

VOSS Automotive, Inc. ("Seller")

GENERAL TERMS AND CONDITIONS OF SALE

1. **General Application, Formation, Choice of Law and Jurisdiction**
a. **General Application.** These General Terms and Conditions of Sale ("General Terms") apply to all proposals and quotations submitted by Seller, to all purchase orders received by Seller, and to all sales of goods and services sold by Seller, except as otherwise specifically provided in a document specifically issued by Seller as an exception. Any services to be provided by Seller, whether or not they are otherwise ancillary to and part of a sale of goods (as separate units or included as part of an installation), shall be considered ancillary to a sale of goods and the law adopted by these General Terms shall apply to all goods and services to be provided by Seller (collectively "Goods"). All references to "Seller" include the Seller identified above and any affiliate of such entity that receives a purchase order referencing or otherwise subject to these General Terms.

b. **Formation.** A written quotation issued by Seller is an offer to sell. A contract shall be formed and Buyer shall be deemed to have accepted the provisions of these General Terms by any of the following: (a) signing and returning to Seller a copy of any quotation within the time provided therein; (b) sending to Seller a written acknowledgment or acceptance of the quotation within the time provided therein; (c) placing a purchase order or giving instructions to Seller respecting manufacture, assembly, or delivery of the Goods (including instructions to build and hold) following receipt of any quotation or these General Terms; (d) failing to cancel a pending purchase order which is not deemed to be an acceptance of an offer by Seller within ten days after receiving these General Terms; (e) accepting delivery of all or any part of the Goods; (f) paying for all or any part of the Goods; or (g) indicating in some other manner Buyer's acceptance of these General Terms. All sales by Seller consist, in the following descending order of priority, only of these General Terms, terms in other documents which are referred to herein or are attached hereto or in a document provided, signed, or issued by Seller which reference the transaction, and Buyer's purchase order (excluding Buyer's standard terms and conditions of purchase and other terms inconsistent with Seller's quotation and these General Terms) (all of which constitute the "Agreement").

c. **Choice of Law and Jurisdiction.** THE AGREEMENT SHALL BE GOVERNED, CONSTRUED AND ENFORCED UNDER THE LAWS OF THE STATE OF INDIANA INCLUDING THE UNIFORM COMMERCIAL CODE IN FORCE ON THE INITIAL DATE OF THE AGREEMENT ("UCC"), EXCEPT AS PROVIDED HEREIN. THE U.N. CONVENTION ON THE INTERNATIONAL SALES OF GOODS SHALL NOT APPLY. THE COURTS OF INDIANA SHALL HAVE EXCLUSIVE JURISDICTION OVER THE PARTIES AND THE CLAIMS ARISING UNDER OR RELATED TO THE AGREEMENT, UNLESS WAIVED IN A WRITING SIGNED BY SELLER AND SUBJECT TO ANY RIGHT OF ARBITRATION WHICH MAY BE PROVIDED BY THE AGREEMENT. The parties stipulate to the convenience of Indiana courts in general, and Allen Circuit Court in particular, as to all litigation and shall not file any objection thereto. If Buyer does not maintain a registered office or agent in the United States, Buyer hereby irrevocably appoints the Secretary of State of the state whose law applies and CT Corporation as its agent in Indiana as Buyer's non-exclusive agents to receive process on behalf of Buyer in any proceeding arising under or related to the Agreement for forwarding to Buyer at the address set forth in the Agreement.

d. **Integration, Modification, and Status of Parties.**

a. **Complete Integration.** The Agreement is a final, complete and exclusive statement of the Agreement of the parties related to the Goods. A purchase order or an amendment submitted by Buyer orally or in writing (whether or not it contains terms or conditions modifying, adding to, repugnant to or inconsistent with these General Terms) may be accepted, approved, performed or filled by Seller, but any resulting contract and the liabilities or obligations of Seller shall be determined solely by the Agreement without regard to any purchase order or any other terms or conditions in Buyer's purchase order or other document or communication, unless Seller otherwise advises Buyer in writing. Seller shall not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by performing such purchase order or by failing to furnish objection to Buyer's terms or conditions.

