

## **TMC DISTRIBUTORSHIP AGREEMENT**

These terms and conditions are a legal contract between you ("Distributor") and "Tex-Mex Curios Incorporated, hereinafter TMC", for the advertisement, sale and distribution of "TMC " products. In consideration of the mutual covenants and agreements contained herein, Distributor agrees to pay TMC in accordance with the whole sale invoice hereby attached and which is incorporated as part of this agreement.

### **I.**

***No Agency.*** The relationship of TMC and Distributor as set forth by these terms and conditions is that of independent contractors, and neither party is an employee, agent, partner or joint venture of the other. Distributor shall not be considered an agent or legal representative of TMC for any purpose, and neither Distributor nor any director, officer, agent, or employee of Distributor shall be, or be considered, an agent or employee of TMC. Distributor is not granted and shall not exercise the right or authority to assume or create any obligation or responsibility on behalf of or in the name of TMC. All sales and other agreements between Distributor and its customers are Distributor's sole responsibility and will have no effect on TMC's obligations under this Agreement. Distributor acknowledges and agrees to be solely responsible for paying all operating expenses incurred in the operation of its distributorship including but not limited to rent, taxes, telephone, local and long distance, broadband connections, cellular, all office expenses, all insurance, payroll, all taxes associated with payroll, contract labor, auto expense, postage and delivery, printing, professional fees, dues, subscriptions, promotional, advertising and marketing, organizational dues, travel, entertainment, equipment leases, all repairs associated with equipment, bank service charges, computer and technical support, and staff support.

### **II.**

***Legal Standards.*** Distributor hereby agrees to comply at all times with all state and federal governmental standards, laws, policy applicable to the Health care industry in the operation of the TMC Distributorship. Failure to remain in strict conformity with state, and federal governmental standards, laws, policy applicable to the Health care industry shall result in the immediate termination of the TMC Distributorship.

### **III.**

***Customer Care.*** Distributor hereby agrees that Distributor shall treat its' customers in a manner that shall uphold the integrity and goodwill of TMC. Distributor hereby agrees to comply at all times with fulfilling customer orders and further understands that TMC shall not be responsible for customer bad debt.

**IV.**

**Cost Increase.** TMC may adjust or increase the cost established by the wholesale Agreement from time to time in relation to cost to produce TMC goods, inflation or in relation to annual cost of living increases as set forth by a standard account CPI index. Distributor hereby agrees to sell TMC products in accordance with the recommended retail price as determined by TMC.

**V.**

**Advertisement.** Distributor hereby understands that any and all advertisement of TMC products shall be expressly approved by TMC.

**VI.**

**License of TMC Marks.** Subject to the terms and conditions herein, TMC grants to Distributor a non-transferable, revocable license, without right of sublicense, to use the TMC marks, including any patents, trademarks, trade names or copyrights in the TMC products or the product lines that include the products, solely in connection with the advertisement, sale and distribution of the TMC products. Distributor shall not use the TMC marks except as expressly permitted herein.

**VII.**

**Restrictions on Use of Marks.** Nothing contained herein shall grant or shall be deemed to grant to Distributor any right, title or interest in or to the TMC marks. All uses of the TMC marks shall inure solely to the benefit of TMC, and Distributor shall obtain no rights with respect to any of the TMC marks, other than the right to distribute products as set forth herein, and Distributor hereby irrevocably assigns to TMC all right, title and interest held by Distributor, if any, in or to any of the TMC marks. At no time during or after the term of the parties' business relationship shall Distributor challenge or assist others in challenging the TMC marks (except to the extent expressly entitled by applicable law) or the registration thereof or attempt to register any trademarks, service marks or trade names confusingly similar to the TMC marks. Upon any termination or expiration of the parties' business relationship or upon written notice by TMC, Distributor shall immediately cease to use any and all of the TMC marks as authorized herein.

