



TERMS AND CONDITIONS OF SALE
Effective DATE: Jan. 01, 2013

1. **APPLICABLE TERMS & CONDITIONS:** THESE TERMS AND CONDITIONS ("Ts&Cs") OF SALE ESTABLISH THE RIGHTS, OBLIGATIONS AND REMEDIES OF VORTECH ENGINEERING INC. and PAXTON AUTOMOTIVE CORP. (hereafter "VORTECH", "WE", "US" OR "OUR") AND PURCHASER ("BUYER", "YOU", "YOURSELF" AND "YOUR") WHICH APPLY TO ANY ORDER ISSUED BY BUYER FOR THE PURCHASE OF VORTECH, PAXTON, or LYSHOLM PRODUCTS ("PRODUCT" or "PRODUCTS"), OR SERVICES ASSOCIATED TO THESE PRODUCTS, SUCH AS BUT NOT LIMITED TO DEVELOPMENT SERVICES ("SERVICES"). UNLESS OTHERWISE STATED IN A WRITTEN PURCHASE AGREEMENT SIGNED BY AUTHORIZED REPRESENTATIVES OF VORTECH AND BUYER AND COVERING THE SPECIFIC PRODUCTS THAT ARE THE SUBJECT OF ANY BUYER'S PURCHASE ORDER, VORTECH'S ACCEPTANCE THEREOF IS MADE EXPRESSLY CONDITIONAL ON ASSENT BY BUYER TO THE TERMS AND CONDITIONS OF SALE INCLUDED HEREIN. NO ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS, WHETHER CONTAINED IN BUYER'S PURCHASE ORDER FORM OR ANY OTHER DOCUMENT OR COMMUNICATION PERTAINING TO BUYER'S ORDER, WILL BE BINDING UPON VORTECH UNLESS ACCEPTED IN WRITING, AND VORTECH HEREBY EXPRESSLY OBJECTS TO ANY SUCH TERMS AND CONDITIONS WHICH SHALL BE DEEMED INEFFECTIVE AND ARE REJECTED.

2. **GENERAL:** Normal operating hours are Monday-Friday from 7:00 a.m. to 3:30 p.m. Pacific Time. We are closed Saturdays, Sundays, and some legal holidays. If any deadline or limit in these Ts&Cs falls on a calendar day where We are closed, then the deadline or limit expires on the next business day.

3. **DELIVERY/SHIPPING TERMS:** Delivery terms are FOB Vortech Channel Islands, CA. Vortech will schedule delivery in accordance with its standard lead time unless Buyer's Order requests a later delivery date; or Vortech agrees in writing to a separate delivery date. Every attempt will be made to ship confirmed orders within seven to ten business days of receipt of an order if We have stock on hand. We cannot guarantee ship times. We ship only to Your billing address. We do not ship to government or private post office boxes or to APO addresses. No drop shipping without prior arrangement and approval from Vortech's Sales Manager and Your agreement to pay all Our drop shipping charges. A fee of \$50 will be added to each drop shipped supercharger system/tuner kit. A fee of \$10 will be added to each drop shipped order where the invoice is less than \$100. Unless You specify in writing, and We agree, the carrier of all shipments will be UPS, via Ground. You are responsible for all freight charges on all goods, including return shipment charges because of refused or missed shipments. You are responsible for any customs, duties, taxes, or fees incurred in shipping of goods. Vortech reserves the right to quote additional charges for any special routing; packing, labeling, handling or insurance requested by Buyer, Buyer will reimburse Vortech upon receipt of an invoice for those charges. We consider requests for UPS Red, Blue, and Orange labels to be requests for methods of shipment and NOT a request for same day shipment. There is an additional charge for "Guaranteed Same Day" shipping which will be added to Your invoice and that You agree to pay. Shipping charges shall be collect, or if prepaid by Vortech, will be billed to You. Title to goods shall pass to You, and Our liability as to delivery shall cease, on delivery of goods to the carrier at Our facility, regardless whether You have made provision for payment for freight, insurance, or the form of any shipping documents. Risk of loss or damage in transit is with You and not Vortech. Should any goods or shipment arrive with damage from shipping, do not refuse the shipment. Hold the original shipment package, all packing material, and all contents of the package, and contact the Vortech Service Department. **ACCEPTANCE OF PRODUCT:** Products are presumed accepted unless Vortech receives written notice of rejection from Buyer explaining the basis for rejection within 20 calendar days after delivery. Buyer must return rejected Product to Vortech in accordance with Vortech's written instructions. Vortech will have a reasonable opportunity to repair or replace rejected Products, at its option. Subject to the terms of the article titled "Taxes", Vortech assumes shipping costs in an amount not to exceed actual reasonable direct freight charges to Vortech's designated facility for the return of properly rejected Products. Buyer will provide copies of freight invoices to Vortech upon request. Following initial delivery, the party initiating shipment will bear the risk of loss or damage to Products in transit. If Vortech reasonably determines that rejection was improper, Buyer will be responsible for all expenses caused by the improper rejection.

4. **ERRORS & SHORTAGES: YOU MUST INSPECT ORDERS UPON RECEIPT.** All goods and shipments are inspected thoroughly before shipment. You must check the shipment and the contents of the order upon Your receipt to make sure that the amount shipped, parts, part numbers, style, size, price charged, etc., conform to Your original order and are not damaged. We will pay UPS ground shipping to send You missing or replacement goods only once for each shipment, regardless whether that is sent in one or more packages. Therefore if You find damage, a shortage or error in a shipment, You should carefully review the balance of the shipment and make one complete claim to Vortech within the time limits set forth below. You pay cost of goods and shipping for any additional claims for damage, shortage or error from that shipment. For goods that You intend to use or install for Yourself or others, all claims for damage, shortage or error must be made by You in writing to the Vortech Service Manager, and received by Vortech within twenty (20) business days of Vortech's shipment date to You. For goods that You intend to resell to Your customers in original unopened packages, all claims for damage, shortage or error must be made by You in writing to the Vortech Service Manager and received by Vortech within twenty (20) business days of Your customer's purchase date from You, but in no event more than nine months after Vortech's shipment date to You. If the intended use of the goods is not clear or in dispute, then the time limit for claiming damage, shortage or error is twenty (20) business days from Vortech's shipment date to you. Claims for damage, shortage, and errors are waived unless received by Vortech within the time limits set in these Ts&Cs.