b. **Modification.** SELLER IS WILLING TO NEGOTIATE CHANGES TO THESE GENERAL TERMS IN A WRITING SIGNED BY SELLER, BUT SELLER RESERVES THE RIGHT TO MAKE AN ADJUSTMENT IN THE PRICE OF THE GOODS TO COVER SELLER'S ESTIMATED COST RELATED TO SUCH CHANGES. No modifications, limitations, waivers or discharge of the Agreement or any of its terms shall bind Seller unless in writing signed by Seller's authorized employee at its home office. Notwithstanding anything to the contrary in the Agreement, no modifications, limitations or waivers of Seller shall be deemed to be made by Seller's employees, contractors, or other suppliers. Seller may accept or reject any such terms or conditions in Buyer's purchase order or other document or communication, unless Seller otherwise advises Buyer in writing. Seller shall not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by performing such purchase order or by failing to furnish objection to Buyer's terms or conditions.

c. **Parties.** The Agreement is only for the benefit of the parties, except all disclaimers and limitations applicable to Seller shall be also for the benefit of Seller's affiliates, agents, employees, contractors, and other suppliers. Customers of Buyer and end users are not intended third party beneficiaries of the Agreement. If any other provisions of the Agreement are determined to apply to third parties, all other provisions including limitations, waivers, and disclaimers shall also apply.

d. **Quotations.** Goods quoted to Buyer are subject to prior sale or other commitment. Unless otherwise stated therein, prices and delivery schedules in quotations are valid for 30 days from date of issuance and subject to modification by Seller thereafter.

e. **Buyer's Marking.** Seller shall not be responsible to Buyer for any brand name other than that of Seller. Unless Buyer is an authorized distributor of Seller, Buyer shall limit its distribution of the Goods purchased under the Agreement to the incorporation of the Goods into Buyer's value added product which Buyer shall market under Buyer's name for sale, lease or rent to third parties in the regular course of Buyer's business. Buyer shall not remove any markings on Goods as received from Seller. Buyer is responsible for the selection of Goods, Buyer's ability to achieve the results it intends with other products, software and/or peripherals of Buyer's design, assembly, manufacture or purchase, and for the system performance of Buyer's value added product. Buyer shall be responsible for the design, assembly, manufacture or purchase, and for the system performance of Buyer's value added product. Any technical support by Seller for Buyer's value added product shall be as is without warranty of liability and entirely Buyer's responsibility.

f. **Acknowledgments.** Buyer and Seller acknowledge that: (i) they are merchants in respect to the Goods produced by Seller; (ii) they have had an opportunity to review the Agreement; and (iii) the provisions of the Agreement are reasonable when considered as a whole.

g. **Directed Source Supplies.** Buyer may direct Seller to obtain components or services from third parties ("Directed Source Supplies") for use in the provision of the Goods. Seller shall not be responsible to Buyer for any warranty or other claims arising from or related to Directed Source Supplies or from the failure of the third party to timely provide Directed Source Supplies.

h. **Quantities.** All orders for Goods to be used by Buyer in production are for 100% of Buyer's requirements for the life of the program.

i. **Forecast.** Buyer shall provide releases with at least four weeks firm for production, an additional eight weeks firm for procurement, and an additional 12 weeks forecast.

3. **Authority of Seller's Agents.** No agent, employee or representative of Seller has authority to bind Seller to any affirmation, waiver, representation or warranty concerning the Goods, not contained in the written Agreement. An affirmation, waiver, representation or warranty shall not be deemed to be part of the basis of the Agreement and shall not be enforceable, unless it is expressly included within the Agreement.

