



## AMY'S KITCHEN COUPON REDEMPTION POLICY AGREEMENT

**Effective January 3, 2018**

This Coupon Redemption Policy shall constitute an agreement (“Agreement”) between Amy’s Kitchen, Inc. (“Amy’s”), retailers of Amy’s products who participate in Amy’s Coupon Program (“Retailers”), and customers who purchase Amy’s products utilizing coupons issued by Amy’s (“Customers”) with respect to Amy’s promotional coupon program (“Coupon Program”) and the redemption and processing of such coupons by Customers and Retailers. Amy’s, Retailers and Customers shall be referred to herein from time to time as the parties (“Parties”). Acceptance by Retailers and Customers of the terms and conditions of this Agreement shall be established by (i) Retailers’ participation in the Coupon Program by honoring coupons in conjunction with Customers’ purchases and submission of such coupons for reimbursement in accordance with the terms of this Agreement and (ii) Customers utilizing Amy’s coupons in the purchase of Amy’s products from Retailers in accordance with the terms of this Agreement.

### **Recitals**

A. Amy’s utilizes an agent for the general administration, handling, processing and managing reimbursement of Retailers for Amy’s coupons redeemed by Customers (“Processing Agent”). Currently, Amy’s Processing Agent is NCH Marketing (“NCH”). NCH has a website that sets forth policies applicable to Retailers and Customers (“NCH Retailer Resources”): <http://www.nchmarketing.com/QuestionsAboutYourCouponSubmission.aspx> Pursuant to the Agreement, the terms and policies set forth in the NCH Retailer Resources shall be incorporated herein and binding on the Parties as set forth herein.

B. This Agreement, and any subsequent modifications thereto, will be posted on Amy’s website: <http://www.amys.com/legal/coupon-policy> and shall be binding upon Retailers and Customers.

### **Terms of Agreement**

In consideration of the promises, terms, conditions, and Recitals contained herein, the Parties agree as follows:

1. Amy’s exclusively reserves all rights to establish and modify from time to time its Coupon Program and the terms of this Agreement, and to specify all applicable

rules and policies with respect to the Coupon Program. Any modifications shall be posted by means of a notice posted on Amy's website ("Notice") and shall become effective and binding on Retailers and Customers as of the effective date set forth in the Notice.

2. A coupon issued in connection with Amy's Coupon Program shall be valid and administered under this Agreement only if: it is presented by a Customer to a Retailer before the expiration date shown on the coupon; it has not been trimmed or altered in any way; it is not an unauthorized reproduction; the Retailer has the product designated on the coupon in stock at the time of the Customer's purchase; the coupon is submitted by the Customer for redemption to the Retailer in conjunction with and at the time of the Customer's purchase of the Amy's product; and the product purchased corresponds to the product description, quantity and size stated on the coupon. Failure to satisfy all of these requirements shall render the coupon invalid for the purchase. A Retailer shall not honor an invalid coupon.

3. Customers shall be permitted to redeem only one coupon per product per purchase. Retailers shall not honor more than one coupon per product per Customer per purchase.

4. Neither a Retailer nor a Customer may assign, distribute, or reproduce a coupon without Amy's prior written consent, which Amy's may withhold in its sole discretion. Coupons shall not be gathered and/or distributed by any person or group for charitable or fund raising purposes, and the submission of coupons for any such purpose shall be denied reimbursement hereunder. Retailers may not tape a coupon to a product, place coupons near products, or keep them in swap boxes or at check out stands to provide to Customers who claim to have misplaced, lost, or forgotten their coupons. Such coupons shall not be honored or reimbursed.

5. A Customer in possession of a valid Amy's coupon may redeem the coupon at any Retailer store that carries the Amy's product designated on the coupon, only by presenting the coupon to the Retailer at the time of the Customer's purchase of the designated Amy's product.

6. Upon presentation by a Customer of a valid coupon, the Retailer shall apply the discount amount specified in the coupon to the retail purchase price of the applicable Amy's product, and reduce the retail price by the discount amount.

7. By this reference Amy's adopts and incorporates herein the policies and terms set forth in the NCH Retailer Resources website. Retailers shall comply with the NCH Retailer policies and terms, including terms for the administration of coupon redemption, policies governing how to submit coupons to NCH, providing the Retailers tax identification information, and payment reconciliation and payment adjustment. Retailers shall comply with all applicable IRS reporting requirements including obtaining and supplying the Processing Agent with an appropriate taxpayer identification number, and shall be responsible for the payment of all taxes. Amy's shall have no obligation to

pay any tax (including sales tax) in connection with a Customer's redemption of any coupon or a Retailer's reimbursement.

8. In the case of any inconsistency between the terms set forth in the NCH Retailer Resources and this Agreement, the terms of this Agreement shall govern. Amy's may modify or supplement any terms contained in the NCH Retailer Resources by posting Notice thereof on Amy's website, and to the extent the modified or supplemented provisions are inconsistent with the terms of the NCH Retailer Resources, the terms of this Agreement shall be controlling. The effective date of modifications shall be the date set forth in the posted Notice.

9. Amy's reserves the right to change Processing Agents at any time by posting Notice thereof on Amy's website. In the event Amy's makes a change in its Processing Agent, the Notice shall set forth the effective date of the change in Processing Agent and shall set forth any modifications to this Agreement including any changes in the Processing Agent's policies that shall be applicable thereafter to Retailers and Customers. The Agreement, as thus modified, shall continue to bind the Parties to the terms thereof.

