

**LESSMANN INC**

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## **1. TERMS AND CONDITIONS**

This Terms and Conditions of Sale and Services Agreement (“Agreement”) shall govern the sale of all products (“Goods”) and the provision of all services (including but not limited to consultation and design, programming and testing of all products developed for Customer) (the “Services”) provided by LESSMANN INC (“LESSMANN”) to its customer (“Customer”). To the extent that any purchase order or sales order issued by Customer contains any terms and conditions that conflict with this Agreement, this Agreement shall control, and such conflicting terms are deemed rejected by both parties. Similarly, any terms contained in a purchase or sales order that supplement this Agreement are rejected unless contemplated by this Agreement (e.g., description of ordered Goods, price, and estimate time and place of delivery) or a statement of work describing the Services to be provided, price, applicable milestones or date of Services (each a “SOW”). Any purchase order, sales order or SOW issued hereunder shall expressly reference this Agreement (and the Customer hereunder shall be the entity to which such order or SOW is addressed), but such reference shall not be a requirement to the application of this Agreement. Any deviation from this Agreement shall be only pursuant to an express written document executed by both parties that expressly references this Agreement and the deviation therefrom. Orders or SOWs submitted by Customer to LESSMANN are not binding upon LESSMANN unless accepted as provided in Section 2.1 or 3.1 below, as applicable.

## **2. TERMS AND CONDITIONS OF THE SALE OF GOODS BY LESSMANN**

### **2.1 ACCEPTANCE OF AN ORDER FOR GOODS**

All orders for Goods are subject to acceptance by an authorized LESSMANN representative from LESSMANN 's order processing department. Acceptance may be made by delivery of the ordered Goods or by written confirmation. The order shall include the following information including, but not limited to, purchase order number, billing address, quantities, model numbers or descriptions, price and requested shipment dates. After LESSMANN 's acceptance, Customer may not cancel its purchase order without the written consent of LESSMANN. LESSMANN may cancel and not complete its obligations under Customer's purchase order if, at any time, in LESSMANN 's opinion, all terms and conditions of this Agreement are not complied with by Customer, a force majeure event has occurred, or LESSMANN has reasonable grounds for insecurity with respect to performance by Customer. Following such cancellation, LESSMANN shall refund to Customer any portion of the purchase price Customer had paid for unshipped Goods, and Customer shall have no other rights against LESSMANN with respect to such cancellation including, but not limited to, damages as a result of such cancellation.

## 2.2 DELIVERY; RISK OF LOSS; RETENTION OF TITLE

Unless otherwise agreed by LESSMANN in writing, prices and shipments are F.O.B. LESSMANN 's parent company facility in Oettingen, Germany and do not include taxes, crating, freight, delivery, insurance, dismantling, loading, unloading, or installation. Such additional charges shall be paid by Customer. Shipment of the Goods will be as agreed by LESSMANN in writing, or if none is specified, then, LESSMANN will use its discretion in selecting the transportation method. Any designated date of shipment is not a guaranteed date of shipment. LESSMANN shall not be liable for any damages or loss, or failure of or delay in performance, for any reason, including but not limited to, acts of God, natural disaster, fire, flood, explosion, war, strike, riot, sabotage, embargo, law, regulation, ruling, order or requirement of any government or government agency or court or tribunal, military authority, shortage or failure of appropriate materials, equipment or labor, or any other cause beyond LESSMANN 's reasonable control, including delays due to Customer's acts, omissions or rush circumstances. LESSMANN reserves the right to make deliveries in installments. The delivery of part of an order shall not obligate LESSMANN to make further deliveries. LESSMANN reserves the right to allocate inventories and production when, in its opinion, such allocation is necessary. Risk of loss and damage to the Goods shall pass to Customer at the point of origin, LESSMANN 's parent Germany facility. Claims for Goods lost or damaged in transit are Customer's responsibility. If Customer requests in writing and LESSMANN agrees, LESSMANN, at Customer's expense, will endeavor to obtain insurance covering losses which are at Customer's risk such as theft, breakage, fire and water damage, and such other insurable casualties as Customer and LESSMANN may agree. LESSMANN retains title to the Goods until the full purchase price has been paid in full.

