

LINAK Australia Pty Ltd

Terms and Conditions of Sale

1. Definitions

"ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) and its associated Regulations as amended;

"Associated Companies" means LINAK A/S, Denmark, and any of its subsidiary or associated companies including LINAK New Zealand Ltd;

"Conditions" means these Terms and Conditions of Sale;

"consumer" is as defined in the ACL;

"Purchaser" means a person, firm or corporation, jointly and severally if there is more than one, acquiring goods or services from LINAK;

"goods" means goods supplied by LINAK to the Purchaser;

"GST" means any tax imposed by government, whether at point of supply or at some other specified occurrence, by whatever name, and includes (without limitation) a goods and services tax, a broad based consumption or indirect tax and value-added tax;

"LINAK" means LINAK Australia Pty Ltd ACN 062 249 450;

"PPSA" means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as amended;

"PPSA Terms" means LINAK's terms and conditions specifically relating to the PPSA; and

"services" means services supplied by LINAK to the Purchaser.

2. Basis of Contract

2.1 The Conditions apply exclusively to every contract for the sale of goods or services by LINAK to the Purchaser and cannot be varied or supplanted by any other conditions including the Purchaser's terms and condition of purchase unless expressly accepted in writing by LINAK.

2.2 Any PPSA Terms provided by LINAK to the Purchaser form part of the Conditions.

2.3 LINAK may vary or amend these Conditions by notice in writing to the Purchaser at any time. Any variations or amendments will apply to orders made by the Purchaser after the date of the notice.

2.4 No order is accepted until LINAK has provided written confirmation or supplied the goods or services to the Purchaser.

2.5 Any written quotation provided by LINAK to the Purchaser in respect of the proposed supply of goods or services is deemed to be an invitation only to the Purchaser to place an order based upon that quotation. Quotations are valid for 30 days from the quotation date unless otherwise stated.

2.6 The goods or services are not designed for use in aircraft or in connection with nuclear power. The goods and services must not be used for any such installations or applications.

3. Payment

3.1 Unless otherwise agreed in writing, payment for goods or services must be made in full upon delivery of the goods or completion of the services.

3.2 If credit terms are provided by LINAK payment for goods or services is to be made within 30 days of LINAK's invoice date or as agreed in writing by LINAK.

4. Payment Default

4.1 If the Purchaser defaults in payment by the due date of any amount payable to LINAK, then all money which would become payable by the Purchaser to LINAK at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Purchaser, and LINAK may, without prejudice to any of its other accrued or contingent rights:-

(a) charge the Purchaser interest on any sum due at the prevailing rate pursuant to the Penalty Interest Rates Act 1983 (Vic.) plus 2% for the period from the due date until the date of payment in full;

(b) charge the Purchaser for all expenses and costs (including legal costs on an indemnity basis) incurred by it in taking whatever action it deems appropriate to recover

any sum due or to recover any goods;

(c) cease or suspend for such period as LINAK thinks fit, supply of any further goods or services to the Purchaser;

(d) by notice in writing to the Purchaser, terminate any contract with the Purchaser so far as unperformed by LINAK;

(e) retain any deposit paid and apply it against any costs and expenses incurred by LINAK as a result of the default.

4.2 Clauses 4.1(c), (d) and (e) may also be relied upon, at the option of LINAK:

(a) where the Purchaser is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

(b) where the Purchaser is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Purchaser.

5. Passing of Property

5.1 Until full payment in cleared funds is received by LINAK for all goods and services sold by it to the Purchaser, as well as all other amounts owing on any account to LINAK by the Purchaser:-

(a) title in the goods remains vested in LINAK and does not pass to the Purchaser;

(b) the goods are held as fiduciary bailee and agent for LINAK;

(c) where practicable the Purchaser must keep the goods separate from its goods and maintain the labelling and packaging of LINAK;

(d) the Purchaser is required to hold the proceeds of any sale of the goods on trust for LINAK in a separate account with a bank to whom the Purchaser has not given security and if the Purchaser uses the goods in some manufacturing or construction process of its own or some third party, the Purchaser shall hold such part of the proceeds of such manufacturing or construction process as relates to the goods, on trust for LINAK;

(e) in addition to any rights it may have under the PPSA, LINAK may without notice, enter any premises where it suspects the goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of LINAK, and for this purpose the Purchaser irrevocably licenses LINAK to enter such premises and also indemnifies LINAK from and against all costs, claims, demands or actions by any party arising from such action.

