

## 1. Application

**1.1** All deliveries of products ("Products") from LINAK New Zealand Ltd, Unit G, 61 Hugo Johnston Drive Penrose, 1061 Auckland, New Zealand ("LINAK") to any purchaser ("Purchaser") shall be governed by these standard terms of sale and delivery (the "Terms") to the extent that they are not waived in writing by LINAK. LINAK's acceptance of Purchaser's order is expressly conditioned upon Purchaser's acceptance of these Terms and no addition to or modification shall be binding on LINAK unless expressly agreed to in writing.

**1.2** The international trade terms specified in "Incoterms 2020" shall apply between LINAK and the Purchaser.

## 2. Ordering

**2.1** No final agreement concerning sale or delivery shall exist between LINAK and the Purchaser until LINAK has given its acceptance as an order confirmation or other explicit written confirmation.

**2.2** If LINAK's order confirmation does not match the Purchaser's order, the Purchaser must complain immediately. Failure to do so means that the Purchaser shall be bound by the content of the order confirmation.

**2.3** Quotations, pro forma invoices and other associated correspondence shall not be binding on LINAK.

**2.4** No cancellation or alteration of orders is regarded as having been accepted until LINAK has confirmed such cancellation or alteration in writing. In case of cancellation or alteration the Purchaser shall reimburse LINAK for all reasonable costs incurred in connection with the cancellation or alteration of orders.

## 3. Terms of delivery

**3.1** All deliveries by LINAK shall be FCA Auckland (Incoterms 2020), and the Purchaser shall bear all risks in case of loss, damage or delay during transport. In the absence of any agreement to the contrary, transport shall be performed using the means LINAK deems best without any liability for LINAK.

**3.2** LINAK undertakes to take appropriate measures to deliver on time. If a delay nevertheless occurs, LINAK shall be entitled to postpone the time of delivery for up to 30 days without the Purchaser being entitled to cancel the order. A late delivery shall not entitle the Purchaser to claim compensation.

## 4. Tax and duty

**4.1** In addition to the purchase price, the Purchaser shall pay any and all tax, duty or tariffs which may be levied on the Products as well as any necessary expenses connected with the approval of the Products.

## 5. Prices

**5.1** LINAK reserves the right to change prices until a final order confirmation has been issued. LINAK also reserves the right to change the prices of confirmed orders in case of changes in production costs, salaries/wages, cost of material, sub-supplies, exchange rates, expenses imposed by public authorities, and the official discount rate.

## 6. Terms of payment

**6.1** Payment shall be made no later than at the time of delivery FCA Auckland (Incoterms 2020), unless otherwise specifically agreed in writing.

**6.2** If payment is delayed, LINAK shall be entitled to claim 2% interest on the purchase price per month or part of a month, as well as to withhold all future consignments. LINAK shall also be entitled to demand that the Purchaser pays all reasonable costs incurred in connection with legal or non-legal action taken with the purpose of collecting payment.

**6.3** The Purchaser shall not be entitled to withhold any payments in respect of alleged claims against LINAK, unless such claims have been accepted in writing by LINAK in advance.

**6.4** If the Purchaser fails to take delivery of consignments or part-consignments, which are ready for delivery on the agreed day, the Purchaser shall nonetheless pay for the Products as if delivery had taken place, in the absence of any agreement to the contrary.

## 7. Retention of title to Products

**7.1** Legal and beneficial ownership in the Products shall remain with LINAK until LINAK has received full payment, of all monies owed by the Purchaser. Until the Purchaser has paid all monies owing to LINAK:

- The Purchaser will hold the Products supplied as bailee for LINAK, provided that the Purchaser may re-sell the Products in the ordinary course of business;
- The Purchaser will store the Products separately, at all times ensure the Products are protected and insured, and identify the Products as LINAK's property;
- The Purchaser will keep written records of all dealings with the Products;
- The Purchaser will ensure that the proceeds of any resale are held on trust for LINAK, paid into a separate account, and not mixed with any other funds;
- All claims the Purchaser holds against third parties in respect of the Products are hereby assigned by way of security to LINAK;
- The Purchaser must not deal with any Products in any way that may adversely affect LINAK's interests;
- Without prejudice to any other rights or remedies LINAK may have, the Purchaser irrevocably grants LINAK and its authorised agents the right to enter the Purchaser's premises at any time to take possession of the Products, but only where the Purchaser has breached these Terms or LINAK considers that the Products in the Purchaser's possession are "at

risk" within the meaning of the Personal Property Securities Act 1999 ("PPSA"). Purchaser agrees to hold LINAK harmless against any costs, loss, or liability incurred by LINAK in exercising this right;

