

# MEGA MEX, LLC



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HUMBLE, TX □ 77338-5228

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This Agreement is entered into between Mega Mex, LLC ("Mega Mex") and the entity identified on the first page of the accompanying Sales Order (the "Purchaser"). By accepting this order, the Purchaser expressly agrees that the following terms and conditions govern its purchase from Mega Mex. 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 Purchaser in writing.
- 2. Default-** Failure to abide by any of the terms of this Agreement, or any of the terms of the accompanying Sales Order, including—but not limited to— payment, delivery and shipping requirements, shall constitute default under this agreement. Besides all applicable remedies available in law, Mega Mex specifically reserves the right to: (i) sell the goods orders by Purchaser at public or private auction at any time after default, regardless of copyright or trademark; (ii) retrieve the goods from the Purchaser by any reasonable means necessary; (iii) hold the Purchaser liable for all consequential damages and costs associated with collection of any amounts due Mega Mex, including reasonable attorney's fees, court costs or collection costs; or (iv) accelerate any obligations of the Purchaser to become immediately due. A variation of not more than ten percent (10%) in either direction from the total quantity of goods supplied by Mega Mex is not a default under this Agreement.
- 3. Payment-** The terms of payment shall be set forth in the accompanying Sales Order, the exact form shall be specified by Mega Mex. Purchaser agrees that payment to any bank or financial institution is not final payment for the goods until Mega Mex receives and accepts tender of such payment, notwithstanding language in the Purchasers negotiable instrument or other form of payment to the contrary. If Purchaser's financial situation is reasonably judged unsatisfactory, Mega Mex may require security, decline to make a shipment before cash payment in full, or terminate the Agreement. These remedies are in addition to any other existing under law. Purchaser shall pay interest of eighteen percent per annum (18%), or the highest prevailing legal rate applicable, on all overdue amounts.
- 4. Warranty-** Mega Mex warrants that the goods shall be free from defects in material and workmanship and shall conform to the description in the accompanying Sales Order. Mega Mex further warrants that the goods are now free, and at the time of delivery will be free, from any security interest or other lien or encumbrance. **MEGA MEX MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING THAT OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, EXCEPT FOR APPLICABLE WARRANTIES PUBLISHED AND DESIGNATED BY MEGA MEX.**
- 5. Inspection-** Purchaser has the right to inspect the goods upon receipt; it is Purchaser's obligation to immediately notify Mega Mex of any defect. Purchaser shall then give a reasonable time to Mega Mex for inspection of the goods, at no charge or storage costs, to ascertain the nature of the defect. Any claims for breach of warranty, negligence or breach of contract, including but not limited to failure or delay in delivery shall be deemed waived by Purchaser unless presented in writing to Mega Mex within sixty (60) days from the date of delivery.
- 6. Delivery and Shipping-** All delivery dates are based on normal commercial expectancy and are approximate, Mega Mex reserves the right to revise its approximate delivery date without default under this Agreement. Partial shipments by Mega Mex are permitted. Title of goods and risk of loss shall remain with Mega Mex until delivery is made as specified in the accompanying Sales Order. If goods are held by Mega Mex at the request of the Purchaser, title and risk of loss shall pass to the Purchaser upon receipt of the Sales Order. If the Purchaser's financial situation is unacceptable to Mega Mex, and Mega Mex exercises its rights under this Agreement to withhold shipment or revoke the sale,

title shall not pass to the Purchaser until sufficient payment is made.

7. **Force Majeure-** Mega Mex shall be excused from liability for unusual delays, or failure to deliver, or fulfill any order for goods where acts of God, fires, floods, strikes, work stoppages, accidents, weather conditions, allocations or other control mechanisms, or regulations –including but not limited to import and export regulations of any country— that are beyond Mega Mex’s reasonable control.
8. **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. The parties specifically intend that the provisions of UCC— Sales, also known as the Texas Business and Commerce Code, Chapter 2, will control all aspects of this Agreement. This Agreement, and all related matters, are a commercial contract and at no time shall consumer law apply to the parties.
9. **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.
10. **Integration, Savings and Waiver-** 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.

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