

General Terms & Conditions of Sale
LINAK GmbH, Nidda

§ 1 Scope of Terms and Conditions

1. Deliveries, performances and offers of LINAK GmbH – hereinafter „LINAK“ – shall be governed exclusively on the basis of the general terms and conditions set forth hereinafter. Conflicting general terms and conditions of Customer shall apply only upon express written confirmation by LINAK.
2. These general terms and conditions apply to business relations, either now or at any future date, even without express reference to them in the future, provided that Customer is a merchant as defined by the German Commercial Code.

§ 2 Conclusion of Contract

1. The conclusion of a contract requires a written agreement with Customer. This applies accordingly to side agreements, amendments and changes to the agreement as well as to waivers regarding statutory formalities for a contract to be in writing.
2. LINAK's offers shall not be binding. In the event LINAK's order confirmation is not congruent with the order, Customer must reject the confirmation without undue delay. Without Customer's rejection of the confirmation, the contract shall be binding as confirmed by LINAK.
3. Customer's offers can be accepted by LINAK within four weeks.
4. Order cancellations by Customer require a written approval from LINAK.
5. Description of goods and quality as well as informal information from LINAK regarding fitness and usability of the goods shall not constitute a warranted characteristic or guaranteed condition as defined in accordance with § 443 German Civil Code, unless expressly agreed by LINAK in writing. It is the responsibility of the purchaser to insure that the products specified meet the performance criteria defined by the purchaser for their application. LINAK A/S cannot know all the conditions under which the products will be operated. This includes but is not limited to suspension of the actuator; vibration; load curve; exposure to outside elements like temperature and moisture; duration and frequency of use, safety, etc. The suitability of the products and the products performance under such varying conditions can only be verified by testing and the responsibility for this testing and validation lies solely with the purchaser. This includes but not limited to testing the products in the purchaser's application and ensuring the suitability when connecting the purchaser's or third parties' components to LINAK products.
6. In the event an order cannot be agreed between LINAK and Customer, Customer must return to LINAK without undue delay any and all documents, prototypes and drawings supplied in connection with the offer. Prototypes and drawings supplied by Customer will only be returned by LINAK upon an express request by Customer in writing. In the event an order cannot be agreed, LINAK shall be entitled to dispose of Customer's documentation within three (3) months.

§ 3 Delivery of Goods

1. All deliveries by LINAK shall be ex works. Customer shall bear all risks regarding loss, damage of goods or delay caused during the shipment of goods. Unless expressly agreed otherwise, LINAK shall arrange for the shipment of goods with the care of a diligent merchant but does not otherwise accept shipment liabilities. Transit insurance coverage will be obtained only upon express written request by Customer and at Customer's costs.
2. The order shall be subject to both agreed delivery dates and punctual as well as proper third-party supply to LINAK. LINAK shall be entitled to partial deliveries.
3. In the event of force majeure and the delays in delivery and other performance caused by it which obstructs deliveries and other performances by LINAK or make them impossible for LINAK, LINAK shall not be responsible for any violations of deadlines and delivery dates duly agreed with Customer.
4. Customer shall bear the burden of risk of loss as of the agreed date of delivery if either Customer refuses delivery or LINAK keeps the goods based on a request by Customer for temporary safekeeping.

§ 4 Price, Payment

1. Prices quoted by LINAK in the order confirmation are exclusive of the applicable Value Added Tax as well as all other costs, such as taxes, charges, custom duties or costs in connection with the official approval of the goods and such taxes as well as other costs will all be specified in the sales invoice and added to the agreed purchase price.
2. LINAK has the right to change prices until the order has been duly confirmed. Also, LINAK has the right to change prices after the order has been duly confirmed if price changes are based on cost increases or official charges which are outside the influence of LINAK.
3. Customer is in default of payment after 15 working days from the date of the invoice. Cash discounts shall only be allowed based on prior written agreement. In the event of service or maintenance contracts, each monthly total shall become due on the seventh (7th) working day of the respective month.
4. In the event service and/or maintenance undertakings have been caused by Customer's mistake, LINAK shall be entitled to invoice reasonable and customary expenses relating to the extra work involved (e.g. work hours, travel expenses, repairs).
5. In case of default in payment by Customer, LINAK shall be entitled to charge a flat cost fee of EUR 40.00 in addition to the annual interest of 9 percentage points above the applicable Basic Rate plus applicable Value Added Tax, unless LINAK can provide proof that the actual loss is in excess thereof.
6. Customer shall be entitled to claim a set-off or refuse performance only on the basis of an undisputed or court-approved final claim. This applies to a notice of defects or a claim for damages accordingly.
7. In the event Customer's solvency deteriorates, LINAK shall be entitled to both request prepayment or a sufficient security for the invoiced amount and refuse delivery in the meantime.

§ 5 Liability for Material Defects

1. Warranty claims based on material defects require that Customer has both inspected the goods upon receipt without undue delay and informed LINAK about apparent defects in writing and with a detailed description of the defect without undue delay but not later than five (5) working days from the date of receipt. Hidden defects shall be reported upon discovery without undue delay. § 377 German Commercial Code applies to all contracts for work and services, including those according to § 651 German Civil Code, as well.