- If any of the Products become mixed, intermingled, or otherwise incorporated into any other goods (through or by whatever process), such that the identity of the Products is lost, the security interest created by this clause continues in the goods in accordance with the PPSA;

- If any of the Products are installed in, or affixed to, and become an accession to, other goods, the security interest continues in the accession in accordance with the PPSA.

**7.2** By assenting to these Terms, the Purchaser grants a security interest (by virtue of the retention of title provisions above) to LINAK in all Products supplied under these Terms, whether present or after acquired property, to secure payment in full, of all amounts due to LINAK in relation to the supply of Products.

**7.3** The Purchaser undertakes to sign any further documents and/or provide any further information (which information the Purchaser warrants to be complete, accurate and up-to-date in all respects) which LINAK may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register.

**7.4** The Purchaser undertakes to give LINAK not less than 14 days prior written notice of any proposed change in the Purchaser's name and/or any other change in the Purchaser's details (including, but not limited to, changes in the Purchaser's address, facsimile number, trading name or business practice). The Purchaser waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest granted to LINAK.

**7.5** To the maximum extent permitted by law, the Purchaser waives its rights and, with LINAK's agreement, contracts out of its rights under the sections referred to in sections 107(2)(c) to (e) and (g) to (i) of the PPSA. The Purchaser agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to any contract made under these Terms and, with LINAK's agreement, contracts out of such sections.

## 8. Intellectual property rights

**8.1** LINAK reserves all rights to the Products and their design. Products may not be copied or given to any third parties with a view to copying the Products. All drawings and descriptions sent to the Purchaser shall remain the property of LINAK, and may not be copied, transferred or in any other way communicated with any third parties without the consent of LINAK.

**8.2** If the provision in clause 8.1 is violated, the Purchaser shall pay LINAK compensation for any loss attributable to unlawful copying; and all costs incurred in connection with the legal and non-legal pursuit of LINAK rights.

**8.3** In case of a development project should a third party claim intellectual property rights such as patents, design patents, copyrights, trademarks and similar rights against LINAK, the Purchaser of the project shall indemnify LINAK all costs such as legal and court costs and any damages resulting from such claim provided that the claim is a result of the Purchaser's specifications and requirements.

## 9. Embedded Software

**9.1** If Products are delivered with embedded software, LINAK provides the Purchaser with a non-exclusive, software license in the form of a right to use such software solely for the purposes set out in applicable Product specification. Aside from this, the Purchaser obtains no rights in the form of license, patent, copyright, trademark or other proprietary right connected with such software. The Purchaser shall not obtain any rights to software source code nor shall the Purchaser attempt to access such source code.

**9.2** If Products are delivered with embedded software, the Purchaser shall be responsible for keeping the software up to date following delivery, by installing necessary updates offered by LINAK.

## 10. Technical changes and approval

**10.1** LINAK reserves the right to make technical and other changes in Products including ordered Products without notice, if it can be done without changing the agreed technical specifications.

**10.2** LINAK is not liable for absence or misinterpretation of information in catalogues and other written material drawn up by LINAK.

**10.3** The Purchaser shall be fully liable for its application, use and operation of any Product, whether or not such application, use or operation has been approved by LINAK. It is the responsibility of the Purchaser to ensure that the agreed technical specifications meet the performance criteria defined by the Purchaser for their application. LINAK cannot assess the impact of all the conditions under which the Products shall 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 is 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 the Products. Products may not in any circumstances be used in aircraft or in connection with nuclear power of any kind.

**10.4** The Purchaser undertakes to apply for all necessary national or international approvals of any application in which Products are used.

## 11. Complaints

**11.1** If the Purchaser wishes to claim that the delivered Products are defective, the Purchaser must complain immediately to LINAK.

**11.2** The Purchaser shall inspect consignments immediately on receipt to check for any shortages, defects, errors or any other deviations from the contract. If the Purchaser wishes to complain to LINAK, the Purchaser shall submit such complaints to LINAK no later than 5 days after receipt of the Products if the relevant defects could have been discovered during the Purchaser's inspection on receipt of the delivered Products.