## 2.3 INSPECTION AND ACCEPTANCE OF GOODS

Customer shall inspect the Goods within two (2) business days after delivery. Failure of Customer to inspect the Goods and/or failure to notify LESSMANN in writing of any noncompliance, shortage or other reason for Customer's rejection of any of such Goods within such period and the specific grounds for rejection shall constitute irrevocable acceptance of the Goods. In cases of any Goods manufactured to Customer's specification ("Special Order") and unless otherwise agreed to in writing, all tools, models, plans, diagrams, blueprints, design worksheets or other devices and/or documents used and/or developed by LESSMANN (the "Tools") in order to fulfill any Special Order are the property and Confidential Information (as defined herein) of LESSMANN, even if the cost of development and/or manufacturing of such Tools is wholly or partially borne by Customer.

## 2.4 INSTALLATION

LESSMANN is not responsible for unloading or installation unless Customer and LESSMANN enter into a separate contract for such services.

## 2.5 WARRANTY APPLICABLE TO GOODS

LESSMANN warrants that the Goods purchased hereunder that were manufactured by LESSMANN or LESSMANN GmbH will be free from material defects in workmanship and materials for a period of 12 months from the date of shipment by LESSMANN. Any claim for warranty for such covered Goods must be made in writing to LESSMANN promptly after discovery of the defect and within the warranty period. LESSMANN and its German parent company LESSMANN GmbH specifically reserve the right to change the fabrication and design of its brushes in a manner that does not materially alter their performance. Slight measurement changes or modifications in the product design shall not be considered by LESSMANN or its Customers to be a product defect subject to a warranty claim. If LESSMANN determines the conditions of this warranty are met and that Customer has met its obligations under this Agreement including all payments, LESSMANN 's sole obligation under this warranty and Customer's sole and exclusive remedy is the repair or replacement, at LESSMANN 's option, of the defective component, free of charge. All replacement components are warranted for the remaining term of the original warranty period for the replaced component or 90

days, whichever is greater. This warranty shall not cover, and LESSMANN shall have no responsibility for, any defect not existing prior to manufacturer's shipment or resulting directly or indirectly from disaster or other force majeure, accident, abuse, misuse, negligence, vandalism, improper handling, modification, failure to properly maintain or operate in accordance with manufacturer instructions, failure to use proper materials and consumables, excess load, damage from external sources, repair attempts by persons not authorized by the manufacturer or LESSMANN, or any defect cause by Customer or any third party. This warranty does not cover normal wear and tear. This warranty does not cover Goods not manufactured by LESSMANN or LESSMANN GmbH. For Goods manufactured by others, Customer may request LESSMANN in writing to assign to Customer such rights, if any, as LESSMANN may have with respect to defects in those Goods, but, LESSMANN has no warranty responsibility as to those Goods. This warranty is not transferable. With respect to Special Orders, any defects of the Goods caused by or as a result of compliance with the Customer's specifications are excluded from Revision March 2013 2 the warranty set forth in this Section 2.5. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 2.5, LESSMANN MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES WITH RESPECT TO THE GOODS SOLD HEREUNDER, EITHER EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 2.6 RETURNED GOODS

Customer may only return Goods to LESSMANN in accordance with LESSMANN's return policy as in effect from time to time. Such policy includes the following requirements: Returns must receive written authorization from LESSMANN on LESSMANN's Material Return Authorization form. LESSMANN has no obligation to accept returned Goods, and under no circumstances will LESSMANN accept returned Goods after 60 days from the date of LESSMANN's shipment. LESSMANN may charge a restocking fee of 40% of the purchase price on any return Goods accepted by LESSMANN. No used, damaged, obsolete, or customized Goods are returnable. Only the original purchaser may be eligible to return Goods. Goods must be returned in their original packaging. Shipping is paid by the Customer. No items that are manufactured by LESSMANN's German Parent company pursuant to a Special Order may be returned to LESSMANN. In addition, the actual total of products delivered under a Special Order may deviate +/- 15% and the Customer expressly agrees to accept the deviation of the product total and the resulting change in the amount owed under the Special Order.