4. **Prices and Payment.**
a. **Prices and Payment.** Prices contained in Seller's published price lists, if any, are subject to change without notice. Prices contained in individual written quotations are firm only for a period stated therein and otherwise for 90 days from the date of the quotation, unless modified in writing by Seller prior to Buyer's acceptance. After any firm price period in a quotation or other communication, the prices are subject to change, and Buyer should inquire of Seller as to their validity and request a written confirmation or revision. All prices are ex works Incoterms 2010. Prices are for the product only, and do not include any amount for freight, insurance, fees, customs duties or Federal, state or local excise, value added, sales, use, service, occupation, gross income, property or any other taxes, all of which shall be paid by Buyer even if the tax is assessable against Seller (except for taxes on Seller's net income). Buyer shall reimburse Seller for any such amounts which are Buyer's responsibility. Unless provided otherwise in the Agreement, all prices are in United States dollars and must be paid in U.S. dollars at the location specified in Seller's invoice. Buyer shall pay all government fees levied on the installation and inspection of the Goods. Buyer shall pay upon receipt of all invoices issued by Seller for Buyer for any such items Seller may purchase where the obligation of Buyer to pay under the Agreement.

b. **Changes to Goods and Schedule at Buyer's Request.** Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, or manufacturing of the Goods and adjust the delivery schedule or any other performance by Seller, which Seller determines to be required by changes requested by Buyer to the Goods after the date of any quotation. Seller is not obligated to perform any such changes which would substantially affect Seller's performance, but shall be compensated for them if Seller complies with such requested changes. In addition, if any delay in delivery beyond the date of delivery scheduled at the time of entry of the purchase order is requested or otherwise caused by Buyer, Seller shall adjust the price as provided above in this Subsection.

c. **Payment Demand and Acceleration.** If, at any time, reasonable grounds for insecurity arise with respect to Buyer's performance of its payment or other obligations hereunder, Seller may demand immediate payment in full or delivery of a documentary or stand-by letter of credit issued or confirmed by a U.S. bank acceptable to Seller or other financial security or other assurance for such payment or other performance. In addition, all amounts owed by Buyer to Seller shall be accelerated and payable immediately if Buyer fails to make any payment and as otherwise legally required, if Buyer sells or transfers the line of business for which the Goods are purchased, or if Buyer is a participant in a merger or other reorganization, or if Seller is notified of any such changes.

d. **Letters of Credit.** If the Agreement permits or requires the use of a letter of credit, the letter of credit must be a documentary letter of credit which is assignable, irrevocable, confirmed by a United States or Canadian bank with a payment office in Indiana or Ontario acceptable to Seller, payable in installments, and requires payment to Seller on submission of Seller's invoice and a bill of lading or other proof of delivery, and Seller's statement that a payment is due. Any such letter of credit must be issued and accepted by Seller before date of proposed initiation of production of the Goods or other event agreed to by Seller; otherwise, Seller reserves the right to postpone production and delivery without liability to Seller. If a required letter of credit is not received within 30 days prior to the proposed initiation of production, Buyer shall be in material default.

e. **Export/Import Fees.** All export and import permits and licenses and the payment of all export and import duties and customs fees shall be the responsibility of Seller, if Seller is obligated by the Agreement to deliver the Goods within the United States. All export and import duties, fees, permits, licenses, etc., for Goods to be delivered outside of the United States shall be the responsibility of Buyer.

f. **Payment Terms.** Buyer shall pay for all deliveries of Goods net 30 days after delivery. Buyer may change payment terms without cause on 30 days notice to Seller. Notwithstanding the foregoing, Buyer shall pay the price for any tooling or other capital Goods as follows:

- 25% non-refundable deposit with purchase order
- 25% due upon notice that the Goods are ready for testing or shipping
- 40% due against receipt of a copy of the bill of lading or other proof of shipment from Seller or its supplier.
- 10% due within the earliest of seven days after formal acceptance by Buyer at Buyer's facility or 30 days after installation. Any quantity of non-conformities remaining after 30 days shall be addressed under Seller's warranty.