2. LINAK has the right to decide between removal of defects or replacement of goods. In the event removal of defects has been delayed or has been unsuccessful, Customer shall have the choice between rescinding the contract or requesting a reduction of the purchase price as set forth by German statutory law.
3. Customer claims relating to supplementary performance by LINAK, including shipment, travel, work and supply costs, shall be excluded as far as those expenses have been increased by the fact that LINAK's goods have been forwarded by Customer to a location different from Customer's original place of receipt.
4. Warranty claims are time barred according to German statutory law. Any agreements between Customer and its customers which exceed any claims due to defects under German statutory laws shall have no effect on LINAK's obligations owed to Customer.

§ 6 Liability

1. All Customer's claims for damages, whether based on delay, defective goods, violation of duties during contract negotiations or tort, shall be excluded, unless liability is mandatory by law. Mandatory liability exists, for example, in the event of death, personal injury, or matters of health as well as intent, gross negligence or a breach of fundamental contract obligations, which are material for the duly performance of the contract and upon which Customer has, in general, the right to rely upon, and also in case of liability pursuant to the German Code on Product Liability and in the event LINAK has agreed in writing to guarantee the condition of an object or has taken on the risk of timely supply. These terms do not constitute a change in the burden of proof to the detriment of Customer.
2. LINAK's liability for gross negligence and negligent breach of fundamental contract obligations shall be limited to foreseeable damages which are typical for the respective contract. In the event of property damages, liability based on ordinary negligence shall be limited to the scope of LINAK's insurance coverage.
3. In the event Customer is a public utility company (for example a power supply company), Customer shall have the obligation to either include LINAK in its liability insurance policy or hold LINAK harmless against claims based on ordinary negligence (including third-party claims) as far as any damages caused by disruptions in the utility supply exceeds LINAK's insurance coverage for such damages.

§ 7 Reservation of Property Rights

1. LINAK shall retain title to all goods delivered to Customer (goods subject to retention of title hereinafter referred to as „Retention Goods“) until Customer has paid all debts arising from the business relationship with LINAK. Customer shall be obligated to treat the Retention Goods with care.
2. Any treatment or processing of the Retention Goods shall be made by Customer on behalf of LINAK as producer in accordance with § 950 German Civil Code without creating any new obligations for LINAK. Goods which have been treated or processed shall also be classified as Retention Goods. In case of Customer's treatment, processing, compounding or mixing of the Retention Goods with goods of different origin for the purpose of creating a new product or a mixed product, LINAK shall retain title in proportion of its invoice prices for the Retention Goods to the invoice prices of the other goods which were subject to such treatment, processing, compounding or mixing. The partial title created hereby for LINAK shall also be classified as Retention Goods. This applies accordingly if a product of Customer must be seen as main ingredient in accordance with § 947 German Civil Code.
3. Customer shall be entitled to sell Retention Goods in the due course of its business, provided, however, that a retention of title clause forms part of the contract between Customer and its customer and that Customer's receivables relating to such sale can be treated as assigned to LINAK. In case of Customer's treatment, processing, compounding or mixing of the Retention Goods with goods of other origin, said assignment of accounts receivables shall be treated as a pro-rata assignment. In the event, a receivable forms part of a statement of account, Customer assigns herewith to LINAK a pro-rata claim of the statement of account, including a pro-rata claim of any final statement of account. LINAK accepts such assignments herewith.
4. Upon request by Customer, LINAK shall release the security based on the above assignment in advance to the extent that the viable value of such security created hereby for the benefit of LINAK exceeds LINAK's claims against Customer by more than 20 %.
5. Customer shall not be entitled to create pledges or transfer rights by way of security as far as Retention Goods are concerned. The foregoing paragraph 3 shall apply to Customer's coverage claims against its insurer accordingly.

§ 8 Protection of Industrial Property Rights

1. Drawings, samples, prototypes, software as well as the finished product and the esthetic and technical ideas which are part of it are the industrial property of LINAK and are subject to all applicable German codes relating to industrial property rights.
2. Customer shall not disclose or make drawings, samples, prototypes, and so on, available to third parties, especially LINAK's competitors, without the prior written approval of LINAK.

§ 9 Project Developments

In the event a third party brings a claim against LINAK for violation of industrial property rights, such as patents, designs, trademarks or similar rights, related to project developments of the parties, Customer shall be obligated to either reimburse or hold LINAK harmless from any costs caused hereby, including but not limited to litigation costs, court charges, damages, provided, the violation of third party rights has been caused by specifications and requirements of Customer.

§ 10 Miscellaneous

1. German law applies exclusively to contracts with Customer thereby excluding the UN Convention on the International Sale of Goods. Business terms and conditions are in accordance with the Incoterms 2010.
2. Place of performance is Nidda. Place of jurisdiction is Frankfurt am Main, Germany.
3. If any clause of these general terms and conditions is or becomes invalid or inoperative, all remaining general terms and conditions shall not be affected thereby. The Parties agree to replace the invalid or inoperative clause with a valid clause which comes as close as legally possible to the financial consequences envisioned by the Parties.