5. **PRICES, TAXES, DUTIES & ORDER SIZES:** All prices are in the applicable currency of the Agreement and are based on delivery FOB. If, notwithstanding the provisions hereof, Buyer's terms and conditions of purchase are deemed to apply by a court of competent jurisdiction, then Vortech reserves the right to either (a) modify the prices (including retroactively, according to the additional level of risk and responsibility that Buyer's terms and conditions require Vortech to undertake; or (b) cancel the Agreement any time after such determination without liability for such termination other than for the Products already delivered on the terms set out herein. All errors in prices or pricing not brought to the Vortech Sales Manager, in writing and within 20 (twenty) calendar days after invoice date, are waived. Prices do not include any charges for services such as packaging; insurance; or brokerage fees. Vortech's pricing excludes all taxes (including but not limited to, sales, use, excise, value-added, and other similar taxes), duties and charges. Buyer is responsible for all such taxes, duties and charges resulting from this Agreement or as a result of Vortech's performance hereunder, whether now or hereafter imposed, levied, collected, withheld, or assessed. If Vortech is required to impose, levy, collect, withhold or assess any such taxes, duties or charges on any transaction under this Agreement, then in addition to the purchase price, Vortech will invoice Buyer for such taxes, duties, and charges unless at the time of order placement Buyer furnishes Vortech with an exemption certificate or other documentation sufficient to verify exemption from such taxes, duties or charges. Sales Tax will be added to all California sales unless You furnish Our Accounting Department with a valid Resale Permit number issued by the California State Board of Equalization prior to invoicing. Vortech reserves the right to establish minimum order sizes. Vortech reserves the right to change its prices if series production ends, or if, from the time of quotation (i) raw material and/or component prices have changed; or (ii) actual volume is less than forecast volume; or (iii) there is any significant change in economic circumstances.

6. **PAYMENT TERMS:** All accounts are payable in full at the time of shipment, unless alternative arrangements are approved by Vortech's Accounting Department. Prepayment by check, without prior approval, will delay shipping until that check has cleared and can no longer be returned. **EXPORT ORDERS:** For all orders placed from outside the United States, payments must be made in United States currency via wire transfer, unless other arrangements are made with You in writing from Vortech's Sales. When applicable buyer will incur additional costs for special crating, shipping insurance, transport documents, customs, duties and taxes. We have the right to refuse to ship any additional orders, or place an account on COD basis, if the account becomes "past due" and until the account is current. In the event of any returned check or reversal of any payment, We will assess a service fee of the greater of Our out-of-pocket costs or \$50, and payment terms will be changed to



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prepay or COD. We may accept partial payment in an amount less than an invoice or amount due, but Our acceptance shall not constitute a waiver of Our right to collect the balance due, nor an accord and satisfaction, even if You place restrictive language on a check or other instrument. Unpaid balances incur interest at 1½% per month, or the maximum legal rate, if less. If We determine that Your financial condition does not justify Our continued sale of goods or services, We have the right to stop sales or services and require that You make full or partial prepayment. If Buyer is delinquent in its payment obligation to Vortech, Vortech may upon written notice to Buyer stop work and withhold future shipments until all delinquent amounts and late interest, if any, are paid. Additionally, Vortech may at its option: 1. repossess Products for which payment has not been made; 2. charge interest on delinquent amounts at the maximum rate permitted by law for each full or partial month; 3. recover all costs of collection, including but not limited to reasonable attorneys' fees; 4. combine any of the above rights and remedies as may be permitted by applicable law. These remedies are in addition to all other remedies available at law or in equity. Vortech may re-evaluate Buyer's credit standing at all times. If Vortech reasonably determines in its sole discretion that Buyer fails to qualify for the above payment terms at any time, then Vortech may without notice to Buyer modify or withdraw credit terms, including but not limited to requiring advance payment, guarantees, or other security.

7. **RETURNS, RESTOCKING CHARGES and INVENTORY ADJUSTMENTS:** Electrical, electronic, electronic tuning, discontinued, close-out, damaged, custom, and special order goods are NOT returnable. Other current regular production goods shipped to You may be returned within thirty (30) calendar days after delivery to You if the goods are in "like new" condition, unopened, undamaged, unused, not missing any parts, and in their original undamaged packaging. All returns to Vortech and inventory adjustments must be pre-authorized and accompanied by a Return Authorization ("RA") number, freight prepaid. Each returned shipping box must include the RA number and all return freight must be prepaid. COD and Freight Collect Returns are not accepted. Goods returned to Vortech without RA numbers will be refused and returned to You. Returns must be shipped by You to Us within 15 (fifteen) calendar days of Our assignment to You of an RA number. All returns must be accompanied by a copy of the original invoice and a brief explanation or reason for return. We will issue credit after We inspect and decide whether to accept the returned goods back into inventory. All returned goods that are accepted back will be subject to a restocking and handling fee of \$25 or 25%, whichever is greater. Refused or missed shipments returned to Vortech do not constitute a right to a return, refund or credit. You are responsible for all return freight charges and the restocking and handling fee as outlined above. If You wish rejected returned goods to be reshipped, We may require You to prepay the invoice plus any applicable additional charges that may apply.

8. **ORDER CANCELLATION:** Orders for custom goods and services are not cancellable. Production starts as soon as We order parts from Our vendors to fulfill Your order. Special order and special runs of regular production goods are subject to a 25% cancellation charge if production has not started, and are not cancellable after production has started. Orders for regular production goods are subject to a 5% cancellation charge before shipment and a 25% cancellation charge after shipment.

9. **BACK ORDERS:** All back orders will be held and shipped when available unless You specify otherwise in writing to cancel prior to shipment. If We experience a delay of the estimated shipment date, We will notify You prior to shipment.

10. **STOCKING WAREHOUSE INVENTORY ADJUSTMENT:** If You are a Vortech stocking warehouse and wish to adjust inventory, You must submit Your request in writing, including copies of original invoices and a two-for-one offsetting order. Inventory adjustments of up to five percent (5%) of Your previous calendar year's purchases of goods are permitted. Returned goods must conform with all conditions in these Ts&Cs, and the returned goods must have been shipped to You from Us within one year. Stock adjustments will only be processed from April 1 through June 30 of each year.

11. **SETOFF:** Buyer will not set off or recoup invoiced amounts or any portion thereof against sums that are due or may become due from Vortech, its parent, affiliates, subsidiaries or other divisions or units.

