1. SCOPE

1.1. Purchases by SEEPEX Inc. (the “Buyer”) are governed by the Buyer’s purchase order form submitted to the vendor identified on the face of such form (herein, the “Supplier”) including, without limitation, these Terms & Conditions of Purchase (these “Terms and Conditions”). These Terms and Conditions shall apply exclusively to any purchase of products or services by the Buyer. Supplier’s commencement of work or shipment of goods shall be deemed to operate as its acceptance of these Terms and Conditions. Any additional or differing terms by Supplier are hereby rejected, unless Buyer expressly acknowledges and accepts such additional or differing terms in writing.

1.2. These Terms and Conditions shall also apply to all future business dealings with the Supplier.

2. OFFERS

2.1. The quality and quantities of the goods offered by the Supplier in response to a request from the Buyer must correspond exactly to the Buyer’s request. In the event that the quality or quantity of the goods is different, the Supplier must expressly disclose such difference(s) to the Buyer in writing. An offer whose terms differ from those contained in the Buyer’s request shall be void unless the Buyer expressly agrees in writing to the different terms.

2.2. The Buyer will not pay the Supplier for the making of offers.

2.3. Unless agreed otherwise, the prices quoted in the Supplier’s offer shall be fixed prices and shall include the cost, if any, of proper recyclable packaging.

3. PURCHASE ORDER

3.1. Only written orders which are signed by an authorized signatory of the Buyer shall be binding. Orders placed by telephone, orally or in the form of electronic communication require express written and signed confirmation from the Buyer in order to be binding. The Supplier must promptly acknowledge in writing each order without delay. No terms that are not contained in the Buyer’s purchase order or in these Terms and Conditions will apply unless they are acknowledged and accepted in writing by the Buyer.

3.2. The Supplier must ensure that the instructions, plans and drawings attached to an order are complete.

4. DELIVERY

4.1. Time is of the essence with respect to all orders. The delivery date specified in the order shall be binding. The Supplier is obliged to notify the Buyer in writing without delay if circumstances occur or become known to it which makes it apparent that it will not be possible to comply with the delivery date. In the event of the Supplier’s failure to deliver as and when specified, the Buyer reserves the right to cancel the order or any part thereof without charge therefore, without prejudice to its other rights, and the Supplier agrees that the Buyer may return part or all of any shipment so made at the Supplier’s risk and expense. Buyer reserves the right, in addition to all other rights and remedies, to purchase substitute items elsewhere and charge Seller with any loss incurred.

4.2. The Supplier shall package all shipments in suitable containers to permit safe transportation and handling. Each delivered shipment must be labeled and marked to identify contents without opening and all containers must contain packing sheets listing contents thereof. The Buyer’s order number and the Supplier’s vendor number must appear on all shipping containers, packing sheets, delivery tickets and bills of lading.

5. SHIPMENT AND INSURANCE

5.1. Supplier shall comply with all forwarding instructions from Buyer. Shipments shall be sent Ex-Works: site of work, unless otherwise noted. Buyer shall not be responsible for any costs relating to packing, crating, handling or transport insurance, unless otherwise agreed in writing. The Supplier shall ship the goods at its own risk.

5.2. The Supplier shall notify the Buyer in writing of each shipment dispatched giving the relevant order number as a reference. Such notice must be sent on the same day as the shipment is dispatched. In the event of noncompliance with the above-mentioned provisions, the Buyer may refuse to accept the shipment.

5.3. The Supplier shall indemnify and hold harmless the Buyer for any damage and costs arising from Supplier’s noncompliance with the Buyer’s forwarding instructions.

6. PAYMENT AND INVOICES

6.1. In the case of goods priced by weight, the price shall be fixed on the basis of the weight determined by the Buyer or the scales at its location, unless the shipment has been officially weighed prior to dispatch. The actual weight of the shipment may differ from the agreed weight by a maximum of ±5%. The Buyer will not pay for any excess greater than 5% of the agreed weight.