## 2.7 SECURITY INTEREST

To secure the payment of purchase price and any other amounts due LESSMANN from Customer, Customer hereby grants to LESSMANN a continuing and first priority security interest in the Goods covered by this Agreement and any and all proceeds thereof. Such security interest shall remain in force until payment in full of the entire purchase price for the Goods covered by this Agreement and any amounts due to LESSMANN by the Customer. LESSMANN shall have all of the rights and remedies available to a secured party, which shall be cumulative with all other rights and remedies afforded a seller of goods by law. Customer hereby designates LESSMANN as its attorney in fact to sign any financing statements required by LESSMANN to perfect this security interest. The Goods shall be and remain personal property and not fixtures whether or not attached to real property.

## 3. PAYMENT OF INVOICES

Payment for Goods shall be as agreed by LESSMANN in writing. If any services are to be performed by LESSMANN, payment for services shall be made as set forth in the applicable letter agreement between the parties. If payment terms are not separately agreed upon in writing by LESSMANN or in the applicable SOW, payment shall be by certified funds, bank wire, or bank draft due in United States dollars within thirty (30) days of LESSMANN's invoice. No cash payments will be accepted. All work shall be subject to credit approval by LESSMANN. If all of the Goods or Services are not delivered at one time, Customer shall pay the unit price applicable to the Goods or Services delivered. Each shipment of Goods shall be considered a separate and independent transaction. LESSMANN may, at

any time, decline to make shipments or deliveries of Goods, or extend additional credit, except upon receipt of payment. If in LESSMANN 's opinion, Customer's financial condition or payment history makes LESSMANN insecure as to payment for the Goods or Services, LESSMANN may require full or partial payment in advance. Any payment or charge not received when due will bear interest at the rate of 1.5% per month (18% per year) from the date due. The full purchase price set forth for the Goods or Services shall not be subject to any set-off, deduction or counterclaim of any kind. Any check or remittance received from or for the account of Customer may be accepted and applied by LESSMANN against any indebtedness or obligation owed by Customer without prejudice to or discharge or accord and satisfaction of the remainder of any such indebtedness or obligation, regardless of any condition, provision, statement, legend, notation, document or writing appearing on, referring to, or accompanying such check or remittance. Any bank charges for drafts, wire transfers, and bad checks shall be paid by Customer. Customer shall pay for all of LESSMANN 's costs of enforcing this Agreement (including reasonable attorneys' fees), including collection of amounts due for Goods or Services or otherwise under this Agreement. If Customer fails to make a payment on or before the due date for such payment, or becomes insolvent, all balances then due and owing to LESSMANN shall become due immediately, notwithstanding any agreed upon payment periods. Any orders for Goods that have been confirmed by LESSMANN, but not yet filled, shall in such cases become cancelable at the sole discretion of LESSMANN. Without prejudice to any other remedies, LESSMANN shall be entitled to immediate repossession of any Goods delivered by LESSMANN if Customer fails to timely pay for such Goods, and Customer hereby permits LESSMANN entry to Customer's premises for such purpose and waives any and all rights to notice or hearing prior to seizure of the Goods following default in payment.

#### **4. TAXES**

All fee and price quotations do not include and Customer shall be responsible for all personal property, sales, use, excise, import, duty, value added, and similar taxes applicable to the Goods sold or Services rendered, not measured by the income of LESSMANN, or Customer shall provide LESSMANN with a valid tax exemption number or certificate acceptable to the applicable taxing authorities.