12. **CHANGES:** Buyer may issue a written change order to request changes within the scope of the Agreement. Such requests are subject to acceptance by Vortech. Vortech will inform Buyer if the change will cause an increase in Vortech's costs or time required to perform. The change will become effective, and Vortech will commence performance, only upon execution of an amendment to the Agreement. Unless otherwise agreed in writing, upon performance of the change order Vortech will be entitled to invoice Buyer and Buyer shall be obligated to pay for the costs of the change, even if Vortech agreed to proceed with the change prior to execution of an amendment.

13. **BUYER CAUSED DELAY:** Vortech will not be liable for any delays or increased costs caused by a failure of Buyer, such as delays in providing necessary information or other Buyer deliverables or delays by Buyer designated suppliers in providing goods or services. In the event of a non-force majeure Buyer-caused delay, the price and other affected terms will be adjusted accordingly to reflect Vortech's increased costs and other adverse impacts associated with such delay. In addition, if deliveries of goods or services are delayed due to the acts or omissions of Buyer or Buyer-designated suppliers, Vortech may store the goods at Buyer's risk and expense and, may invoice Buyer just as if there had been no delay in delivery.

14. **EXCUSABLE DELAY (FORCE MAJEURE)** Except for payment obligations, neither party will be liable to the other for any failure to meet its obligations due to any Force Majeure event. If the inability to perform continues for longer than 90 days, either party may terminate this Agreement by providing written notice to the other party and Buyer will pay Vortech for Products delivered and Services performed prior to termination. Force Majeure is an event beyond the reasonable control of the non-performing Party and may include but is not limited to: (a) delay or refusal to grant an export license or the suspension or revocation thereof, (b) any other act of any government that would limit a party's ability to perform the Agreement, (c) fire, earthquake, flood, tropical storm, hurricane, tornado, severe weather condition, or any other act of God, (d) quarantine or regional medical crisis, (e) labor strike or lockout, (f) riot, strife, insurrection, civil disobedience, landowner disturbance, armed conflict, terrorism or war, declared or not (or impending threat of any of the foregoing, if such threat might reasonably be expected to cause injury to people or property) and (g) shortage or inability to obtain any material or component. If a force majeure event causes a delay, then the date of performance will be extended by the period of time that the non-performing party is actually delayed, or for any other period as the parties may agree in writing.

15. **HARDSHIP:** If for any reason Seller's production or purchase costs for the Product (including without limitation costs of energy, equipment, labor, regulation, transportation, raw material or Product) increases by more than 10% over Seller's production or purchase costs for the Product on the date of entering into this Agreement, then Seller may, by written notice to Buyer of such increased costs, request a renegotiation of the price of the Product under this Agreement. In the event the Parties are not able to agree on a revised Product price within 10 days after a request for renegotiation is given, then Seller may terminate this Agreement on 10 days written notice to Buyer.

16. **SPECIAL TOOLING:** Special Tooling includes, but is not limited to, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids and replacement items, now existing or created in the future, together with all related specifications, drawings, engineering instructions, data, material, equipment, software, processes, and facilities created or used by Seller in the performance of its obligations under this Agreement. Seller owns all Special Tooling, except to the extent an authorized representative of Seller specifically transfers title for any Special Tooling in writing to Buyer. Any transfer of title to Special Tooling does not include transfer of Seller's intellectual property used to create or that may be embodied in the Special Tooling, other than a license



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to use the Special Tooling.

17. **PATENT/ COPYRIGHT INDEMNIFICATION:** Vortech will defend any suit against the Buyer arising out of any actual or alleged patent or copyright infringement of a valid United States patent or copyright, to the extent based on the Product as delivered by Vortech, and indemnify for any final judgment assessed against Buyer resulting from such suit provided that Buyer notifies Vortech at such time as it is apprised of the third-party claim, and agrees to give sole and complete authority, information and assistance (at Vortech's expense) for the defense and disposition of the claim. Vortech will not be responsible for any compromise or settlement made without Vortech's written consent. Vortech will have no obligation or liability with respect to: (a) Products provided pursuant to Buyer's designs, drawings or manufacturing specifications; (b) Products used other than for their ordinary purpose; (c) claims of infringement resulting from combining any Product furnished hereunder with any article not furnished by Vortech; (d) use of other than the latest version of software Product released by Vortech; or (e) any modification of the Product other than a modification by Vortech. Further, Buyer agrees to indemnify and defend Vortech to the same extent and subject to the same restrictions set forth in Vortech's obligations to Buyer as set forth in this Article for any suit against Vortech based upon a claim of Revision 2012-02-29 infringement resulting from (a), (b), (c), (d) or (e) of the preceding paragraph. Because Vortech has exclusive control of resolving infringement claims hereunder, in no event will Vortech be liable for Buyer's attorney fees or costs. If a claim is made against a Product, or if Vortech believes that such a claim is likely, Vortech may, at its option, and at its expense, (i) procure for Buyer the right to continue using the Product; (ii) replace or modify the Product so that it becomes non-infringing; or (iii) accept return of the Product, or terminate Buyer's license to use the infringing Product, and grant Buyer a credit for the purchase price or license fee paid for such product, less a reasonable depreciation for use, damage, and obsolescence. Further, if a claim of patent or copyright infringement is made against a Product, or if Vortech believes that such a claim is likely, Vortech may cease shipping infringing Products without being in breach of this Agreement. Any liability of Vortech under this Article is subject to the provisions of the "Limitations of Liability" Article of this Agreement. This Article states the parties' entire liability, sole recourse and their exclusive remedies with respect to infringement. All other warranties against infringement of any intellectual property rights, statutory, express or implied are hereby disclaimed.

