said Goods; iv) any breach of the express or implied warranties of merchantability, fitness for purpose or title including any claims that Goods infringe on any patents, trademark, trade dress, trade name, copyright or other third party right; v) any failure by Supplier to comply with applicable laws, statutes, ordinances, governmental administrative orders, rules or regulations relating to Goods or any of their components, ingredients, manufacture, or labeling; vi) any failure by Supplier to comply with the terms of this Agreement; vii) the presence of Supplier's employees, agents or contractors on Save Mart's controlled premises; viii) any actual or alleged misrepresentation or omission made by, or on behalf of, or at the direction or approval of Supplier or its employees, agents or contractors; or, ix) any damages arising from the existence of pesticides or other foreign materials at levels exceeding legally permitted limits, including the cost of all product destroyed as a result of contamination, the cost incurred by Save Mart to engage a state certified lab to test products, and reimbursement for any cost of shipping the original order incurred by Save Mart. Supplier shall be obligated to pay all Damages even if allegations are groundless, false or fraudulent. Supplier specifically acknowledges and agrees that its obligation to indemnify Save Mart applies to transactions occurring between Supplier and Save Mart prior to the date hereof. Upon twenty-one (21) days' written notice, if Supplier fails to assume or abide by its defense and indemnity obligations, Save Mart has the right but not the obligation to proceed on its own behalf to defend or settle the matter by way of engaging its own legal counsel and the services of other experts as it deems necessary to prepare and present a defense or settle such matter and to require Supplier to reimburse and indemnify for all Damages incurred.

Save Mart agrees to defend, indemnify, and hold Supplier and its directors, trustees, officers, employees, counsel, other advisors and agents harmless, to the fullest extent permitted by general laws and the alcoholic beverage laws of the state in which the alcoholic beverage products are being sold, allowed by law or equity, from and against any and all Damages incurred in connection with any actual or threatened claim, litigation, investigation, proceeding or action in any court or before any regulatory, administrative or other body relating to any of the foregoing, which in any way relate to, arise out of, or are in connection with: i) the engagement or performance of any services provided by Save Mart for Supplier; ii) Save Mart's modification, alteration or re-packaging of Goods received from Supplier; iii) Save Mart's mishandling of Goods received from Supplier; or, iii) any failure by Save Mart to comply with applicable laws, statutes, ordinances, governmental orders, rules or regulations provided, however, that Save Mart shall not be required to correct Supplier defects or indemnify Supplier for Supplier's negligent, intentional or omitted acts. Save Mart specifically acknowledges and agrees that its obligation to indemnify Supplier applies to transactions occurring prior to the date hereof. Upon twenty-one (21) days' written notice, if Save Mart fails to assume or abide by its defense and indemnity obligations, Supplier has the right but not the obligation to proceed on its own behalf to defend or settle the matter by way of engaging its own legal counsel and the services of other experts as it deems necessary to prepare and present a defense or settle such matter and to require Save Mart to reimburse and indemnify for all Damages incurred.

In addition to the indemnity obligations set forth above, in the event either Party receives notice from any administrative agency (specifically including Prop. 65 Notices of Violation) the Party receiving notice shall notify and send a copy of the Agency Notice of Violation to the other within ten (10) days. Both parties shall cooperate in investigating and preparing a response to such agency but it shall be Supplier's responsibility to submit a timely response on behalf of both parties. Failure of Supplier to, within twenty-one (21) days after receiving a Notice of Violation, acknowledge in writing to Save Mart that Supplier will provide a timely response to the Agency on it and Save Mart's behalf shall be deemed a default under the terms of this Agreement. Time is of the essence with respect to this provision.

The provisions of this indemnity shall be in addition to any rights that the indemnified Party may have at common law or otherwise, and shall survive in full force and effect regardless of cessation or termination of the parties relationship. A Party's obligations shall inure to the benefit of its successors and/or assigns and/or the other indemnified parties.

**2. Insurance Requirement:** Each Party warrants that it shall continuously maintain a policy or policies of general and

automobile liability insuring such party against liability for bodily injury, property damage and personal injury liability equal to or exceeding the minimum limits set forth below. In addition, each Party warrants that it shall continuously maintain workers' compensation coverage within prescribed limits for employees, temporary employees, and contractors in accordance with the laws of the State of California.