10. From time to time a Retailer may utilize a clearinghouse to assist the Retailer in gathering, handling and processing coupon redemptions for submission on behalf of the Retailer to the Processing Agent for reimbursement. Amy's authorizes reimbursements only to such clearinghouses that have entered an arms length written agreement with the Processing Agent ("Authorized Clearinghouse"). Retailers or Authorized Clearinghouses acting on a Retailer's behalf shall send valid Amy's coupons properly redeemed by a Customer to the following address for processing and reimbursement of the Retailer:

**Amy's Kitchen c/o NCH**

Amy's Kitchen, Inc. (#1487)  
NCH Marketing  
PO Box 880001  
El Paso, TX 88588-0001

Telephone No.: 1.800.833.7096

Any Retailer questions regarding payments should be directed to the Processing Agent at the above Telephone Number.

11. Retailers and Authorized Clearinghouses acting on a Retailer's behalf shall be reimbursed only as follows:

A. For the lesser of the full face value of each properly redeemed valid coupon, or, if the coupon calls for free merchandise, for the Retailer's retail selling price at the time of redemption of the coupon (subject to providing proof if requested by Amy's), not to exceed the stated maximum value printed on the coupon.

B. For handling/processing allowances, as follows:

1. \$0.08 for each properly redeemed paper coupon. This shall be full reimbursement for all costs associated with handling/processing of coupons, including but not limited to:

- Front end handling by the retailer
- Store to headquarters accounting
- Store occupancy
- Sundry loss
- Cost of funds
- Coupon processing, special handling, invoice preparation and process, deduction or other fees

2. Or, in the alternative, \$0.08 for each properly redeemed paperless coupon. This shall constitute full reimbursement for all costs associated with handling/processing such coupons, including but not limited to the items listed in paragraph B.1. above.

C. Reasonable out-of-pocket costs incurred by Retailer for the physical delivery of these coupons to the Processing Agent, subject to the limitations described below:

1. For paper coupons, not in excess of the cost for the most cost efficient ground transportation for the last leg of the shipment from the Retailer's point of origin to the Processing Agent at the address set forth in paragraph 11, above.

2. For all coupons, not in excess of reasonable Authorized Clearinghouse fees and costs that have been negotiated at arms length between the Retailer and the Authorized Clearinghouse.

Except as provided above, Amy's shall not be obligated to pay for any administrative or consolidation fees or any other up charges that Retailers or third party Retailer agents may assess on or in lieu of pass-through/out-of-pocket expenses.

The foregoing specified reimbursements constitute the full amount Amy's shall be obligated to pay Retailers. Any deductions for Customer coupon-related expenses and/or fees (other than those expressly identified in this Agreement) shall not be reimbursable by Amy's, and Amy's may offset such non-reimbursable deductions against other Retailer funds as necessary.

12. Payments and reimbursements to a Retailer or to an Authorized Clearinghouse acting on behalf of the Retailer pursuant to the terms of this Agreement shall constitute full and final payment to the Retailer for all valid coupons properly submitted by or on behalf of the Retailer and shall discharge Amy's from any further obligation to Retailers with respect to said coupons. A Retailer who submits coupons through an Authorized Clearinghouse hereby agrees to indemnify, defend and hold harmless Amy's from and against any and all claims asserted by such Authorized Clearinghouse against Amy's.

13. Amy's shall have the right to require proof satisfactory to Amy's that any coupon submitted by a Retailer or Authorized Clearinghouse is valid and has been properly redeemed by a Customer in conjunction with a bona fide purchase in full compliance with the terms of this Agreement. Absent proof satisfactory to Amy's, Amy's shall have the right to deny reimbursement for that coupon or coupons.

14. Amy's reserves the right to discontinue and terminate its Coupon Program at any time by posting 30 days' advance Notice thereof on Amy's website. Unexpired coupons will thereafter remain redeemable until their expiration.

15. Any dispute arising out of or in connection with this Agreement asserted by a Retailer against Amy's shall first be brought to the attention of both Amy's and the Processing Agent by providing written notice thereof describing the dispute to both Amy's and the Processing Agent within six months from the date the dispute first arises. A Retailer's failure to submit notice of the dispute within the six-month period shall constitute a waiver of the claim by the Retailer. In the case of a properly and timely noticed dispute, the Parties shall first attempt to resolve the dispute by good faith negotiation. Absent resolution, either Party may file a judicial action in any court of competent jurisdiction, State or Federal, located within the geographic area of the federal Northern District of California. Any such lawsuit shall be governed by the laws of California. Each Party shall bear its own attorney's fees and costs.

16. Retailer agrees to indemnify, defend and hold harmless Amy's from and against any and all liability, claims, damages, losses (including reasonable attorneys fees and costs) asserted against Amy's by a Customer or other person or entity arising out of or in connection with the Retailer's or an Authorized Clearinghouse's negligence, omission, wrongful act or failure to perform in compliance with the terms of this Agreement.

17. This Agreement shall be the final and entire agreement between the Parties on the subjects addressed herein and supersedes all prior or contemporaneous writings, discussions, communications and/or agreements on the subjects. The exercise or waiver by Amy's in whole or in part of any right, remedy or duty provided for in this agreement will not constitute the waiver of any prior, concurrent or subsequent right, remedy or duty under this Agreement. Any notice required under this Agreement shall be in writing and effective immediately upon delivery if made by personal service to the

business office of the recipient during regular working hours, or upon receipt if sent by first class mail, overnight delivery service, or fax that has been confirmed received. Neither a Retailer nor a Customer may assign or delegate any of its duties or obligations hereunder except with the prior written consent of Amy's, which may be withheld by Amy's in its sole discretion.