

# MEGA MEX, L.P.



1823 ROUGH NECK DR. □

HUMBLE, TX □ 77338-5228

PH:(281)548-1544 □ FAX:(281)548-2477 □ [www.megamex.com](http://www.megamex.com)

This Agreement is entered into between Mega Mex, L.P. (“Mega Mex”) and the seller identified on the first page of the accompanying Purchase Order (the “Seller”); both this Agreement and accompanying Purchase Order constitute an offer to buy goods under the UCC. This agreement cannot be modified without the express written consent of Mega Mex.

- 1. Modification-** Mega Mex retains the right to modify this Agreement, at its sole discretion, by contacting the Seller in writing. If such changes materially affect the price of the purchased goods the seller shall proceed with the changes and make application in writing within thirty days for an equitable adjustment in the price. Any dispute in such equitable adjustment must be resolved in accordance with this Agreement.
- 2. Delivery-** Time is of the essence to this Agreement. Therefore the Seller agrees to make delivery before the specified delivery date in the accompanying Purchase Order. Seller must promptly notify Mega Mex of any anticipated or actual delay; Seller shall take all reasonable steps to avoid and end delays at no cost to Mega Mex. Any expedited delivery, and remedial steps necessary to ensure prompt delivery shall be absorbed by the Seller. As time is of the essence, any unreasonable delay is considered a fundamental breach of this Agreement, and Mega Mex reserves the right to make a cover purchase, under the United National Convention on Contracts for the International Sale of Goods or the UCC Article 2. The Seller will bear all costs associated with such cover purchase.
- 3. Indemnity-** The Seller agrees to indemnify and hold harmless Mega Mex, including its partners, agents and employees, from any liability resulting from the performance of the Purchase Order or the goods purchased from Seller. This indemnity covers any actions for violation of intellectual property laws arising from the goods. Neither this Agreement, nor the Purchase Order, shall be construed to indemnify against any loss or liability caused solely by the negligence or willful misconduct of such indemnity.
- 4. Inspection and Receipt of Goods-** All goods are subject to inspection, testing and final acceptance or rejection by Mega Mex or its designee. If within a reasonable time after delivery Mega Mex finds the goods are defective in any manner, the Seller is obligated to promptly take any corrective action necessary to make the goods conforming. If the goods purchased are materially defective, Mega Mex reserves the right to: (i) repair the goods at reasonable expense to the Seller; (ii) reject and hold the goods at Seller’s expense, and require delivery of conforming goods or replacement cost; (iii) return the goods freight collect. If the Seller fails to deliver conforming replacement goods within a reasonable time: (i) Mega Mex may purchase cover goods at cost to the Seller; or, (ii) terminate the order as default and fundamental breach. No inspection or acceptance under this Agreement relieves the Seller of its warranty obligations. No substitution of goods shall be made without the prior express written consent of Mega Mex.
- 5. Liability-**In no event shall Mega Mex be liable to the Seller for any damages arising out of the performance of this Purchase Order and Agreement.
- 6. Confidentiality-** All information of any sort obtained by the Seller from Mega Mex in connection with this Agreement and the accompanying Purchase Order are received in confidence and remain the sole property of Mega Mex. Seller shall not use or disclose such information other than to the extent necessary to fulfill its obligations under the Purchase Order without obtaining the express written consent of Mega Mex.
- 7. Risk of Loss, Shipment and Transportation-** All goods are purchased F.O.B. to the specific location designated on the Purchase Order. Seller’s price shall include packing, freight and transportation to the

F.O.B location. All goods must be properly marked in accordance with good commercial practices and accompanied by an itemized packing list. Upon delivery, risk passes from the Seller with the exception of loss or damage resulting from Seller's non-conforming packaging. Seller will not make partial delivery or deviate from the agreed shipping instructions without prior express written consent from Mega Mex. The obligations of the parties shall be defined by ICC "Incoterms" as in effect at the time of execution of this agreement.

8. **Subcontracting-** Seller shall not subcontract any portion of the Purchase Order without prior written express consent from Mega Mex— Mega Mex agrees that approval of subcontracting will not be unreasonably withheld.
9. **Termination-** Mega Mex retains the right to terminate the Purchase Order for default, in whole or in part, by written notice to the seller if: (i) Seller fails to deliver the goods within a reasonable time and in a reasonable manner; (ii) Seller becomes insolvent or makes assignment for the benefit of creditors. Files or is forced to file bankruptcy or enters reorganization proceedings; or, (iii) provides unsatisfactory goods under the Purchase Order. In such an event, Mega Mex reserves the right to take all reasonably necessary actions to cover its interest and obtain commercially equivalent goods.
10. **Waiver, Modification and Savings-** Any express waiver of any term in this Agreement shall not be construed to waive any term other than that specific term. If any provisions of this Agreement are held to be contrary to law by a court of competent jurisdiction, or governmental administrative agency having authority over its provisions, such provisions will not be deemed valid and subsisting except to the extent permitted by law; all other provisions of this Agreement will continue in full force and effect. If any provision of this Agreement is inconsistent with any other provision in any contract between the parties, the Applicant expressly agrees that the terms of this agreement shall govern. This Agreement contains the complete and total agreement of the parties and excludes any verbal agreements or representations, including any other contemporaneous writings.
11. **Warranty and Performance-** Seller warrants that any goods sold under this Agreement are free of claims by third parties and that Seller conveys clear title to Mega Mex. Seller warrants that the goods will be in conformity with Mega Mex's specification, and fit for commercial and particular purpose. Seller agrees that these warranties shall survive acceptance of the goods by Mega Mex, and shall run to Seller and its assignees or successors in interest. These warranties are in addition to all applicable warranties mandated by law.
12. **Taxes and Bank Charges-** All prices negotiated are exclusive of any present or future tax from any source. If the goods are taxable goods within any applicable law, the Seller shall notify Mega Mex of the applicable tax amount and seek written express approval. Any such taxable amount is in addition to the prices provided herein. If any the execution of this Purchase Order requires any banking or transaction charge, such amounts will not be included in the purchase price of the goods, such transaction and banking costs are the responsibility of the Seller, unless otherwise agreed between the parties.
13. **Applicable Law-** This Agreement, and the accompanying Purchase Order, including any and all related matters are governed by the commercial law of the State of Texas. This Agreement, and all related matters, is a commercial contract and at no time shall consumer law apply to the parties.
14. **Arbitration-** Any controversy or claim arising out of, or relating to, this Agreement and the accompanying Purchase Order, shall be determined by arbitration in accordance with the Arbitration Rules of the American Arbitration Association. Such arbitration will take place in Houston, Texas, and any award rendered by the arbitrators will be final.

Please review and approve these terms of purchase, execute the original and return a copy to Mega Mex at your earliest possible convenience; as always, if you have any questions or concerns please contact us at any of the above mediums.

\_\_\_\_\_  
Business Name

\_\_\_\_\_  
Executed By (include your title)

\_\_\_\_\_  
Date