

# BOSE CORPORATION, ELECTROFORCE SYSTEMS GROUP

## TERMS AND CONDITIONS

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### 1. DEFINITIONS

As used in these Terms and Conditions, "Bose" means Bose Corporation, through its ElectroForce Systems Group; "Buyer" or "You" means the person, firm or corporation from whom this order is received.

### 2. ACCEPTANCE AND AGREEMENT

The provisions set forth on this quotation and these Terms and Conditions constitute the entire agreement between Bose and Buyer and supersede all other communications between the parties, whether written or oral. ANY PROVISION OR CONDITION OF BUYER'S ORDER WHICH IS IN ANY WAY DIFFERENT FROM OR IN ADDITION TO THESE TERMS AND CONDITIONS (EXCEPT ADDITIONAL PROVISIONS SPECIFYING QUANTITY AND SHIPPING OR BILLING INSTRUCTIONS) SHALL NOT BE APPLICABLE OR BINDING UPON BOSE. No modification or waiver of the provisions shall be binding upon Bose for any purpose unless it is contained in writing, signed by an authorized representative of Bose. Retention by Buyer for over thirty (30) days of any goods delivered by Bose shall be conclusively deemed acceptance of the products in accordance with these Terms and Conditions.

### 3. CHANGES

Bose's quotation and Buyer's purchase order shall define the goods and services to be supplied. Changes to requirements will be quoted separately.

### 4. LIMITED WARRANTY AND REMEDY

Bose warrants its products to be free of defects in material and workmanship for the periods shown below:

|                             |                         |
|-----------------------------|-------------------------|
| Electronic Control Hardware | 1 year                  |
| Mechanical Hardware         | 1 year                  |
| ElectroForce Linear Motor   | 10 years                |
| Non-Bose Products           | Manufacturer's warranty |
| Software                    | As set forth below      |

All claims under Bose's limited warranty must be made in writing to Bose during the applicable limited warranty period. Bose will contact the Buyer to review the claim and determine the steps required to resolve the claim. If, during the applicable limited warranty period, Bose determines, in its sole discretion, that such product/part requires repair or replacement, Bose will repair or, at its option, replace any defective or non-conforming product/part without charge. Repair of the product/part will require the return of the product/part to a Bose repair facility. Buyer will determine the shipping method and prepay the shipping costs to the Bose facility. Bose will return the repaired or replacement product/part to Buyer without additional charge.

The limited warranty period of any product/part Bose repairs or replaces will extend until the later of (1) 90 days from the date of repair or replacement or (2) to the end of the original limited warranty period. SUCH REPAIR OR REPLACEMENT IS THE EXCLUSIVE REMEDY AVAILABLE FROM BOSE AND BOSE IS NOT RESPONSIBLE FOR DAMAGES OF ANY KIND, INCLUDING INDIRECT, INCIDENTAL AND CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OF THIS CONTRACT.

If Buyer returns the product/part during the applicable limited warranty period and Bose determines, in its sole discretion, that such product/part does not require repair or replacement, Bose will charge Buyer for costs incurred. Bose reserves the right to reject any claims for limited warranty where Bose determines, in its sole discretion, that the product/part failure was caused by Buyer-made modification(s), improper maintenance, misuse, abuse of the product or other causes not directly attributable to Bose. Furthermore, Bose reserves the right to refuse returns or limited warranty service on any product, equipment, components or software that Bose deems, in its sole discretion, to have been modified or customized in any manner.

Non-Bose products (which may include items such as computer, monitor, laser and temperature controllers) are not covered under Bose's limited warranty. The following consumables are not covered under Bose's limited warranty: tubes, bellows, heaters, thermocouples, fittings and seals. Some of these may be covered under manufacturers' warranties.