18. **LIMITATION OF LIABILITY:** IN NO EVENT WILL VORTECH BE LIABLE FOR ANY INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, SPECIAL DAMAGES, PUNITIVE DAMAGES, STATUTORY DAMAGES, INDIRECT DAMAGES, LOSS OF PROFITS, LOSS OF REVENUES, LOSS OF USE, OR DAMAGE TO BRAND NAME, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. VORTECH'S LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL IN NO CASE EXCEED IN THE AGGREGATE A SUM EQUAL TO TWICE THE AMOUNT ACTUALLY PAID TO VORETCH FOR THE PRODUCTS FROM WHICH THE CLAIM AROSE OR IN THE CASE OF SERVICES THE AMOUNT ACTUALLY PAID TO VORETCH. FURTHER, IF BUYER REQUIRES VORTECH TO USE A PARTICULAR SUPPLIER OR SUPPLIERS, THEN VORTECH SHALL HAVE NO LIABILITY FOR THE SUPPLIER(S) PERFORMANCE, OR FOR ANY DAMAGES CAUSED DIRECTLY OR INDIRECTLY BY VORTECH'S PRODUCT OR SERVICES TO THE EXTENT RESULTING FROM INCORPORATION OF SUCH SUPPLIER (S) PRODUCT OR SERVICES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS AND EXCLUSIONS WILL APPLY REGARDLESS OF WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), BY OPERATION OF LAW, OR OTHERWISE. NOTHING HEREIN, HOWEVER, IS INTENDED TO DISCLAIM VORTECH'S LIABILITY FOR PERSONAL INJURY OR DEATH CAUSED BY DEFECTIVE PRODUCTS TO THE EXTENT SUCH LIABILITY IS MANDATED BY APPLICABLE LAW.

19. **INTELLECTUAL PROPERTY:** Neither Party shall be required to assign or license Intellectual Property (including but not limited to inventions, patents, designs, trade secrets, copyrights and trademarks) used in or developed for the Products or created previously or resulting from any Services provided, regardless of any financial contributions each may make toward such development or Services. No

development work or Services work in support of this Agreement shall be considered "work for hire."

20. **TRADEMARKS AND OTHER LABELS:** Buyer agrees not to remove or alter any indicia of manufacturing origin or patent numbers contained on or within the Products, including without limitation the serial numbers or trademarks on nameplates or cast or machined components.

21. **SOFTWARE LICENSE:** Software, if included in the Agreement, is hereby licensed and not sold. The license is nonexclusive, and is limited to such equipment and/or location(s) as are specified in the Agreement. No other use is permitted and Vortech retains for itself (or, if applicable, its suppliers) all title and ownership to any software delivered hereunder, all of which contains confidential and proprietary information and which ownership includes without limitation all rights in patents, copyrights, trademarks and trade secrets. Buyer shall not attempt any sale, transfer, sublicense, reverse compilation or disassembly (save to the extent expressly permitted by law) or redistribution of the software. Nor shall Buyer copy, disclose or display any such software, or otherwise make it available to others (except as Vortech authorizes in writing).

22. **CONFIDENTIALITY:**

22.1 "Proprietary Information" means: 1. any information, technical data or know-how in whatever form, including, but not limited to, documented information, machine readable or interpreted information, information contained in physical components, mask works and artwork, that is clearly identified as being confidential, proprietary or a trade secret, 2. business related information including but not limited to pricing, manufacturing, or marketing, 3. the terms and conditions of any proposed or actual agreement between the parties, 4. Either party's business policies, or practices, and 5. The information of others that is received by either party under an obligation of confidentiality. The receiving party will keep all Proprietary Information disclosed hereunder confidential for a period of 7 years following the expiration or termination of this Agreement. Each party will retain ownership of its Proprietary Information including, without limitation, all rights in patents, copyrights, trademarks and trade secrets. No right or license is granted hereby to Party or its customers, employees or agents, expressly or by implication, with respect to the Proprietary Information or any patent, patent application or other proprietary right of the other Party, notwithstanding the expiration of the confidentiality obligations stated herein. Vortech agrees to use the Proprietary Information of Buyer only to provide products or services for Buyer. Buyer agrees that it will not use or disclose Vortech's Proprietary Information for any purpose besides the purchase or use of products or services under this Agreement. Buyer will not use Vortech's Proprietary Information to provide services or for the manufacture or procurement of parts that are the subjects of this Agreement or any similar parts or to cause such services to be provided or products to be manufactured or procured from any other source.

22.2. Personal Data" means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity. Supplier will: (a) treat Personal Data of all Vortech personnel and prospective Vortech personnel as Confidential Information; (b) take appropriate technical and organizational security measures as are required by Vortech to protect Personal Data; (c) use and permit employees and third parties to use Personal Data pursuant to Vortech's instructions only for purposes directly related to the performance of obligations under this Purchase Order; (d) refrain from transferring Personal Data out of the European Union unless Vortech has given its prior consent to the transfer and Supplier has satisfied any further requirements reasonably imposed by Vortech; (e) indemnify Vortech against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which Vortech may suffer or incur arising out of any breach of this Article 17.2; and (f) promptly notify Vortech about: any legally binding request for disclosure of Personal Data by a law enforcement agency (unless otherwise prohibited); any accidental or



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unauthorized processing of Personal Data; and any requests received from individuals to whom Personal Data relates, without responding to that request unless it has been otherwise authorized to do so by Vortech. If Supplier will process Personal Data that Vortech transfers from any of its affiliates in the European Union to any of its affiliates in the US pursuant to the U.S. - EU Safe Harbor Framework ("Safe Harbor Personal Data"), Supplier warrants that either (a) Supplier self-certifies to the U.S. - EU Safe Harbor Framework with respect to the processing of the Safe Harbor Personal Data and will notify Vortech immediately if its self-certification terminates for any reason, or (b) Supplier must provide at least the same level of privacy protection as required by the U.S.-EU Safe harbor Framework.

22.3. The receiving Party has no duty to protect information that is proven by written records to be: (a) publicly known at the time of disclosure or becomes publicly known through no fault of recipient, (b) known to recipient at the time of disclosure through no wrongful act of recipient, (c) received by recipient from a third party without restrictions similar to those in this section, or (d) independently developed by recipient.

23. **EXPORT AND IMPORT COMPLIANCE:** Buyer is responsible for compliance with all import and export control laws and regulations. Buyer will obtain import, export, and re-export approvals and licenses required for Products, transfers, services and technical data delivered and will retain documentation evidencing compliance with those laws and regulations.

Vortech will not be liable to Buyer for any failure to provide Products, services, transfers or technical data as a result of government actions that impact Vortech's ability to perform, including:

1. The failure to provide or the cancellation of export or re-export licenses; or
2. Any subsequent interpretation of applicable import, transfer, export or re-export law or regulation after the date of any order or commitment that has a material adverse effect on Vortech's performance; or
3. Delays due to Buyer's failure to follow applicable import, export, transfer, or re-export laws and regulations.