6.2. A separate invoice shall be issued for each order and for each shipment. Invoice copies and carbon copies shall be clearly identified as such. Invoices must show the product number(s) of the ordered goods and the date of the order.

6.3. The Buyer shall make payment of the net amount within 30 days. If it makes payment within 10 days, it shall be entitled to a 3% cash discount. The payment period shall begin upon receipt of the invoice. If the invoice is received prior to receipt of the goods, the payment period shall begin upon receipt of the goods.

6.4. Payment of an invoice shall not constitute a waiver of warranty claims with respect to the delivered goods. All applicable warranty claims are preserved.

6.5. The Buyer shall be entitled to the full range of set-off and retention rights as stipulated by law.

7. WARRANTIES

7.1. Unless otherwise agreed to in writing by the parties, the Supplier expressly warrants that all goods and/or services provided to the Buyer conform to these Terms and Conditions. If goods are ordered to specifications, the Supplier expressly warrants that such goods strictly conform thereto and to any blueprints or drawings, samples or other description furnished by the Buyer in connection with an order. All goods, whether or not ordered to specifications will be fit and sufficient for the purposes intended and, unless otherwise agreed to in writing by the Buyer, will be new and not used or refurbished. The Supplier further expressly warrants that all goods and/or services provided by the Supplier in connection with an order will be merchantable, of good material and workmanship, free from defect, and not subject to any security interest or other lien. These warranties shall survive acceptance and payment and shall run to the Buyer, its successors, assigns, customers and the users of the goods and/or services ordered herein and shall not be deemed to be exclusive.

7.2. Supplier expressly warrants all goods and/or services against defects in materials or workmanship for a period of 24-months from date of shipment/conclusion of services or 10,000 hours of operation, whichever period is longer.
7.3. All goods provided by the Supplier will be subject to final inspection and acceptance by the Buyer within a reasonable time after receipt by the Buyer at the location designated in an order, irrespective of prior payment. The Buyer may reject any goods or portion of goods provided by the Supplier that are not in conformance with an order. Any such goods or portion of goods may be returned to the Supplier at the Supplier’s risk and expense, at full invoice price plus applicable transportation charges. The Supplier shall replace any non-conforming or defective goods to the Buyer upon the Buyer’s request.

7.4. In the case of a hidden defect which becomes apparent within the warranty period, the warranty period shall commence as from the day that the defect is discovered.

7.5. The Buyer shall be entitled, at its discretion, to demand that any defect(s) be rectified or that the defective goods be replaced with goods which are free of defects, to demand a reduction in the price or to rescind the purchase contract. In cases of particular urgency or where the defect poses an immediate danger, the Buyer shall be entitled at the Supplier’s expense to either rectify the defect itself or obtain substitute goods.

7.6. In the event that the defect is remedied pursuant to §7.3 of these Terms and Conditions, the warranty period shall start anew once the defect has been remedied. In the event that the defective parts are replaced, the warranty period shall be extended correspondingly. If the replacement parts constitute a significant element of the total to be manufactured by the Supplier, the warranty period shall start anew for the replaced goods in their entirety.

7.7. Approval of the Supplier’s drawings and calculations by the Buyer shall be without prejudice to its warranty rights.

7.8. Seller warrants that all Certificates of Origin for its goods shall be provided to Buyer on a timely basis and shall be accurate and complete.

8. ACCEPTANCE TESTS

8.1. If acceptance tests are agreed to determine a system’s performance and current consumption data, such tests shall be performed in accordance with jointly approved standards. Each party shall bear the costs that it incurs in this connection itself. If one party requires the involvement of an independent third party, it shall itself bear the costs arising hereby.

8.2. The Buyer’s warranty rights shall not be affected by the performance of acceptance tests.

9. ACCIDENT PREVENTION – INDEMNIFICATION – PRODUCT LIABILITY – LIABILITY INSURANCE

9.1. The Supplier shall supply any safety devices required by the applicable authorities as well as any required by the accident prevention regulations of its own liability insurance carrier free of charge to the Buyer.