6. Pricing

6.1 Each amount, of whatever description, specified as payable by the Purchaser to LINAK under any contract is expressed exclusive of GST. In addition to the amount payable, the Purchaser must pay to LINAK on demand, the GST payable by LINAK in respect of that amount. Prices for the supply of goods and services exclude any other taxes, duties or imposts imposed on or in relation to the goods or services in Australia or overseas.

6.2 The Purchaser must arrange and pay for all costs associated with the carriage and insurance of the goods from LINAK's nominated collection address.

6.3 LINAK reserves the right to vary its prices, without notice to the Purchaser, up to the time when final confirmation of the order is given by LINAK.

6.4 Where there is a change in the costs incurred by LINAK which are outside its control in relation to the goods or services, LINAK may vary its price for the goods or services to take

account of such change even after the final confirmation of order is given by LINAK.

7. Performance of Contract

- 7.1 Any period or date stated by LINAK for the provision of services or collection or delivery of the goods is intended as an estimate only and is not a contractual commitment.
- 7.2 LINAK will use its best endeavours to meet any estimated dates but will in no circumstances whatsoever be liable for any loss or damage suffered by the Purchaser or any third party for failure to meet any estimated date for delivery of the goods.
- 7.3 If LINAK cannot complete the services by any estimated date, it will complete the services within a reasonable time.

8. Delivery

- 8.1 Unless otherwise agreed in writing, all goods from LINAK are sold "Ex-works".
- 8.2 Risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods will pass to the Purchaser upon presentation of the goods for delivery at LINAK's premises. Where goods are supplied on a trial basis, risk in the goods remains at all times with the Purchaser.
- 8.3 All claims for damage during delivery, short supply, non-receipt of goods or incorrect delivery documents must be made to LINAK within 7 days of receipt of goods.
- 8.4 Where the Purchaser requests LINAK to deliver goods directly to another person, that person takes possession of the goods for the Purchaser as the Purchaser's agent, and the Purchaser remains directly responsible to LINAK.

9. Liability

- 9.1 Except as specifically set out in these Conditions, or contained in any warranty statement provided with the goods or services, these Conditions do not otherwise include by implication any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services, or any contractual remedy for failure.
- 9.2 If the Purchaser:

- (a) is a consumer nothing in these Conditions restricts, limits or modifies the Purchaser's rights or remedies against LINAK for failure of a statutory guarantee under the ACL;
- (b) on-supplies the goods to a consumer and clause 9.3(a) does not apply:
- (i) if the goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of LINAK's liability to the Purchaser;
- (ii) if the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of LINAK's liability to the Purchaser;
- howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods by the Purchaser or any third party.

- 9.3 If:
- (a) the Purchaser uses up or transforms the goods in the course of trade so the goods are no longer "goods" as defined in the ACL; or
- (b) clause 9.2 does not apply;
- then other than as stated in the Conditions or any written warranty statement LINAK is not liable to the Purchaser in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Purchaser or any third party.

- 9.4 LINAK is not liable for any indirect or consequential losses or expenses suffered by the Purchaser or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party unless the Purchaser is a consumer in which case, LINAK's liability for indirect or consequential loss is limited to the extent the loss was reasonably foreseeable.

- 9.5 Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or the provision of

services which cannot be excluded, restricted or modified.

- 9.6 The Purchaser undertakes in relation to goods it acquires from LINAK:

- (a) not to attach LINAK's name, brand or mark to the goods, unless already attached when LINAK supplies the goods to the Purchaser;
- (b) it will not use LINAK's goods for any purpose for which they are not suitable, and that it will (wherever appropriate) correctly advise its customers as to the purposes to which LINAK's goods should or should not be put;
- (c) to immediately notify LINAK in writing of any claim the Purchaser may receive in respect of the goods and/or services giving full details of the claim concerned.