If Buyer designates the freight forwarder for export shipments from the United States, then Buyer's freight forwarder will export on Buyer's behalf and Buyer will be responsible for any failure of Buyer's freight forwarder to comply with all applicable export requirements. Vortech will provide Buyer's designated freight forwarder with required commodity information.

24. **COMPLIANCE WITH LAWS:** Buyer shall comply with all local laws and regulations applicable to the installation, use, or import of all Products delivered hereunder. As a condition of purchase, Buyer shall comply with all applicable export control laws and regulations of the United States, the European Union and any other country having proper jurisdiction and shall obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Products and technology delivered hereunder. Buyer shall not sell, transfer, export or re-export any Vortech Products or technology for use in activities which involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use Vortech Products or technology in any facility which engages in activities relating to such weapons.

25. **TERMINATION:** A Party may terminate this Agreement and any or all unperformed Orders by giving written notice to the other party upon the occurrence of any of the following events:

(a) the other Party materially breaches this Agreement and fails to remedy the breach within 60 calendar days after receipt of written notice that specifies the grounds for the material breach;

(b) the other Party fails to make any payment required to be made under this

Agreement when due, and fails to remedy the breach within 7 calendar days after receipt of written notice of non-payment; or

(c) any insolvency or suspension of the other Party's operations or any petition filed or proceeding made by or against the other Party under any state, federal or other applicable law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors or other similar proceedings.

Termination does not affect any debt, claim or cause of action accruing to any party against the other before the termination. The rights of termination provided in this clause are not exclusive of other remedies that either party may be entitled to under this Agreement or in law or equity.

26. **ASSIGNMENT:** Neither Party will assign any rights or obligations under this Agreement without the advance written consent of the other Party, which consent will not be unreasonably withheld. Either Party may assign this Agreement to any affiliate of such party or in connection with the sale or transfer of all or substantially all of the assets of the product line or business to which it pertains. Any attempt to assign or delegate in violation of this clause will be void.

27. **WAIVER:** The failure of either Party to enforce at any time any of the provisions of this Agreement will not be construed to be a continuing waiver of any provisions of the Agreement.

28. **HEADINGS AND CAPTIONS:** Headings and captions are for convenience of reference only and do not alter the meaning or interpretation of this agreement.

29. **PUBLICITY:** Neither party will issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of the other party, which approval will not unreasonably be withheld, except that either party may make any public disclosure it believes in good faith is required by applicable law or any listing or trading agreement concerning its or its affiliates' publicly-traded securities. Notwithstanding the foregoing, if either party, or a third party, makes a public disclosure related to this Agreement that is false or damaging to a party, the aggrieved party will have the right to make a public response reasonably necessary to correct any misstatement, inaccuracies or material omissions in the initial and wrongful affirmative disclosure; and, provided, further, that no party will be required to obtain consent pursuant to this section to the extent any proposed release or announcement is consistent with information that has previously been made public without breach of its obligations under this section.

30. **DISPUTE RESOLUTION – CHOICE OF LAW AND FORUM:**

Vortech is a legal entity formed in the United States and the construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the State of California, U.S.A. without regard to or application of its principles or laws regarding conflicts of laws, and including the United Nations Convention on the International Sale of Goods of 1980 and any amendments or successors thereto. Any dispute not resolved by the parties shall be subject to the exclusive jurisdiction of the courts of California.

31. **SEVERABILITY:** If any provision or portion of a provision of this Agreement is determined to be illegal, invalid, or unenforceable, that portion or provision will be stricken and the validity and enforceable of the remaining provision will not be affected.

32. **SURVIVAL:** All provisions of this Agreement which by their nature should continue in force beyond the term of this Agreement will remain in force after expiration or termination of this Agreement.



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33. LIMITED WARRANTY:

Nonconformance ("Nonconformance") for the purpose of this Section means failure to comply with the applicable Limited Warranty in force with respect to such Product within the Warranty Period. Normal wear and tear, regular overhaul, and periodic maintenance do not constitute Nonconformance. Products in which there is no defect found will not be considered Nonconforming.

The Warranty Period ("Warranty Period") for all Products shall begin on the later of (i. the date on which the Product first enters a retail distribution/sales channel, or (ii. the date of delivery to the end user provided Buyer presents the end user's retail invoice demonstrating such date of delivery.

Subject to all terms, conditions and exclusions in this document, Vortech provides the following warranties to the original purchaser of certain Vortech products. In this document, "Buyer", "You", "Yourself", and "Your" mean only the original purchaser of the warranted Vortech product covered by one or more of these warranties. The terms of this LIMITED WARRANTIES PROGRAM cannot be amended orally or in writing by any Vortech employee, representative or agent, and any promises inconsistent with this limited warranty are void and unenforceable against Vortech.

33.1. VORTECH AND PAXTON PRODUCED STREET LEGAL SUPERCHARGER SYSTEMS LIMITED WARRANTIES

-THREE YEARS ON STREET LEGAL SUPERCHARGERS IN ENGINE OIL- FED, NON V-3/SL TYPE SYSTEMS

-ONE YEAR ON MOST OTHER SYSTEM COMPONENTS

Vortech warrants to You that the superchargers included by Vortech in its street legal supercharger systems listed on its current Vortech Engineering Application guide will be free from defects in materials and workmanship in the bearings, gears, gear case, impeller and volute for three years after the date of Your purchase of the system. The balance of the system, excluding fuel system and other Forcepower parts, will be free from defects in materials and workmanship for one year after the date of Your purchase of the system. The following requirements apply to this warranty:

- » You must be the original purchaser of the Street Legal Supercharger System.
- » You must reside and use the Vortech product within the United States or Canada.
- » The supercharger may not have been altered, disassembled, or modified in any way.
- » The supercharger drive pulley must not be changed and the original pulley seal

must be intact.

- » The original Vortech serial number tag must not be removed, altered or replaced.
- » You must change the engine oil and oil filter at least every 3,000 miles, using a minimum SH rated oil or synthetic lubricant, regardless of the vehicle, filter or oil manufacturer's recommendations for oil change intervals (engine oil-fed, non V-3/SL type units only)
- » You must remove, inspect and clean the oil inlet fitting to the supercharger every 12,000 miles (engine oil-fed, non V-3/SL type units only)
- » You must change the supercharger fluid at least every 7,500 miles using only Vortech supplied lubricating fluid (self-lubricated V-3 type units only)

33.2. VORTECH AND PAXTON INDIVIDUAL SUPERCHARGERS

-ONE YEAR LIMITED WARRANTY

Vortech warrants to You that Vortech's individual non-heavy duty supercharger, including those used by other companies in their own supercharger kits or systems will be free from defects in materials and workmanship in the bearings, gears, gear case, impeller and volute for one year after the date of Your purchase of that supercharger.