All deposits are non-refundable unless the Agreement is properly terminated for Seller's breach or at Seller's discretion.

g. **Installments.** The Agreement may require or the Seller may elect to deliver the Goods in installments. Each installment of Goods to be delivered is to be considered as a separate sale. Invoices may be rendered separately for each shipment (including any early shipment) made by Seller. Buyer shall pay timely the price for each installment which is delivered. Any Goods indicated as back-ordered now or in the future shall be considered an installment delivery. A failure to pay for an installment when due is a material anticipatory breach of other installments by Buyer.

h. **Carrying Charge.** All amounts not paid to Seller when due shall incur a carrying charge of 1.0% per month upon the current LIBOR one month rate and the extent allowed by law and otherwise at the highest written contract rate allowed by law. Buyer shall reimburse Seller for all costs of collection, including reasonable attorney fees, of amounts not paid when due.

i. **Buyer's Failure to Cooperate.** All amounts due on inspection, delivery, installation, acceptance or other event which requires the action or cooperation of Buyer which Buyer fails to promptly timely shall become due upon such failure, irrespective of whether or not the Goods are formally accepted by Buyer or the Goods have been installed.

j. **Right of Offset.** Seller may offset or recoup any amounts owed by Seller or an affiliate of Seller to Buyer or an affiliate of Buyer against any amounts owed by Buyer to Seller or an affiliate of Seller. Buyer waives any right of offset or recoupment and shall pay all amounts owed to Seller when due regardless of any claim of Buyer regarding warranties or other issues arising under contract, tort, statute or otherwise. Payment of such amounts by Buyer under written protest shall not constitute a waiver by Buyer of its claims.

k. **Assignment of Payments.** Seller may allocate payments from Buyer among outstanding invoices on Seller's discretion.

l. **Samples.** Samples of Goods and sample test reports will be provided by Seller only upon Seller's consent and at prices established by Seller or written agreement.

m. **Withholdings from Amounts Due Seller.** If a legal requirement requires Buyer to deduct an amount as a withholding tax or other government fee (however it may be described in such legislation) from any payment under the Agreement such that Seller will not actually receive on the due date the full amount provided for under the Agreement, Buyer shall provide Seller with 60 days' written notice of such obligation, and on the due date: i. Buyer shall deduct the amount for the withholding tax;

ii. Buyer shall pay an amount equal to that amount deducted to the relevant authority in accordance with applicable law and give to Seller the original receipt or other proof of payment required for Seller to obtain a refund;

iii. Buyer shall pay Seller an amount equal to the difference between the payment otherwise due and the amount deducted;

iv. Buyer shall also pay Seller the amount deducted; and
v. Seller shall, after receiving reimbursement of the withheld amount, if any, repay Buyer the amount recovered after deducting the expenses incurred in obtaining reimbursement.

n. **Cumulative Rights.** All remedies of Seller under the Agreement are cumulative and to the extent not specifically waived under the Agreement in addition to those provided by law.

o. **Solvency of Buyer.** Buyer represents that it is solvent and able to pay the price for the Goods and that all financial and business information given to Seller is correct. If Buyer becomes insolvent before delivery of the Goods, it shall notify Seller. Acceptance of delivery shall be a reaffirmation of Buyer's solvency, and that there has not been a material adverse change in such information.

5. **Delivery.**
a. **Shipping Dates.** Shipping dates are estimates based on Seller's and/or its supplier's present engineering and manufacturing capacity and scheduling, and may be revised by Seller upon receipt or scheduling of Buyer's purchase order and/or delivery releases. All shipping dates are approximate and shall be computed from the date of entry of the purchase order and/or delivery releases on Seller's books. All shipping dates are further subject to Seller's prompt receipt from Buyer of a written purchase order or formal acceptance, letter of credit, deposit and other conditions as specified in the Agreement, and of all drawings, information and approvals convenient or necessary for Seller to provide the Goods and/or to grant any credit terms.