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If Buyer returns the product after the applicable limited warranty period for repair or calibration, Buyer shall pay for all necessary repair or calibration and all costs associated with shipping the product to and from Bose. All such repaired product shall have a 90-day limited warranty from the date of return to Buyer

OTHER THAN THE LIMITED WARRANTY HEREIN CONTAINED, THERE IS NO OTHER WARRANTY, WHETHER EXPRESSED OR IMPLIED (INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT) THAT SHALL EXIST IN CONNECTION WITH THE SALE OR USE OF ANY BOSE PRODUCT. BOSE SHALL HAVE NO LIABILITY FOR FAULTY OR IMPROPER APPLICATION OF ITS PRODUCTS. Bose's limited warranties shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of Bose's rendering of technical advice or service in connection with Buyer's order or the goods furnished.

### 5. MONEY BACK GUARANTEE

Bose guarantees that performance of its standard systems meets certain performance expectations. These expectations must be identified and agreed to in writing between Buyer and Bose prior to order placement. Buyer has up to 60 days after delivery to note and submit in writing any non-performance issues. Bose then has another 60 days to remedy the performance issue(s) ("Cure Period"). If at the end of the Cure Period the performance issues are still not remedied, Buyer may return the standard equipment for a full refund as long as such standard equipment has not been modified or customized in any manner.

Any special system performance validation tests must be agreed to in writing at the time of order and will be charged on a time and material basis at Bose's standard rates.

### 6. TITLE AND DELIVERY

Shipment of goods within the United States shall be delivered F.O.B. destination or as accepted in the purchase order. Bose shall retain a security interest until receipt of payment from Buyer. Title passes upon final payment to Bose.

Shipment of goods for export from the United States shall be delivered F.O.B. Bose's facility Eden Prairie, Minnesota or as accepted in the purchase order. Liability for loss or damage shall pass to Buyer upon Bose's tender of delivery of the goods to a carrier for shipment to Buyer. If loss or damage occurs during shipment, Buyer shall not be relieved of any obligation to pay costs of insurance, transportation, import duties, taxes or any other expenses incurred for licenses or clearances required at port of entry and destination. Bose shall retain a security interest until receipt of payment from Buyer. Title passes upon final payment to Bose.

### 7. CONTINGENCIES

Bose shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control of either Bose or Bose's suppliers, including but not limited to war (whether an actual declaration is made or not), sabotage, insurrection, riot or act of civil disobedience, act of a subdivision, judicial action, labor dispute, accident, fire, explosion, flood, storm or the like. If any such contingency occurs, Bose may at its discretion allocate production and deliveries among Bose's customers.

### 8. CANCELLATION

Orders are considered firm. Orders may not be cancelled except upon Bose's written approval, which shall be subject to the Buyer's payment of Bose's reasonable cancellation charges. Such charges may include all reasonable costs incurred by Bose in preparing to meet the Buyer's anticipated delivery schedule, including, without limitation, commitments by Bose to its suppliers, and the cost of inventory (raw materials, work in progress and finished goods) allocated to the Buyer's order.

### 9. INDEMNIFICATION

To the extent permitted by law, buyer agrees to indemnify and hold harmless Bose from any judgments, orders, awards, costs and expenses (including attorney's fees) and claims on account of damage to property (including specimens) or bodily injury (including death) which may be sustained by Buyer, Buyer's employees or third persons, arising out of or in connection with or resulting from use of products manufactured by Bose and purchased hereunder.

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### 10. TERMS AND METHOD OF PAYMENT

Standard Terms are 50% upon order, and 50% on shipment.

50% upon order payment shall be due upon receipt of invoice, net 10. If payment is not received within 10 days of invoice, Bose reserves right to extend delivery schedule by duration that payment is late.

50% upon shipment payment shall be due upon invoice, net 30. Bose reserves the right to assess a late payment charge of 1.5% per month on the unpaid balance of items shipped. Payment shall be made without regard to Buyer's completion of inspection of goods. If shipment of a completed product is delayed due to Buyer's request, invoicing will be issued at the time Bose was prepared to make shipment. Goods held thereafter in compliance with such request are at Buyer's sole risk and expense.