33.3. VORTECH V-3/SL SUPERCHARGERS

-ONE YEAR LIMITED WARRANTY

Vortech warrants to you that the Vortech V-3/SL (Self-lubricated). Supercharger ("Product") is free from defects in materials or workmanship for one year from the date of purchase by Buyer, and regardless of the mileage accrued on the Product in the year from the date of purchase (V-3/SL only: when Product is purchased in a street legal supercharger system, an additional extended term warranty for up to three years and subject to the same conditions herein may be purchased for an additional sum. Please see your Vortech representative for further details.

33.4. VORTECH AND PAXTON SUPERCHARGER UPGRADES, MAJOR REPAIRS AND MINOR REPAIRS

- SIX MONTH LIMITED WARRANTY

Vortech warrants to You that Vortech superchargers that are upgraded or receive a major or minor repair by Vortech ("Vortech Modified") will operate as designed or intended by Vortech and be free from defects in materials and workmanship in the gears, gear case, impeller and volute for six months after the earlier of the date the Vortech Modified supercharger is received by You from Vortech, or five (5) days after Vortech shipped the Vortech Modified supercharger back to You. This warranty runs concurrently with the supercharger's original purchaser warranty. This means the Six-month warranty does not extend the original warranty period for the supercharger or supercharger system, whichever is applicable.

33.5. FOR LYSHOLM PRODUCED STREET LEGAL SUPERCHARGER SYSTEMS LIMITED WARRANTIES (ONLY).

- ONE YEAR ON STREET LEGAL SUPERCHARGERS IN SYSTEMS

- 90 DAYS ON MOST OTHER SYSTEM COMPONENTS

Lysholm warrants to You that the superchargers included by Lysholm in its street

legal supercharger systems listed on its current Lysholm Application guide will be free from defects in materials and workmanship in the bearings, gears, gear case, rotors and housing for one year after the date of Your purchase of the system. The balance of the system, excluding fuel system and other manufactured parts, will be free from defects in materials and workmanship for 90 days after the date of Your purchase of the system. The following requirements apply to this warranty:

- » You must be the original purchaser of the Street Legal Supercharger System.
- » You must reside and use the Lysholm product within the United States or Canada.
- » The supercharger may not have been altered, disassembled, or modified in any way.
- » The supercharger drive pulley must not be changed and the original pulley seal

must be intact.

- » The original Lysholm serial number must not be removed, altered or replaced.
- » You must change the supercharger fluid at least every 30,000 miles using only Lysholm supplied lubricating fluid.



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33.6. LYSHOLM INDIVIDUAL SUPERCHARGERS

- 90-DAY LIMITED WARRANTY

Lysholm warrants to you that the Supercharger ("Product") is free from defects in materials or workmanship for one year from the date of purchase by Buyer, and regardless of the mileage accrued on the Product in the year from the date of purchase.

33.7. LYSHOLM SUPERCHARGER UPGRADES, MAJOR REPAIRS AND MINOR REPAIRS

- 90-DAY LIMITED WARRANTY

Lysholm warrants to You that Lysholm superchargers that are upgraded or receive a major or minor repair by Lysholm will operate as designed or intended by Lysholm and be free from defects in materials and workmanship in the gears, housing and rotor for 90 days after the earlier of the date the supercharger is received by You from Lysholm, or five (5) days after Lysholm shipped the Lysholm Modified supercharger back to You. This warranty runs concurrently with the supercharger's original purchaser warranty. This means the 90-day warranty does not extend the original warranty period for the supercharger or supercharger system, whichever is applicable.

33.8. VORTECH AND PAXTON COMPUTER MODULE, HAND HELD FLASH PROGRAMMER

- ONE YEAR LIMITED WARRANTY

Vortech warrants to you that the Vortech Computer Module, Hand Held Flash Programmer unit will be free from defects in material and workmanship for one year after the date of Your purchase.

Crane Electronics, MSD Electronic Components, MAF signal massagers and other electronic components and parts produced by third parties are warranted and serviced exclusively by their respective manufacturers and must be returned to them for any warranty consideration.

33.9. FORCEPOWER PARTS

- NINETY DAY LIMITED WARRANTY

Vortech warrants to You that Forcepower Parts sold by Vortech under the Vortech brand name will be free from defects in material and workmanship for ninety days following, as well as any additions that may be added to the Forcepower line:

- » Fuel pumps
- » Fuel pump voltage booster
- » Powercooler systems
- » Oil feed and oil drain components
- » Air valves
- » Fuel rails
- » Mounting components
- » Intake manifolds
- » Supercharger drive pulleys and components
- » Mass air flow units
- » Fuel management units
- » Idler pulleys

- » Fuel filters
- » Air inlet and discharge systems
- » Power pulley packs

34. THE FOLLOWING WARRANTY EXCLUSIONS APPLY TO ALL VORTECH AND PAXTON LIMITED WARRANTIES

Vortech's Limited Warranties do not cover any of the following damages or items:

- » damages to and/or failure of any non-Vortech component or equipment on a vehicle including, but not limited to, the engine, electrical system, transmission and differentials;
- » damage caused by Acts of God, normal wear and tear, or damage to a vehicle or engine caused by backfire, tuning by others, collision and/or engine failure;
- » any costs incurred for towing or downtime of the vehicle;
- » any labor costs to diagnose problems or to remove or replace the Vortech products; or
- » any damage caused by the use of another company's fittings or pulleys.