#### **5. LIMITATION OF LIABILITY**

IN NO EVENT SHALL LESSMANN BE OBLIGATED OR LIABLE TO CUSTOMER OR ANY OTHER PERSON, IN TORT OR CONTRACT OR OTHERWISE, BASED UPON NEGLIGENCE, PRODUCT LIABILITY, STRICT LIABILITY, OR OTHERWISE, FOR ANY DAMAGES OR LOSSES OF ANY KIND (EXCEPT FOR THE SOLE REMEDIES PROVIDED IN SECTIONS 2.5 AND 3.7 OF THIS AGREEMENT WHERE APPLICABLE) WHETHER GENERAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, INCIDENTAL, INDIRECT, OR CONTRIBUTORY, INCLUDING BUT NOT LIMITED TO THOSE BASED UPON ANY LOSS OR DAMAGE RESULTING FROM GENERAL OR PARTICULAR REQUIREMENTS AND NEEDS OF CUSTOMER OF WHICH LESSMANN MAY HAVE HAD REASON TO KNOW, LOST PROFITS OR REVENUE, ANTICIPATED SAVINGS, GOODWILL, FACILITY OR PRODUCTION DOWNTIME, LOSS OR DAMAGE OF MATERIALS, INJURY TO PERSON OR PROPERTY OR DEATH, OR OTHERWISE. Without limiting the foregoing, LESSMANN shall have no liability or responsibility for damage or loss of use of Goods from accident, misapplication, abuse, misuse, improper or substandard unloading or installation, negligence, failure to properly maintain, extra loads, external sources, or repair attempts by unauthorized persons. Under no circumstances will the aggregate liability of LESSMANN for any cause of action related Revision August 2016 to this Agreement or the Goods or Services covered hereby exceed the net amount received by LESSMANN for the applicable Goods and/or Services giving rise to such claim. Any action or suit by Customer against LESSMANN relating to this Agreement or the Goods or Services covered hereby must be brought within one (1) year of the date of invoice for such Goods or Services giving rise to such action or suit. This is a commercial transaction.

## 6. INDEMNIFICATION

Customer agrees to indemnify and hold harmless LESSMANN, its affiliates, employees and agents, from and against any and all actual or threatened liabilities, damages, losses, demands, judgments, causes of action, claims (including intellectual property infringement claims), expenses and costs which arise from or relate to Customer's or a third party's actual or intended use of the Goods, of any software or other item to which the Goods or Services relate, or as a result of LESSMANN's compliance with Customer's specifications for the Goods or Services.

## 7. INDEPENDENT CONTRACTOR

It is understood and agreed that each party is an independent contractor and that neither party is, nor shall be considered to be, the other's agent, distributor, partner, fiduciary, joint venturer, co-owner or representative unless such an agreement is expressly made between LESSMANN and another party. Neither party shall act or represent itself, directly or by implication, in any such capacity or in any manner assume or create any obligation on behalf of, or in the name of, the other.

## 8. CONFIDENTIAL INFORMATION

### 8.1

"Confidential Information" of LESSMANN means any and all non-public information relating to LESSMANN's business, including all technical, marketing, financial, personnel, and pricing details. "Confidential Information" of the Customer means any and all non-public written or other documentary information that is marked "Confidential" or "Proprietary" or bears a marking of like import when disclosed to LESSMANN pursuant to this Agreement. Furthermore, the Confidential Information of each party includes the terms of this Agreement, but not the existence and general nature of this Agreement. To the extent that, in connection with this Agreement, either party (each, the "receiving party") comes into possession of Confidential Information of the other (the "disclosing party"), it will not disclose such information to any third party without the disclosing party's written consent.