9.2. The Supplier agrees to defend and hold harmless the Buyer, its employees, agents, affiliates, successors, assigns, customers or users of the goods and/or services ordered herein, against all damages, claims, demands and all suits at law or in equity arising out of or relating to any actual or alleged injury to any person, including death, damage to any property, defect in any goods or any other damage or loss alleged to have resulted from the goods and/or services ordered or resulting from or relating to any actual or alleged breach of any of the Supplier’s obligations hereunder or other acts, including acts of omission, of the Supplier, its officers, agents, employees, subcontractors, and upon notification of any such suit or claim to the Supplier, the Supplier shall defend the same at the Supplier’s expense as to all costs, fees, and damages, and shall be responsible for all reasonable expenses incurred by the Buyer. This indemnity shall survive the delivery and acceptance of any goods, materials or services and shall apply without regard to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability, or other tort. The Buyer may set off any amount owed to it by the Supplier against any sum payable hereunder by the Buyer to the Supplier.

9.3. As part of its liability for loss pursuant to clause 9.2 of these Terms and Conditions, the Supplier shall also be obliged to reimburse the Buyer for any expenses arising from or in connection with recall campaigns conducted by the Buyer. Insofar as it is possible and reasonable to do so, the Buyer shall inform the Supplier about the content and scope of the recall measures to be carried out and give the Supplier an opportunity to respond. The Buyer’s other statutory rights shall not be prejudiced hereby.

9.4. The Supplier agrees to procure and maintain product liability insurance with a combined limit of at least $5 million per occurrence covering bodily injury and property damage. This requirement may be met with use of an excess/umbrella policy. Supplier shall add Buyer as an additional named insured on such policies, and shall provide Buyer with a certificate of such insurance upon acceptance of Buyer’s Purchase Order.

10. INTELLECTUAL PROPERTY RIGHTS

10.1. The Supplier warrants that its product(s) do not infringe any trademarks, patents, copyrights or other third party intellectual property rights.

10.2. The Supplier agrees to indemnify and hold the Buyer, its successors, assigns, customers, and the users of the goods and/or services ordered herein, harmless against any loss, damage or liability including costs, expenses and reasonable attorney’s fees which may be incurred on account of any claim, demand, suit or judgment involving infringement or alleged infringement of any trademark, patents, copyrights, trade secrets, trade names or other third party intellectual property rights in the manufacture, use or disposition of any goods and/or services supplied hereunder, provided the Buyer shall notify the Supplier of any such claim, demand or suit, and to the extent possible, the Supplier shall be permitted to defend the same or make settlement in respect thereof, provided, that if any such settlement impacts the Buyer, the Supplier must get written consent of the Buyer to the settlement, not to be unreasonably withheld. Should the Buyer’s use, or use by its distributors, subcontractors or customers, of any goods or services purchased from the Supplier be enjoined, be threatened by injunction, or be the subject of any legal proceeding, the Supplier shall, at its sole cost and expense, either a) substitute fully equivalent non-infringing goods or services; b) modify the goods or services so that they no longer infringe, but remain fully equivalent in functionality; c) obtain for the Buyer, its distributors, subcontractors or customers the right to continue using the goods or services; or d) if none of the foregoing is possible, refund all amounts paid for the infringing goods or services.

11. THE SUPPLIER’S RETENTION OF TITLE

The Buyer shall have the right to sell the goods provided by Supplier free and clear of any claim or security interest of the Supplier and shall be entitled to all proceeds from goods sold or manufactured by the Buyer and incorporating the goods provided by the Supplier. The Buyer expressly rejects any condition of the Supplier providing that the passing of title to the Buyer is dependent on the payment by the Buyer of all of the Supplier’s claims. Supplier shall be entitled to all proceeds from the commingled goods sold or manufactured by the Buyer.