The following non-Vortech occurrences, uses and modifications are considered misuse of the Vortech product and invalidate all Vortech warranties:

- » Any disassembly or attempted disassembly of any Forcepower parts.
- » Any disassembly or attempted disassembly of a supercharger, volute, gearcase or other components.
- » Damage resulting from ingestion of debris by the supercharger.
- » Improper supercharger installation.
- » Improper drive pulley/belt combination on the supercharger.
- » Excess belt tension on the supercharger belt drive.
- » Over-speeding the supercharger.
- » Restricted or blocked supercharger air intake resulting in excessive negative pressure at the air inlet.
- » Damage due to improper supercharger sizing and compressor surge, or by tuning.
- » Free revving of the engine with the belt driving the supercharger in place.
- » Improper size, installation, adjustment or lack of a bypass valve.
- » Restricted, or lack of, oil supply to the supercharger.
- » Improper installation of, or blocked or restricted, oil drain line (non V-3/SL type units).
- » Supercharger gearcase fluids overfill (self-lubricated V-3/SL type units only).
- » Excessive engine crankcase pressures to a "cold start-up" condition (below 25° F) without the use of an engine block heater/aftermarket engine blanket.

- » Dirty or contaminated engine oil.
- » Improper supercharger fluid change interval.
- » Removing or defacing the original Vortech serial number tag.

35. EXTENT OF WARRANTY – ADDITIONAL EXCLUSIONS AND LIMITATIONS

The duration of any and all implied warranties is limited to the duration of this express warranty. All incidental and consequential damages are hereby excluded. Some states do not allow limitations on how long an implied warranty lasts, or exclusion or limitations of incidental or consequential damages, so the above limitations or exclusions may not apply to You. This warranty gives You specific legal rights, and You may have other rights that vary from state to state.



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THERE ARE NO OTHER WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF AND THE WARRANTY DESCRIBED HEREIN SHALL BE IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

36. REMEDIES

Your sole remedy for the above warranties is the repair or replacement of the defective product, at Vortech's sole discretion.

37. WARRANTY CLAIM PROCEDURES

If a Vortech product is within the warranty period and You wish to make a claim, please follow the following procedure:

1. Call Vortech at (805) 247-0226, ask for the Product Support Department and have the following information available:

- » Serial number of the supercharger (if applicable).
- » Copy of original invoice on which the product was purchased (must be dated and show retail store name).
- » Year, make, model, vehicle mileage and engine specifications of the vehicle.
- » Number of miles on the Vortech product.
- » Description of the problem.

2. Vortech will then offer suggestions to help You in troubleshooting or will issue a Return Authorization ("RA") number to return the product for warranty evaluation.

3. If You have been issued an RA number, You must "safety package" each product, which means You must plug or seal all oil and air openings, place the properly plugged and sealed product(s) within a shipping box strong enough to hold the weight of the product(s) and to maintain its shape during shipping with adequate packaging material so that the product(s) will not hit other product(s), component(s), or the side of the box during shipping. You may want to use a professional shipping company. Clearly mark the RA number in large (approximately 2") alphanumeric characters in two locations on the outside of the box with a bold marker.

4. Include in the shipping box the following items:

- » Serial number of the supercharger (if applicable).
- » Copy of original invoice on which the product was purchased (must be dated and show retail store name).
- » Year, make, model, vehicle mileage and engine specifications of the vehicle.
- » Number of miles on the Vortech product.
- » Description of the problem you observed.
- » Return authorization number RA.
- » Address to which the product is to be shipped after inspection.

5. Issuance of an RA does not mean that the Vortech Product will be covered by one or more of the Vortech limited warranties. **If the Vortech product is not covered by a warranty, then You will be charged, and You agree to pay, the minimum inspection charge plus any charges of repair or replacement authorized by You orally or in writing.**

6. Ship the properly safety packaged and marked box via United Parcel Service (800) 742-5877, www.ups.com, or other carrier, prepaid and insured for the retail value of the product being returned to:

Vortech Engineering, Inc.
Product Support Department

1650 Pacific Ave.
Channel Islands, CA 93033
RA number _____

If a Vortech limited warranty applies, Your product will be repaired or replaced at Vortech's option and returned to You, freight prepaid (excluding any international taxes, tariffs, customs and/or duties which must be paid by You), via UPS ground service. If a Vortech limited warranty does not apply, we will advise You of the reason for denial and explain the costs involved in repair or replacement of the Vortech product. After relaying this information Vortech will, at Your option, either proceed with the repairs as quoted or return the Vortech product(s) in the condition it/they are in at the time of inspection of the warranty evaluation by Vortech. If the warranty does not apply and You do not want Vortech to repair or replace the Vortech product, You will still be charged a disassembly and inspection charge for the product and the product will be returned UPS COD, insured for the new retail replacement value. This means You must pay any disassembly and/or inspection charges, return shipping, and insurance charges to UPS before the Vortech product will be returned. The minimum supercharger inspection charge is \$100. The minimum charge for all other product inspection is \$25.

38. PERFORMANCE CONSUMER'S BILL OF RIGHTS

Most Vortech supercharger systems are designed to meet CARB requirements for classification as 50-state legal. Street legal certification can be a lengthy process, and systems are sometimes sold by Vortech before 50-state legal classification is granted. Contact Vortech directly to confirm the current classification of Your system. The installation of Vortech products, except those identified "for racing use only" or that "may not be legal for use on public roads", do not void the new vehicle warranty nor should they cause the vehicle to fail an emissions test. Notify the vehicle manufacturer if either of these events occurs. If the vehicle manufacturer fails to honor emission/warranty claims, You may contact the Environmental Protection Agency (EPA) at (202) 260-2080 or www.epa.gov. If federal warranty protection is denied, call the Federal Trade Commission (FTC) at (202) 326-3128 or www.ftc.gov. Additional information is available at the Specialty Equipment Market Association (SEMA) website at www.sema.org

38.1. Vortech warrants to Buyer that at the time of shipment and for the Warranty Period: (i) the Product will be free from defects in workmanship and materials, and (ii) the Product will comply with the drawings, specifications, vehicle applications, and vehicle operating conditions set forth in the applicable Supercharger instructional manual.

38.2. Services will be performed in a competent and professional manner, by qualified personnel under the direction of and control of Vortech, and in accordance with industry standards.