b. **Method of and Insurance of Shipment.** Seller shall deliver the Goods ex works Incoterms 2010 by tendering the Goods for placement in the possession of a carrier and, unless otherwise advised by Buyer in writing, without liability, shall make such contract for their transportation as Seller deems having regard for the nature of the Goods and other circumstances. Seller will generally follow Buyer's shipping instructions, but may make reasonable changes thereto without liability and at Buyer's cost. On Buyer's request, Seller shall obtain and send to Buyer upon its reasonable request documents to assist Buyer in obtaining insurance. Seller is not responsible to prepay transportation or insurance costs. Buyer shall pay all handling and other charges incidental to transportation. Buyer is responsible for making any claim against the carrier, riggers and other handlers of the Goods after delivery to Buyer.

c. **Risk of Loss and Title.** The Agreement is for a shipment contract and the Goods shall be delivered ex works Incoterms 2010 Seller's dock or ex works Seller's supplier's dock. If the Goods are to be shipped directly from Seller's supplier to Buyer. Whether or not Seller prepays shipping charges shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary. Notwithstanding the transfer of the risk of loss, title to the Goods shall remain with Seller until Buyer pays for the Goods in full.

d. **Shipping and Packaging.** Except as otherwise provided in the Agreement, Seller shall not be responsible for any freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges arising out of the performance of the Agreement. If such charges are specifically included in the price or Seller's standard terms and conditions, any increase in such charges becoming effective after the date the price is quoted, Seller shall be added to the price. All Goods shall be packed for shipment by Seller for over-the-road travel transportation, and for placement in a seaworthy container if transportation under the Agreement includes transportation by sea, in accordance with Seller's standard practices. It is Buyer's responsibility, whether or not Seller arranges shipping, to determine whether additional packaging procedures and materials are appropriate for the shipment of Goods and advise Seller in writing of Buyer's requirements. Buyer shall pay for all additional procedures and materials.

6. **Delay of Shipment or Performance Excused for Various Reasons.**

a. **Delayed Shipment.** If shipment of any Goods or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the Goods at the place of manufacture or elsewhere at the risk and expense of Buyer from the time the Goods are ready for shipment. On written request made not later than 60 days prior to the scheduled delivery date, Seller may quote to Buyer additional charges required to complete the Goods ready for shipment. If Seller is unwilling to accommodate Buyer by holding such Goods, Buyer shall accept shipment immediately.

b. **Supply Allocation.** Whenever Seller's supply of the Goods, materials or means of production or source of supply is insufficient to meet the estimated delivery schedule or in the event of any occurrence mentioned in Subsections (a) and (b), Seller, in its sole discretion, may allocate its supply to its own use, to Buyer, and to other customers. Subsections (a) and (b) shall be effective even as to events described in Subsections (a) and (b) which exist on the date of a quotation or of contract formation.

7. **Inspection, Testing and Rejection.**

a. **Testing.** Seller's standard test procedures conducted by Seller's representative or supplier shall be the criteria for inspection and/or acceptance, unless other specific procedures have been specified in the Agreement. Seller is not obligated to provide other than its or its supplier's standard test procedures. On written request made not later than 60 days prior to the scheduled delivery date, Seller may quote to Buyer additional charges required to conduct any additional test procedures by Buyer which may be acceptable to Seller. Any variation to standard test procedures as a result of any special engineering requests requires a written amendment to the Agreement with specific acceptance criteria detailed and approved in writing by Seller. Such specific acceptance criteria, which may be defined by Seller, must be submitted by Buyer to Seller in writing a minimum of 60 days prior to delivery date. Alterations to standard test procedures within 60 days prior to delivery will not be approved and, in any case, cannot be used as a reason for rejection.