12. ORDER DOCUMENTS AND ANCILLARY MATERIALS

12.1. The Supplier must treat as confidential all information it receives in connection with the Buyer’s request and/or purchase order. All information, drawings etc., which the Buyer makes available to the Supplier for the production of the item to be delivered, as well as all drawings etc. which are prepared by the Supplier in accordance with the Buyer’s special instructions shall be considered confidential trade secrets and shall remain the intellectual property of the Buyer. The Supplier shall not use the aforementioned information, drawings etc. for any other purpose, nor shall it duplicate same or make same available to a third party without the express, written authorization of the Buyer. Upon the Buyer’s request, the Supplier shall promptly return all such documents and information as well as all copies or duplicates of same.

12.2. The Supplier shall be liable for all loss or damage incurred by the Buyer as a consequence of a breach of this obligation of confidentiality.
12.3. The Buyer retains ownership of all material, models, tools and/or equipment it makes available to the Supplier.

12.4. The Supplier shall treat the models, tools and equipment made available to it by the Buyer with the appropriate care and store them accordingly. The Supplier shall be liable to the Buyer for all damage to the Buyer’s property.

13. ADVERTISING MATERIALS
The Supplier shall obtain the Buyer’s express prior written consent before it makes reference to any business relationship with Buyer in advertising or promotional materials, including its internet website.

14. MISCELLANEOUS
Neither party shall assign its contractual rights or obligations to a third party without the prior consent of the other contracting party.

15. PLACE OF PERFORMANCE AND PLACE OF JURISDICTION
15.1. Any disputes arising out of or in connection with any purchase or goods or services by Buyer from the Supplier shall be governed by the laws of the State of Ohio. The state and federal (where federal subject-matter jurisdiction exists) courts located in Clark County, Ohio shall have exclusive jurisdiction with respect to any claims or disputes arising from such purchase or any business relationship between Buyer and Supplier.

15.2. Unless otherwise determined by the type of order, the place of performance shall be the site of Buyer’s facility in Enon, Ohio.

16. CHANGES/TERMINATION OF ORDER
Buyer shall have the right, at any time, to make any necessary changes to the order. If such change causes an increase/decrease in cost or in time required for delivery, and equitable adjustment shall be made and Buyer’s Purchase Order will be modified accordingly. If Supplier files a petition for bankruptcy, or if a petition for bankruptcy is involuntary filed against Supplier, or if Supplier materially breaches its obligations to Buyer, then Buyer shall have the rights to terminate its order, to purchase substitute items elsewhere and to hold Supplier liable for all resulting costs and damages incurred. In the event of Buyer’s cancellation for convenience, Supplier shall be entitled to payment for all work previously delivered to Buyer, as well as an agreed upon portion of any work in progress.

17. DAMAGES
In the event where Buyer is liable for damages to its customer as a result of the Supplier’s failure to deliver by the date specified in the purchase order, the Supplier shall be liable to Buyer for such damages, not to exceed the value of the Purchase Order between Buyer and Supplier. Supplier acknowledges that actual damages would be difficult to calculate but that the liquidated damages stated herein constitute a reasonable estimate of such damages that Buyer will incur. Such liquidated damages shall be in addition to any other rights or remedies that the Buyer may have resulting from Supplier’s breach or delay in performance, all of which right and remedies are expressly preserved.

Acceptance:
Please complete the area below and return to the Buyer with your quotation or proposal.

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(Vendor Name) represents that he/she is an authorized representative of Supplier and that he/she has read and understood the above SEEPEX Inc. Terms and Conditions of Purchase (04.2016) and acknowledges and agrees to such Terms and Conditions, which shall supersede and replace all other prior or future terms and conditions written or oral, exchanged between Buyer and Seller, unless otherwise expressly agreed by Buyer in writing.

Signature ........................................................................................................ Printed Name

Title ........................................................................................................ Date