Supplier's Certificate of Insurance shall contain the following:

- a. Effective Dates and Expiration Dates
- b. Coverage, per occurrence form, in the amount of **\$2,000,000** for General Liability; **\$1,000,000** for Business Auto Liability (if applicable); Workers' Compensation — Statutory Limits, with Employers Liability Limit of **\$1,000,000** (if applicable).
- c. Forward certificate of insurance to:

**SAVE MART SUPERMARKETS**  
Legal Services Department  
P.O. Box 4278  
Modesto, CA 95352-4278

Failure to receive an updated certificate of insurance in a timely manner may result in suspension of Supplier's account but shall not relieve Supplier of any of its responsibilities under this Agreement.

Supplier represents and warrants that it has made such insurance coverage available on a non-discriminatory basis to all retail alcoholic beverage accounts similarly situated to Save Mart and in the same trading area.

**3. Warranties and Representations of Supplier:** Supplier represents, warrants, and guarantees that, as of the date of delivery, the Goods shall: (i) comply with all federal, state and local laws, including but not limited to environmental and health and safety laws; (ii) not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, and regulations adopted there under (the "FD&C Act"); (iii) 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; (iv) 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 and environmental laws, regulations or ordinances of any state or other government authority which are applicable to such shipment or delivery; (v) be in compliance with all other applicable Federal, state and local laws and regulations; and (vi) be merchantable and fit for their intended purpose, and shall pass without objection in trade; (vii) all consumer Goods shall comply with all applicable federal consumer product safety standards (including those set forth in Title I, Section 106 of the Federal Consumer Product Safety Improvement Act ("CPSIA") and any additional requirements imposed under the CPSIA for those Goods intended for use by persons age 12 and under, as well as third-party testing or other requirements that may apply; (viii) all Goods comply with California Proposition 65, and its implementing regulations, California Health and Safety Code §§ 25249.6 et seq. and 27 Cal. Code Regs. §§ 25102 et seq. including the general requirement that all consumer Goods test at or below 100 parts per million ("ppm") for substrate lead, 90 ppm, for any surface coating lead, 300 ppm for cadmium, and at or below 1,000 ppm for the following phthalates: DEHP, BBP, DnHP, DBP, DIDP, DINP, and DnOP if in a children's product under CPSIA; (ix) all food products are in compliance with Proposition 65 and do not contain any chemical contaminants including, but not limited to, lead, arsenic, acrylamide and mercury, in violation of Proposition 65; (x) all tests for accessible parts (as defined by CPSIA) of consumer products are performed by CPSIA certified laboratories; (xi) all Goods meet the labeling requirements of Title I, Section 105 of the CPSIA; (xii) all products that come into contact with food comply with all U.S. Food and Drug Administration ("FDA") regulations including CFR Title 21 as well as California's Proposition 65 ("Prop 65") and any other applicable federal or state

law requirements; (xiii) any printed or painted glass or ceramic ware Goods will comply with all federal and state regulations including CFR Title 21 and Prop 65; (xiv) with respect to agricultural products, testing has been completed by state certified laboratories certifying that the level of pesticides or other foreign matters contained in such products falls within permissible legal limits; and, (xv) Supplier attests that product container and/or packaging will be free from chemicals or other agents, such as bisphenol A [BPA], that are known to cause physical harm or birth defects, unless certification exists to support that the presence of such chemical or agent is at a level acceptable in consumer products .

Supplier warrants that it will comply with Section 105 of the CPSIA and inform Save Mart of all required cautionary statements for Goods supplied to Save Mart. Supplier certifies that each consumer Good they supply Save Mart complies with all rules, bans, standards or regulations applicable to that Good under CPSIA and any other Act enforced by the CPSC and that upon request of Save Mart, Supplier shall within 72 hours provide true and accurate copies of all certifications and testing documentation for such products. Supplier warrants that Goods delivered to Save Mart will meet or exceed all future consumer safety legislation or regulations resulting in additional or alternative safety requirements.

Supplier represents and warrants that they comply with all laws regarding slavery and human trafficking and that Supplier does not knowingly conduct business with any suppliers who engage in this activity. Supplier further agrees that it will not unlawfully discriminate, harass or permit harassment against any person because of their race, color, religion, sex, age, sexual orientation, ancestry, creed, marital status, national origin, disability, veteran's status or union activity. Any violation of this provision may result in Save Mart's suspension of any future business with Supplier.

Supplier agrees to promptly provide such information as Save Mart may reasonably request to enable Save Mart to assure its own compliance with applicable federal, state and local statutes, rules, regulations, and ordinances.