b. **Rejection.** All manuals, drawings, specifications, technical documentation, samples, test results, prototypes and Goods shall be deemed approved and/or accepted by Buyer if Buyer does not provide a written objection and/or rejection as provided by Seller's standard test procedures, if any, but not later than seven days of receipt of such items or other reasonable time established by Buyer. Buyer shall have seven days after receipt of the item to inspect and either accept or provide notice of objection and/or rejection. If an item is rejected, notice must be given to Seller so that it will arrive no later than ten days after receipt of the item by Buyer. Failure to so act shall constitute an irrevocable acceptance by Buyer. Any objection and/or rejection by Buyer must be in writing and state with specificity all defects and non-conformities upon which Buyer will be given to support its rejection. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SO SPECIFIED ARE WAIVED. Buyer may reject the Goods only for material non-conformities and all non-material non-conformities shall be resolved under the express warranty. If Buyer rejects any tender of the Goods and is requested by Seller, Buyer shall return the Goods, if any, within three days after such request. A failure to so return shall constitute an irrevocable acceptance. No attempted revocation of an acceptance shall be effective, and Buyer shall be limited to any available express warranty remedies specifically provided in the Agreement. There shall be no limitation on the period of time in which Seller may cure any non-conformity or breach, provided Seller continues to make reasonable efforts to cure.

c. **Inspections.** If the Agreement requires, or Seller requests in writing, inspection or testing prior to shipment, and upon at least three days' notification by Seller that the Goods are ready for inspection or testing, Buyer shall provide at the place of manufacture or delivery, at its own expense, one or more qualified and authorized employees to inspect and/or test the Goods, as provided in this Section on Inspection, Testing, and Rejection, for general compliance with the Agreement and authorize shipment. If Buyer fails to do so within seven days, then Seller may, in its own discretion, (i) determine that Buyer has waived the right of inspection, testing and/or acceptance prior to shipment, (ii) conduct Seller's or its supplier's standard test procedures, and (iii) ship the Goods if it determines them to be conforming. Correction of non-conformities, which would likely or should have been discovered by Buyer during required, requested or completed inspection and/or testing and are otherwise covered by Seller's warranty, will be at Buyer's expense and shall not be a basis for rejection.

d. **Testing Facilities.** Buyer shall provide, at its cost and risk of loss, all materials, fixtures, tooling and other items necessary for any inspection and/or testing required by the Agreement or requested by Buyer (except for Seller's standard test procedures). If Buyer fails to supply such items within the time required, Seller may supply them at Buyer's expense and test by such means as available at the place of manufacture or other location of the Goods. Equipment, parts and materials furnished by Buyer for testing and/or inspection will be returned to Buyer at Buyer's cost, unless Buyer authorizes their disposal. If the necessary fixtures and tooling are available, the inspection and/or testing at the place of manufacture or delivery may be performed on production or other equipment similar to, but other than, that identified in the Agreement.

e. **Delivery Shortages.** Any claim by Buyer for shortages in any delivery must be in writing with satisfactory written evidence delivered to Seller within seven days of receipt of the shipment at Buyer's facilities.

f. **Expenses.** Any expense incurred by Buyer in the inspection or testing of the Goods shall be paid by Buyer, whether or not the Goods have been rejected as defective or non-conforming or the Goods have been accepted and a warranty claim has been made for correction of a defect or non-conformity.

8. **Software License.** Seller grants Buyer, for its internal use [and to the initial end user of the final product in which the Goods are installed] only, a non-exclusive perpetual license ("License") of all user manuals, software programs, firmware and storage media ("Software") which is owned or sub-licensable by Seller and provided by Seller in conjunction with the Goods with which the Software is provided, for the sole purpose of the operation of the Goods. The License terminates automatically if Buyer fails to pay any amount within 30 days of its due date or is otherwise in default of its obligations. The Software may be provided in machine readable object code only. Buyer may make and keep one copy of the object code, if provided by Seller, for backup purposes. When making a copy, Buyer shall reproduce all of Seller's copyright or patent notices in all forms originally included in the Software. Buyer shall not make any effort to obtain or reproduce the Software's source code. Title and all ownership rights to the Software remain with Seller or its licensors. The Software is the proprietary information and trade secret of Seller or its licensors, whether or not any portion thereof is or may be validly copyrighted or patented. The License may not be assigned nor transferred by Buyer (except as a part of a transfer of the Goods) without the written consent of Seller which may be withheld. The Software is provided for use with the Goods only, and Buyer shall maintain, and require its customer to maintain, the confidential nature of the Software and related materials and protect them against disclosure or improper use. Buyer shall pay all taxes based on the Software or use of the Software, however designated or levied, except those based on Seller's net income. These provisions take precedence over any government procurement policy, regulation or contract clause relating to rights in computer software. ALL DISCLAIMERS AND LIMITATIONS APPLICABLE TO THE GOODS APPLY TO THE LICENSE AND SOFTWARE.