**11.3** Any damage or loss occurring during transport shall be of no concern to LINAK and claims in such circumstances may only be made against the transport agent concerned.

## 12. Cost-free repairs and replacement

**12.1** At its sole discretion, LINAK agrees to repair, replace or credit Products that are found to be defective, at time of delivery, due to faulty manufacture, design and/or defective materials, provided that Purchaser makes a claim to LINAK within 18 months from the date of production as stipulated on the Product label, unless otherwise agreed (the "Claim Period"). If batteries are provided by LINAK as a part of a Product, such batteries are subject to the aforementioned 18 month Claim Period.

**12.2** If Purchaser discovers defects within the Claim Period, the Purchaser shall in writing inform LINAK of such alleged defects and the Product shall then be sent to LINAK or to any other address determined and designated by LINAK with freight and insurance paid by the sender, accompanied by a description of the reason for such return. If LINAK accepts that the Product is defective and the Purchaser has complained within the Claim Period, LINAK shall dispatch the Product after replacement or repair free of charge. LINAK shall reimburse the Purchaser for the freight costs incurred by the Purchaser in sending the defective Product to LINAK's place of business, but only if LINAK has approved in writing of the method of dispatch and the costs incurred prior to the dispatch of the Products. If, however, LINAK's analysis shows that the Product is not defective, LINAK may return the Product to the Purchaser at Purchaser's cost and risk, and LINAK may charge a fee for the time and materials used in analysing the allegedly defective Product.

**12.3** Re-delivery or repair under this clause shall under no circumstances be performed outside LINAK places of business, unless otherwise agreed by LINAK. LINAK shall not in any circumstances remove, replace or remount Products which have been incorporated in other non-Products.

**12.4** Excluded from cost-free repairs and replacements are Products delivered with embedded software where claims arise from (i) combination of Products with any hardware or software not manufactured or not provided by LINAK; (ii) the Purchaser's specifications being different from the agreed written specifications; (iii) nonconformity not discovered by LINAK during release and quality testing nor by Purchaser during Purchaser's quality testing and approval; (iv) failure to update such software as necessary; and (v) any alteration or modification to Products, except those alterations or modifications made by LINAK or specifically agreed to by LINAK in writing.

**12.5** In case of defects in software covered by clause 12.1, cf. clause 12.4 the Purchaser's sole remedy and LINAK aggregated liability shall be limited to LINAK providing and/or replacing any defective parts in the Products by supplying new software components to the Purchaser. LINAK shall not be responsible for replacement of Products or part of Products in the Purchaser's applications, including but not limited to any kind of field updates.

**12.6** Unless otherwise expressly stated in these Terms, Products are supplied "AS IS", "WHERE IS" and "WITH ALL FAULTS", LINAK does not extend any warranty, written, expressed nor implied for implied merchantability or fitness for particular purpose.

**12.7** Products shall not be subject to clause 12.1 regarding cost-free repairs or replacement, if LINAK has determined, in its sole discretion, that the Purchaser has misused the Products in any manner, has failed to use the Products in accordance with industry standards and practices or has failed to use the Products in accordance with any instructions, if any, provided by LINAK. Further LINAK accepts no liability for wear and tear nor for Products which have been subject to violent treatment or inadequate maintenance.

## 13. Product liability

**13.1** LINAK shall be liable for product liability in accordance with applicable legislation in this connection but does not assume liability in any degree beyond that specified by applicable legislation.

**13.2** The Purchaser shall indemnify LINAK to the extent that LINAK is liable vis-à-vis third parties for any damage or loss for which LINAK is not liable vis-à-vis the Purchaser in accordance with clause 13.1 above.

## 14. Limitation of liability

**14.1** LINAK shall not be held responsible nor liable for any special, indirect, consequential, punitive or exemplary damage or loss, which might arise out of faulty Products, delay in the delivery of Products, product liability, recall or otherwise, irrespective of cause, including but not limited to, loss of production, loss of profit, loss of data and/or loss of goodwill.

**14.2** Save for liability for death or injury caused by the negligence of LINAK and for other liability which cannot be excluded by law, in all other cases LINAK's total liability (whether in contract, tort including negligence or otherwise) under or in connection with any order or these Terms or based on any claim for contribution or indemnity in respect of any single claim or series of connected claims shall not exceed the price paid for such Products as are the subject of that claim or claims in aggregate.