Each such commercially normal and reasonable substantive representation, warranty, and indemnification provided in this Agreement has been made available on a non-discriminatory basis to all alcoholic beverage retail accounts similarly situated to Save Mart and in the same trading area.

**4. Confidentiality:** During the term of this Agreement, both parties will have access to and become acquainted with confidential information of the other party, including that relating to plans, operational and business practices and procedures, pricing models, sales volume, business techniques/methods, strategic plans, operations and related matters. All such materials are the property of the disclosing party and all such materials shall be considered confidential and proprietary. Neither party shall disclose, without the other party's written consent, to any person or entity, directly or indirectly, either during the term of this Agreement or any time thereafter, any such data of the other party except in the course of furtherance of this Agreement.

**5. Exclusion of Liquor Suppliers:** As they purport to apply to alcohol suppliers, including distributors, any terms and conditions contained in this agreement, including but not limited to indemnity provisions and insurance requirements, that are found after judicial determination to violate the California Beverage Control Act, the Federal Alcohol Administration Act or any other law or regulation governing the sale or distribution of alcohol products ("Alcohol Regulations"), shall not apply to Supplier with respect to the sale or distribution of products governed by such Alcohol Regulations.

**6.** Save Mart shall have the right to utilize state certified labs to test samples of agricultural products for pesticides and other foreign materials ("Contaminants"). In the event test results reveal

Contaminant levels exceeding legally permissible levels, Save Mart shall have the right, subject to applicable state law to i) remove such product from shelves and destroy it immediately without further notice to Supplier; ii) be credited by Supplier for the cost of all destroyed product; iii) be reimbursed for any expenses incurred relating to testing, removal and destruction; and, iv) to notify the appropriate State Agencies of the testing results, product information including origin, dates of delivery and producer identity.

**7. General Provisions:**

a. **Governing Law; Interpretation; Section Headings.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California without regard to conflict-of-laws rules. The section headings contained herein are for purposes of convenience only and shall not be deemed to constitute a part of the Agreement or to affect the meaning or interpretation of this Agreement in any way.

b. **Entire Agreement/Amendment.** The Agreement, along with the terms and conditions of Save Mart's Purchase Order constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or other communications between the parties with respect to the subject matter.

c. **Counterparts.** This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

d. **Signatories.** The person executing this document represents that they are authorized representatives with the authority to bind the Party they represent.

e. **Modification.** This Agreement may only be modified by written agreement of the parties.

f. **Survival of Terms.** The terms of this Agreement which by their very nature should survive, shall survive termination or cancellation of the business relationship between the parties.

g. **Severability.** In the event any term contained herein is deemed invalid by a court, arbitrator or other administrative proceeding, such provision shall be severed from this Agreement and the remaining terms and conditions shall remain in full force and effect.

h. **Time.** Time is of the essence in this agreement.

i. **Non Assignment.** Supplier shall not assign this P.O. or any interest herein including any performance or any amount which may be due or may become due hereunder, without Save Mart's prior written consent.

j. **Notices.** All notices required to be sent during the term of this agreement go to:

**Save Mart: SAVE MART SUPERMARKETS  
Attn: Legal Department  
1800 Standiford Avenue  
Modesto, CA 95350-0180  
(209) 574-6299**

**Supplier:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

k. **Attorneys' Fees and Costs:** If any legal action or other proceeding is commenced to interpret or enforce the terms and conditions of Agreement or any Party is entitled to indemnity pursuant to the terms of this Agreement, the losing party shall pay the prevailing Party's reasonable attorneys' fees and costs incurred in connection with any actual or threatened claim or litigation, investigation of any claim leading to the proceeding (proceeding shall include but not limited to regulatory or administrative and state and federal court proceedings), preparation for and participation in the proceeding, any appeal or other post judgment motion and any action to enforce or collect the judgment including contempt, garnishment, levy, discovery, sanction and bankruptcy. For this purpose, "expenses" shall include without limitation, court or other proceeding costs, experts' and attorneys' fees and their expenses. The phrase "prevailing Party" shall mean the Party who is determined in the proceeding to have prevailed or who prevails by dismissal, default or otherwise.

**IN WITNESS WHEREOF**, intending to be legally bound hereby, the following have executed this Supplier Agreement as of the date first written above.

**SAVE MART:**

By: \_\_\_\_\_  
Print Name: Cary Mergele  
Title: Vice President and General Counsel  
Date: \_\_\_\_\_

**SUPPLIER:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_