

Standard Terms of Sale and Delivery for LINAK A/S

1. Application

1.1 These standard terms of sale and delivery shall apply to the extent that they are not waived by written agreement by the parties concerned. Any terms specified by the purchaser which conflict with these standard terms of sale shall not be binding on LINAK A/S, even though LINAK A/S fails to make any complaint against them. No deviation from the terms shall apply without the explicit written consent of LINAK A/S.

1.2 The international trade terms specified in "Incoterms 2010" shall apply between LINAK A/S and the purchaser.

2. Ordering

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

2.2 If LINAK A/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 contents of the order confirmation.

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

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

3. Terms of delivery

3.1 All deliveries by LINAK A/S shall be FCA Padborg, Denmark (Incoterms 2010), 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 will be performed using the means LINAK A/S deems best without any liability for LINAK A/S. Insurance will only be taken out in the event of a written request by the purchaser.

3.2 LINAK A/S undertakes to take appropriate measures to deliver on time. If a delay nevertheless occurs, LINAK A/S 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 tax, duty or customs duty for the purchased goods as well as any necessary expenses connected with the approval of the purchased goods.

5. Prices

5.1 LINAK A/S reserves the right to change prices until a final order confirmation has been issued. LINAK A/S 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 Padborg, Denmark (Incoterms 2010), unless otherwise specifically agreed in writing.

6.2 If payment is delayed, LINAK A/S 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. If payment is delayed, LINAK A/S shall be entitled to demand that the purchaser pays all reasonable costs incurred in connection with legal or non-legal steps taken with a view to collecting payment.

6.3 The purchaser shall not be entitled to withhold any payments in respect of alleged claims against LINAK A/S, unless such claims have been accepted in writing by LINAK A/S 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 make payment anyway as if delivery had been effected, in the absence of any agreement to the contrary.

7. Property rights

7.1 Until LINAK A/S has received full payment for products delivered, such products shall remain the property of LINAK A/S even though the purchaser has started to use or process the products, or started incorporating the products in its own application.

8. Intellectual property rights

8.1 LINAK A/S reserves all rights to 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 A/S, and may not be copied, transferred or shown to any third parties in any other way without the consent of LINAK A/S.

8.2 If the provision in clause 8.1 is violated, the purchaser shall pay LINAK A/S the following:

1. Compensation for any loss attributable to unlawful copying.
2. All costs incurred in connection with the legal pursuit of LINAK A/S rights.
3. All costs incurred in connection with the non-legal pursuit of LINAK A/S 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 A/S, the purchaser of the project shall indemnify LINAK A/S 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. Technical changes and approval

9.1 LINAK A/S 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.

9.2 LINAK A/S is not liable for absence or misinterpretation of information in catalogues and other written material drawn up by LINAK A/S.

The purchaser shall be fully liable for their application, use and operation of any LINAK product, whether or not such application, use or operation has been approved by LINAK A/S. It is the responsibility of the purchaser to ensure that the products specified meet the performance criteria defined by the purchaser for their application. LINAK A/S cannot assess the impact of 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 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 LINAK products. Products may not in any circumstances be used in aircraft or in connection with nuclear power of any kind.

9.3 The purchaser undertakes to apply for all necessary national or international approvals of any application in which LINAK A/S products are used.

10. Complaints

10.1 If the purchaser wishes to claim that the delivered products are defective, the purchaser must complain immediately to LINAK A/S.

10.2 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 A/S, the purchaser shall submit such complaints to LINAK A/S no later than 10 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.

10.3 Any damage or loss occurring during transport shall be of no concern to LINAK A/S, and claims in such circumstances may only be made against the transport agent concerned.

11. Warranty and rights in case of lack of conformity

11.1 LINAK A/S warrants the Products to conform to written specifications and to be free from defects in material and workmanship under use and service for the period of 18 months from the date of production, unless otherwise agreed. Batteries only carry a 12 months' warranty.

LINAK warranty is only valid as far as the products have been used and maintained correctly and has not been tampered with. The warranty does not cover wear and tear. Furthermore, the products must not be exposed to violent treatment or inadequate maintenance. In the event of this, the warranty will be ineffective/invalid. LINAK A/S warranty is only valid if the system is unopened and has been used correctly.

11.2 LINAK A/S liability for defective products delivered is limited as follows:

11.3 LINAK A/S is only obliged to perform either re-delivery or repair of the defective product, as preferred by LINAK A/S, and only if LINAK A/S has received the purchaser's written complaint within the warranty period.

11.4 If defects are discovered in the design, materials or production of any LINAK product, the purchaser shall complain immediately in writing to LINAK A/S, and such allegedly defective product shall then be sent to LINAK A/S or to an address stipulated by LINAK A/S with freight and insurance paid by the sender, accompanied by a description of the reason for such return. If LINAK A/S accepts that the product is defective and the purchaser has complained in time, LINAK A/S shall dispatch the product after replacement or repair free of charge. LINAK A/S shall reimburse the purchaser for the freight costs incurred by the purchaser in sending the defective product to LINAK A/S place of business, but only if LINAK A/S has approved in writing of the method of dispatch and the costs incurred prior to the dispatch of products.

11.5 LINAK A/S will not in any circumstances remove, replace or remount LINAK products which have been incorporated in other non LINAK products. Re-delivery or repair under the guarantee will under no circumstances be performed outside LINAK A/S places of business.

12. Product liability

12.1 LINAK A/S shall be liable for product liability in accordance with the relevant legislation in this connection, but does not assume liability in any degree beyond that specified by the legislation. Any product liability not laid down by law but which has developed in accordance with legal practice concerning compensation is thus explicitly waived. In addition, LINAK A/S shall not be liable for operating losses, loss of profits or other indirect losses caused by defective LINAK products.

12.2 The purchaser shall indemnify LINAK A/S to the extent that LINAK A/S is liable vis-à-vis third parties for any damage or loss for which LINAK A/S is not liable vis-à-vis the purchaser in accordance with clause 12.1 above.

13. Force majeure

13.1 The following circumstances result in exemption from liability if they prevent performance of the agreement or make performance unreasonably onerous: labour disputes and any other circumstances beyond the control of the parties concerned, such as fire, war, mobilisation or military call-up of similar dimensions, requisition, confiscation, currency restrictions, civil unrest or riots, the absence of transport, general shortages of goods, restrictions in fuel, and defects or delays in deliveries from sub-suppliers due to any of the circumstances mentioned in this clause.

13.2 The circumstances mentioned shall only result in force majeure if their influence on the performance of the agreement at the time of the formation of the agreement was not possible to predict.

13.3 The party wishing to claim any cause of force majeure as mentioned in clause 13.1 shall without delay inform the other party in writing about the beginning and end of such causes. In case of force majeure on the part of the purchaser, the purchaser shall cover the costs incurred by the seller in connection with securing and protecting the LINAK product concerned.

14. Confidentiality

14.1 The purchaser shall keep strictly secret and not disclose to any third party any confidential information received through doing business with LINAK A/S.

15. Applicable law and venue for disputes

15.1 Any disagreements or disputes between LINAK A/S and the purchaser shall be settled by Danish law without regard to its conflict of law rules.

15.2 Unless LINAK A/S gives its written consent to a process of arbitration, which shall then take place in Copenhagen, all disputes shall be settled by legal proceedings at LINAK A/S venue at the Court in Sønderborg (Retten i Sønderborg) or the Western Division of the Danish High Court (Vestre Landsret), depending on the nature of the case concerned.

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