## 15. Export Control and Sanctions Compliance

**15.1** Quotes and Order Confirmations under these Terms are subject to this clause on Export Control and Sanctions Compliance.

**15.2** The Purchaser shall comply with applicable export control and trade sanction laws, regulations, rules, and licenses including those of the EU and U.S. ("Trade Laws"), and is solely responsible for legal compliance, including without limitation a prohibition on direct or indirect use, sales, export, re-export, transfers or otherwise to entities and territories listed in EU or U.S. Trade Laws, if applicable.

**15.3** The Purchaser must prevent third-party violations of these restrictions, including resellers of the Products. The Purchaser must monitor third-party compliance to prevent misconduct. Violating these terms constitutes a material breach.

**15.4** The Purchaser must promptly report any compliance issues to LINAK and upon LINAK's request provide compliance information without undue delay.

**15.5** LINAK may cancel or delay orders without liability if restricted by Trade Laws or if fulfilling the order negatively impacts LINAK. No legal claims from such cancellation or delay may be raised.

## 16. Consumer Guarantees Act and Fair Trading Act

**16.1** The Purchaser and LINAK agree that the Products are acquired by the Purchaser for the purpose of resupplying them in trade or consuming them in the course of a process of production or manufacture and that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply. Where the Purchaser is acquiring Products from LINAK for the purpose of resupplying the Products in trade to a party who is acquiring the Products for the purpose of resupplying them in trade or consuming them in the course of a proceed of production or manufacture, the Purchaser must include a term in each contract for the resupply of those Products to confirm that the CGA does not apply. The Purchaser agrees to indemnify LINAK against any liability incurred by LINAK under the CGA as a result of any breach by the Purchaser of this clause 15.1.

**16.2** The Purchaser and LINAK agree that the Products are supplied and acquired in trade and agree to contract out of sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 ("FTA") and the parties consider that it is fair and reasonable that the parties are bound by this clause 15.2.

**16.3** For the purposes of these clauses 15.1 and 15.2, "in trade" has the meaning contemplated in each of the CGA and the FTA.

## 17. Protection of personal data

**17.1** As a part of handling sales requests from the Purchaser, LINAK shall process contact and invoice data. Any personal data LINAK may process may be shared with other LINAK group companies. Personal data will not be shared with any third parties other than data processors who process data on behalf of LINAK based on a data processor agreement. Further information can be found in LINAK's Privacy Policy which can be found at [www.linak.com.au](http://www.linak.com.au).

## 18. Force majeure

**18.1** LINAK is entitled to cancel orders or suspend delivery of Products and shall not be liable for any non-delivery, faulty or delayed delivery, which partly or wholly is caused by circumstances beyond LINAK's reasonable control, including, but not limited to, riots, civil unrest, war terrorism, health emergencies, health epidemic or pandemic or any associated governmental or regulatory restrictions, fire, insurrection, requisition, seizure, embargo or defects or delays in deliveries by sub-suppliers, strikes, lockouts, slowdowns, lack of transportation, scarcity of materials, and insufficient supplies of energy. Any of the Purchaser's contractual rights are suspended or become void in any such circumstances referred to in this Clause. The Purchaser is not entitled to any kind of damages or to make claim whatsoever in case of cancellation or delayed delivery due to such circumstances.

## 19. Confidentiality

**19.1** The Purchaser shall keep strictly secret and not disclose to any third party any confidential information received through doing business with LINAK.

## 20. Partial Invalidity

**20.1** If one or more of the terms and conditions in these Terms or any part of a term is deemed invalid, unenforceable, illegal or inoperable, the validity, enforceability, legality or operability of all further terms and conditions shall not be affected or diminished thereby.

## 21. Applicable law and venue for disputes

**21.1** Any disagreements or disputes between LINAK and the Purchaser shall be settled by laws of New Zealand without regard to its conflict of law rules.

**21.2** Unless LINAK gives its written consent to a process of arbitration, which shall then take place in Auckland, New Zealand, all disputes shall be settled by legal proceedings at LINAK venue at the Court in Auckland, New Zealand, depending on the nature of the case concerned.

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## LINAK New Zealand Ltd

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