### 8.2

In satisfying its obligations under this Section, each party shall maintain the other's trade secrets and proprietary or confidential information in confidence using at least the same degree of care as it employs in maintaining in confidence its own trade secrets and proprietary or confidential information, but in no event less than a reasonable degree of care. Notwithstanding anything to the contrary herein, the Customer acknowledges that LESSMANN in connection with the sale of Goods or the performance of the Services, may develop or acquire experience, skills, knowledge and ideas that are retained in the unaided memory of its personnel. The Customer acknowledges and agrees that LESSMANN may use and disclose such experience, skills, knowledge and ideas.

## 9. SAFETY COMPLIANCE

Customer shall use, and shall require its employees and agents to use, safety devices, guards, and proper safe operating procedures as set forth in the applicable manuals, instructions, and labels. Customer shall not remove or modify any safety device, guard, label, or warning. Customer shall comply with these requirements and all applicable safety and health laws, standards and regulations. LESSMANN shall have no liability for, and Customer shall indemnify and hold LESSMANN harmless from, any damages, obligation, loss, and expense related to Customer's use of the Goods or any item to which LESSMANN's Services relate. Customer is solely responsible for damage to

the Goods from use of qualities, grades and quantities of materials which adversely affect the operation of the Goods. Customer has the sole duty to warn and protect users and other persons with respect to the dangers of the Goods.

## **10. FORCE MAJEURE**

LESSMANN shall not be liable for any damages or loss, or failure of or delay in performance, for any reason, including but not limited to, acts of God, terrorism, natural disaster, fire, flood, explosion, war, strike, riot, sabotage, embargo, law, regulation, ruling, order or requirement of any government or government agency or court or tribunal, military authority, shortage or failure of appropriate materials, equipment or labor, or any other cause beyond LESSMANN's reasonable control, including delays due to Customer's acts, omissions or rush circumstances.

## **11. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and final, complete, and exclusive written expression by LESSMANN and Customer with respect to the Goods and Services that are the subject hereof and may not be changed, amended, supplemented, or waived (by course of dealing, usage of trade or course of performance, or otherwise) except by written agreement or change Revision August 2016 order signed by Customer and an authorized representative of LESSMANN specifically referring to being an amendment or waiver to this Agreement. Any representation, warranty, quote, confirmation, statement, price, drawing, description, data, specification, agreement, or undertaking (oral or written) not expressly set forth in this Agreement shall be superseded by this Agreement and shall not be effective or enforceable or relied upon. The terms of this Agreement are independent and severable so that if one provision is not enforceable, that does not affect the remainder of the provisions. No additional or different terms or conditions (including but not limited to Customer's purchase or service order form) shall become part of this Agreement, any new or different terms being hereby expressly rejected. Customer's retention of any Goods, deliverables, granting of access for Services to be performed, or payment of any portion of an invoice for Goods or Services constitutes Customer's acceptance of the terms of this Agreement with respect to such Goods, deliverables or Services. The failure or delay in enforcing any provision of this Agreement shall not be deemed a waiver of such provision or right. No waiver of any term of this Agreement shall be effective unless made in writing and signed by the party against whom the waiver is asserted. No such waiver shall be a continuing waiver or waiver of any other term or breach or default. The rights and obligations of LESSMANN and Customer under this Agreement are binding upon and inure to the benefit of each of their respective successors, permitted assigns, trustees, and legal representatives. Customer may not assign its rights under this Agreement without the prior written consent of LESSMANN. Customer shall, at all times, comply with all applicable federal, state and local laws and regulations. Export of deliverables and any Goods that are the subject of Services covered by this Agreement may be subject to export license control by the United States government. It is Customer's responsibility to obtain any licenses which may be required under the applicable laws of the United States, including the Export Administration Act and regulations promulgated thereunder.

## **12. GOVERNING LAW**

The laws of the State of Wisconsin, USA shall govern this Agreement and any related dispute between LESSMANN and Customer. The Wisconsin courts shall have sole and exclusive jurisdiction with respect to any matter related to this Agreement or the Goods and Services covered hereby. The application of the Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.