38.3. This Limited Warranty does not apply to prototype, development, and pre-production products. All prototype, development, and pre-production products are accepted by Buyer on an "AS IS" basis with no warranties whatsoever. Furthermore, Vortech shall not be responsible for any Nonconformance if the Product has been exposed or subjected to any:

- a. use of the Product on an engine, vehicle, or vehicle application other than specified in the applicable Supercharger instructional manual; or
- b. operation of an engine, vehicle, or vehicle application outside of the limits and operating parameters including, but not limited to, pressures, rotational speed, or temperature specified in the applicable Supercharger Instructional manual; or
- c. maintenance, repair, overhaul, installation, storage, operation or use, which is improper or not in accordance with Vortech's instructions, manuals, or specifications; or



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d. use of the Product in racing or competition vehicles of any kind, or for other than automotive purposes such as but not limited to aerospace or marine use, or other use exceeding the limitations established by Vortech, or are installed on engines, or vehicles, or vehicle applications not specifically approved by Vortech; or

e. alteration, modification, including by "tuning," or repair by anyone other than Vortech or those specifically authorized by Vortech; or

f. accident, contamination, foreign object damage, abuse, neglect or negligence after shipment to Buyer; or

g. use of counterfeit or replacement parts that are not manufactured or approved by Vortech for use in Vortech's manufactured Products; or

h. damage caused by failure of any hardware or software not supplied by Vortech or a Vortech supplied Product not under warranty.

38.4. This Limited Warranty shall not apply to ordinary or normal wear and tear resulting from use of the Product during the Warranty Period including without limitation any failure of the product to meet calibration settings or other tolerances set forth in applicable drawings. It is the responsibility of the Buyer to conduct testing to ensure that the engine or application in which Vortech's Superchargers are installed meet emission standards or any other relevant standards notwithstanding normal or ordinary wear and tear.

38.5. For this Limited Warranty to apply, Buyer must notify Vortech of any claimed Nonconformance in writing by returning a Returned Authorization Form "RA Form" to Vortech.

a. The RA Form must be received by Vortech within ninety (90) days of Buyer's discovery of any claimed Nonconformance and must contain a detailed description of any claimed Nonconformance or Buyer will be barred from any remedy under this Limited Warranty.

b. Upon Vortech's receipt of Buyer's completed RA Form, Vortech will provide Buyer with a Returned Authorization Number "RA#" Buyer must await its receipt of the RA# before returning any Product to Vortech. Vortech will return, at Buyer's expense, any Product not properly identified or associated with a RA #.

c. When Vortech requires the examination of claimed nonconforming Product, Vortech will notify Buyer as to the place of return and will await receipt of the claimed nonconforming Product before further processing the warranty claim. Buyer will ship the Product by normal ground shipment and bear the cost of shipment and risk of loss or damage to Products while in transit to Vortech. If Vortech ultimately determines that the failed part is covered under this Limited Warranty, Vortech will reimburse Buyer for the cost of ground shipment for the Product(s) found to be in Nonconformance. If Vortech reasonably determines after analysis of the returned Product that a Nonconformance does not exist, then Buyer will pay all expenses related to the improper return including, but not limited to, analysis and shipping charges.

d. Any claimed nonconforming Product must be received by Vortech within 30 days of issuance of a notice to return Product.

38.6. If Vortech determines that a Product does not conform to this Limited Warranty, Vortech may elect, in its sole discretion, to repair or replace the Product, or credit the original purchase price. In addition, Vortech will credit Buyer for standard labor and handling costs (to be agreed case by case, per applicable Product. Repair, Replacement, or credit of the original purchase price and standard labor and handling costs are the exclusive remedies under this Limited Warranty. All Products repaired

or replaced are warranted for the unexpired portion of the original Warranty Period.

In no event shall Vortech's liability exceed the aggregate sum equal to twice the amount actually paid to Vortech for Products subject to Buyer's warranty claims. The Limited Liability will apply, however, to the unlawful intent or gross negligence of the auxiliary persons of Vortech.

38.7. All credits of purchase price issued under this Limited Warranty will be accomplished only through Vortech's issuance of a credit to the Buyer's account. Under no circumstance will Buyer debit or short-pay Vortech invoices.

38.8. Buyer assumes all risks and responsibility for the Product purchased hereunder and agrees to indemnify and hold harmless Vortech against any and all claims and/or liability for damages to property or injury to persons arising from the use and/or operation of such Product if such Product, (i) has been or is being used in racing boats or racing vehicles of any kind, (ii) has been or is being used in contests or other use which imposes unusual loads upon the Product, (iii) is subjected to pressures, rotational speed, or temperature higher than those in which the Product is designed to operate, (iv) is subjected to any condition which imposes stresses upon the Product in excess of limitations set forth by Vortech, or

(v) if the Product has been or is mounted in such a manner as to be exposed to or does in fact come into contact with water, spray, mud, or other liquid or viscous substance(s) during operation of the Product, and Buyer agrees to reimburse Vortech for all reasonable costs, including attorney fees, incurred by Vortech in defending against any claim based on any of the above occurrences or conditions.

38.9. Vortech has no obligation under this Limited Warranty unless Buyer maintains records that accurately document operating time, maintenance performed and the nature of the unsatisfactory condition of Vortech's Product. Upon Vortech's request, Buyer will give Vortech access to these records for substantiating warranty claims.

38.10. In the event of any accident, occurrence or warranty claim concerning the Product, Buyer must notify Vortech promptly in writing and permit Vortech to preserve evidence, test the Product, and investigate the cause thereof. Buyer shall give Vortech prompt and continuing access to the Product for inspection and testing, to the environment and location of the Product, and shall cooperate with Vortech by promptly furnishing all relevant information, data, test results, witnesses, and other information relative to any occurrence, accident or claimed Nonconformance in the Product. Failure of Buyer to give prompt notice as required herein or to cooperate in the investigation of an occurrence, claim or accident concerning the goods, shall bar Buyer from any remedy against Vortech.

38.11. THESE LIMITED WARRANTIES AND REMEDIES ARE THE ONLY WARRANTIES AND REMEDIES AND ARE IN LIEU OF ALL OTHER WARRANTIES APPLICABLE TO THE PRODUCT. ALL OTHER WARRANTIES, WHETHER WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE ARE DISCLAIMED. NO EXTENSION OR MODIFICATION OF THIS WARRANTY WILL BE BINDING UPON VORTECH UNLESS SET FORTH IN WRITING AND SIGNED BY VORTECH'S AUTHORIZED REPRESENTATIVE.

38.12. ANY LEGAL ACTION BROUGHT FOR BREACH OF THIS WARRANTY MUST BE BROUGHT WITHIN THE EARLIER OF (i) ONE YEAR AFTER THE END OF THE APPLICABLE WARRANTY PERIOD, OR (ii) ONE YEAR AFTER THE CLAIMED NONCONFORMANCE WAS DISCOVERED BY BUYER.