All amounts invoiced shall be due when invoiced. Special Terms may be arranged as requested and quoted, but must be made in writing signed by Bose.

International orders require a letter of credit.

If in the judgment of Bose the financial condition of the Buyer, at any time, does not justify continuance of production or shipment to terms of payment specified, Bose may require full or partial payment of any completed shipment prior to further shipment.

### 11. TAXES

Responsibility for all federal, state and local taxes imposed on the sale or use of any of the products purchased shall be borne by the Buyer, unless exempt certificates are received prior to shipment.

### 12. PATENTS

Bose shall defend any suit or proceeding brought against the Buyer insofar as such suit or proceeding is based on a claim that goods manufactured and supplied by Bose to Buyer constitutes direct infringement of any duly issued United States patent, and Bose shall pay all damages finally awarded against Buyer, provided that Bose is promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given authority, information and assistance (at Bose's expense) necessary to defend or settle said suit or proceeding. Bose shall have exclusive control over defense of such action. Notwithstanding the foregoing, Bose shall not be obligated to defend or be liable to Buyer or any other party if the infringement arises out of compliance with Buyer's specifications, or from a combination of, an addition to, or a modification of the goods after delivery by Bose or from use of the goods. The obligations of Bose shall not apply to any infringement occurring after Buyer has received notice alleging infringement unless Bose has given written permission for such continuing infringement. If infringement is alleged prior to completion of delivery of goods, Bose may decline to make further shipments without being in breach of this contract. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR PATENT INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY.

### 13. WAIVERS

Failure by Bose to insist upon performance of any of these Terms and Conditions in any one instance shall not be construed as a waiver of such terms and conditions and shall not affect the right of Bose thereafter to enforce each and every term and condition.

### 14. STORAGE

Any detention, demurrage, storage or auxiliary charges assessed by carriers or warehousemen resulting from Buyer's requirement for special service or Buyer's failure to accept delivery in a timely manner shall be paid by Buyer.

### 15. CHOICE OF LAW

The domestic law and regulations of the Commonwealth of Massachusetts, without giving effect to any choice or conflict of law provision, shall govern the interpretation and performance of all transactions.

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### 16. AFFIDAVITS AND CERTIFICATES

Certificates of compliance, conformance, or chemical analysis shall not be provided unless Buyer's detailed requirements are stated on the face of Buyer's order. Bose reserves the right to charge an additional fee for any such certificates issued.

### 17. ASSIGNMENT

This contract shall be binding upon and inure to the benefit of the parties, and their successors, and assigns, except that Buyer may not assign this contract without the express written consent of Bose.

### 18. EXPORT RESTRICTIONS

Buyer shall comply with all applicable U.S. export control laws and regulations regarding any hardware or software provided by Bose.

### 19. RECYCLING

The product offered for sale in this proposal includes components that typically require recycling. The Buyer agrees to be responsible for treatment of any resulting Waste Electrical and Electronic Equipment (WEEE) as specified by local legislation.

### 20. GOVERNMENT CLAUSES AND CONTRACTS

Special clauses shall only be applicable if specifically quoted and accepted by written contract. Government contract clauses and any clause essentially based upon government contract regulations shall apply only to sales subject to a government contract. The terms and conditions of this sale shall include those government contract clauses - not inconsistent with terms and conditions herein - where applicable regulations require to be included in a contract or subcontract for the minimum necessary purposes of the clause.

### 21. LICENSE OF *WINTEST*<sup>®</sup> SOFTWARE

(A) Bose grants to You a non-exclusive, non-transferable (except as provided below) limited license to use the *WinTest*<sup>®</sup> software (the "Software") in object code form only, and to use the accompanying documentation in accordance with this Software License and the Terms and Conditions to which it is attached.