**VIII.**

**Infringement.** Distributor shall promptly notify TMC of any actual or suspected infringements, imitations, or unauthorized use of the TMC marks by third parties of which Distributor becomes aware. TMC shall have the sole right, at its expense, to bring any action on account of any such infringements, imitations or unauthorized use, and Distributor shall cooperate with TMC, as TMC may reasonably request, in connection with any such action brought by TMC. TMC shall retain any and all damages, settlement and/or compensation paid in connection with any such action brought by TMC.

## **IX.**

***Indemnification.*** Distributor agrees to indemnify and hold TMC, its officers, directors, employees, successors, and assigns harmless from and against any and all losses, damages or expenses of whatever form or nature, including attorneys' fees and other costs of legal defense, whether direct or indirect, that they, or any of them, may sustain or incur as a result of any acts or omissions of Distributor or any of its directors, officers, employees, or agents, including but not limited to (i) breach of any of these terms and conditions herein, (ii) negligence or other tortious conduct, (iii) representations or statements not specifically authorized by TMC in writing or not expressly provided on the TMC website, or (iv) violation by Distributor (or any of its directors, officers, employees, or agents) of any applicable law, regulation, or order in or of Distributor's territory or the United States, including, but not limited to, any law regulating the transmission of unsolicited commercial email ("spam").

## **X.**

***Representations and Warranties.*** Each party represents and warrants to the other party that such party has the full corporate right, power and authority to enter into this agreement and to perform the acts required of it hereunder; and the performance by any such party of its obligations and duties hereunder do not and will not violate any agreement to which such party is a party or by which it is otherwise bound; and this agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms. Except as otherwise provided in this Agreement, no amendments, changes or variance from this Agreement shall be binding upon either TMC or Distributor except by mutual written agreement.

## **XI.**

***Enforcement.*** TMC or its designee shall be entitled to obtain, without bond, declarations, temporary and permanent injunctions, and orders of specific performance, in order to enforce the provisions of this Agreement relating to Distributor's use of the Licensed Marks, the obligations of Distributor's termination or expiration of this Agreement, and assignment of the Distributorship and ownership interests in Distributorship or to prohibit any act or omission by Distributor or its employees which constitutes a violation of any applicable law or regulation, which is dishonest or misleading to prospective or current customers of business operated under the Distributorship which constitutes a danger to other Distributors, employees, customers or the public, or which may impair the goodwill associated with the Licensed Marks.

## **XII.**

***Sales and Distribution.*** Distributor will not sell any TMC product on eBay, Amazon, any of their affiliate's websites or any other auction website or online marketplace. Prices do not include and are net of any foreign or domestic governmental taxes or charges of any kind that may be applicable to the sale,

licensing, marketing or distribution of the products. Distributor understands and acknowledges that all sales are final and that they are not entitled to return any product for a full or partial refund. TMC will not be responsible for any delays or lack of delivery due to customs clearance issues.

**XIII.**

***Governing Law and Dispute Resolution.*** This Agreement is accepted in the State of TEXAS (the “State”) and shall be governed by and construed in accordance with the laws thereof, which laws shall prevail in the event of any conflict; The parties hereto agree that it is in their best interest to resolve disputes between them in an orderly fashion and in a consistent manner hereby agree to resolve legal matters first through a mediation process and if a mediation process does not resolve the issues both parties agree to arbitration in accordance with the American Association of Arbitration and such forum shall be in the State of Texas. The parties hereby agree that the mediator or arbitrator chosen shall be a qualified person in the area of commercial transactions. law.

**XIV.**

***Severability and Construction.*** In case any one or more of the provisions of this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

**ACKNOWLEDGMENT**

**DISTIBUTOR HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ AND UNDERSTANDS THE TERMS OF THE AGREEMENT.**

---

**Print Name**

**Signature**

---

**Date**

**Please fax this page to Tex-Mex Curios, Inc. along with your completed Wholesale Distributor Application Form and your completed W9.**

**Fax number: 361-884-9791**