9. **General Express Warranties**

a. **General.** Seller warrants to Buyer only, subject to the disclaimers and limitations of the Agreement, that Goods shall conform in all material specifications to the Agreement, shall be in material conformity with the specifications in the Agreement, and shall be free from defects in materials and workmanship which are discovered and reported to Seller within the period of 12 months from the delivery date to the original retail purchaser or 100 miles if installed in a vehicle. Under no circumstances shall the warranty period extend beyond 18 months from the date of delivery of the alleged non-conforming or defective Goods to Buyer. This is not a warranty of performance, but a limited warranty as to the condition of the Goods at delivery. Because the Goods may be subject to a wide variety of use, installation, maintenance, cleaning, and other factors, the warranty is only against the named defects and not against any other defects or failures such as, but not limited to, those due to normal wear and tear, normal maintenance and unknown causes. Perishable items are excluded from warranty against defects. Notwithstanding anything to the contrary, there is no warranty as to prototype Goods.

b. **Conformity.** Included in Seller's warranty against defect is Seller's warranty to Buyer only that the Goods will be as described in the Agreement in all material respects, subject to the limitations they bear and Seller's published and internal standards; however, Seller retains the right to change the dimensions, composition, design, performance, color and appearance of the Goods without liability if, in its judgment, the change is nonmaterial. Seller may, in its discretion, also rely on any generally accepted industry standards in making changes.

c. **Warranty Requirements.** Seller's warranties against non-conformities and defects shall continue to apply only so long as the Goods: (i) have been installed and used in conformity with instructions provided by Seller from time to time, and Seller has been notified in conformity with the highest industry practices; (ii) have been subjected to normal use for the purpose for which the Goods were designed; (iii) have not been subjected to misuse, negligence or accident; (iv) have not been altered or repaired by persons other than Seller or Seller authorized warranty service providers in any respect which, in the judgment of Seller, adversely affects the condition or operation of the Goods; and (v) have been fully paid for.

d. **Records.** Buyer shall create, maintain and make available to Seller, permanent records of the installation, maintenance, use and disposition of the Goods.

10. **Patent Warranties.** Seller shall defend and indemnify Buyer from any claim which asserts that the Goods or their inherent methods of operation, intrinsically, infringe any United States patent, except as to a claim based on Buyer's modifications and use of the Goods as a step in an overall process or as an element in an overall combination. Seller's obligation shall not apply to a claim based on the Goods or portions thereof specifically designed, or manufactured by Buyer. Buyer shall notify Seller promptly of any infringement and provide Seller with assistance and information in the form requested by Seller for its defense, or Seller shall have no further obligation to defend or indemnify. Seller shall defend with its counsel or other counsel of its choice and shall have the sole right, without consultation with Buyer, to take all action Seller deems appropriate to prosecute or settle such claims. Seller's exclusive obligation to indemnify as to the Goods declared to infringe is limited to the acquisition of a License, the replacement of the Goods with non-infringing Goods, and the return of the Goods to the return of the purchase price and shipping costs in exchange for the Goods, as Seller may elect. This Section states Seller's entire and exclusive obligation regarding patent infringement and the exclusive remedies