(B) The Software is owned by Bose and protected by copyright and trademark laws, and all rights, title, interest, and copyrights to the software, documentation, and any copy made by You remain with Bose. Therefore, You must treat the software like any other copyrighted material, including that:

You may:

- i. install the Software on only one computer;
- ii. make one (1) copy of the Software in machine-readable form solely for backup purposes, provided that You reproduce all proprietary notices on the copy; or
- iii. physically transfer the Software from one computer to another provided that the Software is used on only one computer at a time.

You may not:

- i. use the Software on more than one (1) computer, workstation, or file server at a time in a network or a multi-user system;
- ii. modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, or copy (except for the backup copy described above) the Software or the accompanying documentation unless You obtain prior written consent by Bose;
- iii. rent, lease or sublicense any rights in the Software or accompanying documentation in any form to any person without the prior written consent of Bose which, if given, is subject to the transferee's consent to the terms and conditions of this license; or
- iv. remove any proprietary notices, labels, or marks on the Software, documentation, or containers.

### (C) LIMITED WARRANTY

- i. Bose warrants the media disk on which the Software is furnished to be free from defects in material and workmanship for a period of one (1) year from the date of shipment. Bose shall, at its sole option and cost, either repair or replace the media disk with a new or reconditioned disk provided You return the original disk to Bose within the above limited warranty period and provided Bose determines that

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the disk is defective within the terms of this limited warranty. Bose will return disks repaired or replaced to you. Returned defective disks are the property of Bose.

- ii. Bose warrants that the Software will operate in accordance with the software documentation for a period of one (1) year from the date of delivery of the Software and such documentation.
- iii. Bose reserves the right to reject those claims under its limited warranty where it is determined that failure is caused by Your modification(s), improper maintenance, misuse or abuse of the product.

(D) The limited warranty set forth above shall not apply to any failure or deficiency which has been caused by misuse, neglect, alteration, improper installation, unauthorized repair or modification, improper testing, accident or causes external to the disk, such as, but not limited to, excessive heat or humidity, power failure, or improper installation. Bose's limited warranty as set forth above shall not be enlarged, diminished or affected by, and no liability shall arise out of Bose's rendering of technical advice or service in connection with Your order. The limited warranty set forth above is not assignable by You.

(E) POSSESSION OF THE DISKS AFTER EXPIRATION OF THE ABOVE ONE (1) YEAR LIMITED WARRANTY PERIOD IN (C) ABOVE, OR CONTINUED USE OF THE SOFTWARE BEYOND THE ONE (1) YEAR LIMITED WARRANTY PERIOD IN (C) ABOVE SHALL BE CONCLUSIVE EVIDENCE THAT THE LIMITED WARRANTY IS FULFILLED TO YOUR FULL SATISFACTION.

(F) WARRANTY DISCLAIMER – EXCEPT AS EXPRESSLY SET FORTH ABOVE, BOSE MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY AS TO THE CONDITION, MERCHANTABILITY, DESIGN, OPERATION, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF THE SOFTWARE.

(G) LIMITATION OF REMEDIES – IN NO EVENT SHALL BOSE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, COLLATERAL, EXEMPLARY, CONSEQUENTIAL OR SPECIAL DAMAGES OR LOSSES ARISING OUT OF YOUR ORDER OR DISKS DELIVERED UNDER IT OR OUT OF THE LIMITED WARRANTY, INCLUDING WITHOUT LIMITATION LOSS OF USE, PROFITS, GOODWILL OR SAVINGS, OR LOSS OF DATA, DATA FILES, OR PROGRAMS THAT MAY HAVE BEEN STORED BY THE USER. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

(H) EXPORT COMPLIANCE – You shall comply with all applicable U.S. export control laws and regulations regarding any hardware or software provided by Bose.

(I) GENERAL – If you acquired this product in the United States, this license agreement is governed by the laws of the Commonwealth of Massachusetts, without giving effect to any choice or conflict of law provision. If this product was acquired outside the United States, then local law may apply.