- 9.7 The Purchaser indemnifies LINAK against all liabilities and costs (including all legal costs on an indemnity basis) expenses, losses, damages or claims arising in any way as a result of the Purchaser's failure to comply with any part of these Conditions.

10. Warranty

- 10.1 When LINAK supplies the goods in Australia directly to a consumer, the following mandatory statement applies: "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."

- 10.2 The benefits of this warranty are in addition to any rights and remedies imposed by Australian State and Federal legislation that cannot be excluded. Nothing in this warranty is to be interpreted as excluding, restricting or modifying any State or Federal legislation applicable to the supply of goods and services which cannot be excluded, restricted or modified.

- 10.3 Subject to the remainder of this clause 10, LINAK warrants the goods it supplies to the Purchaser against defective materials and defective workmanship for the period of 12 months from the date of invoice.

- 10.4 Any warranty does not apply in circumstances where:

- (a) the goods or services are not defective;
- (b) the goods were used or services applied for a purpose other than for which they were intended;
- (c) the goods were repaired, modified or altered by any person other than LINAK;
- (d) the defect has arisen due to misuse, neglect or accident;
- (e) the defect has arisen due to the incorrect installation of the goods;
- (f) the goods have not been stored or maintained as recommended by LINAK;
- (g) the defect has arisen due to normal wear and tear on the goods; or
- (h) the Purchaser is in breach of the Conditions.

- 10.5 In order to make a claim under this warranty, a person must:

- (a) give LINAK written details of any defect in the goods together with documentary proof of the date of purchase of the goods within 30 days of identifying the defect;
- (b) return, at their cost, the defective goods to LINAK or allow LINAK or its employees or agents to inspect the goods;
- (c) provide any information requested by LINAK in relation to the goods or installation of the goods.

- 10.6 If the warranty claim is accepted by LINAK, LINAK will at its sole discretion replace or repair the defective parts or workmanship free of charge or provide a refund of the purchase price. This is the limit of LINAK's liability under this warranty.

- 10.7 Where LINAK supplies goods manufactured by a third party, those goods are warranted by the original manufacturer of those items and are not covered by this warranty.

- 10.8 For the purposes of this Warranty the Purchaser can contact LINAK at 82-84 Abbott Road, Hallam VIC 3803 telephone (03) 8796 9777, or alternatively at sales@linak.com.au.

11. Technological Changes and Approvals

- 11.1 LINAK reserves the right to alter or substitute the goods, including goods on order, if the alteration or substitution can be done without changing the technical specifications already

- agreed upon.
- 11.2 LINAK is not responsible for any misunderstanding of information contained in any catalogues and other written material supplied by LINAK.
- 11.3 The Purchaser is responsible and liable for the specific applications to which it selects and puts the goods. To the extent permitted by law, LINAK will not be responsible for any goods designed or manufactured by the Purchaser which include components supplied by LINAK.
- 11.4 The Purchaser acknowledges that it is responsible for obtaining any national or international approvals which may be necessary in relation to the products it may manufacture which include components supplied by LINAK.
- 12. Intellectual Property**
- 12.1 LINAK owns or is the licensee of all copyright, trademark, patent or design rights or confidential information ("Intellectual Property") in or related to any of its goods or services.
- 12.2 The Purchaser must not claim any right, title or interest in the Intellectual Property nor use or disclose any of the Intellectual Property other than necessary for the use of the goods or services. The Purchaser must not copy the goods nor arrange for any third party to copy them.
- 12.3 If the Purchaser provides, on sells or licences the use of the goods or services, it must ensure the recipient is aware of LINAK's rights in clause 12.1 and complies with clause 12.2 by written agreement. Further the Purchaser must ensure that any recipient is bound by similar terms as this clause 12.3.
- 13. Acknowledgements**
- 13.1 The Purchaser acknowledges and agrees that:
- it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by LINAK in relation to the goods or services or their use or application;
 - where it is a consumer, it has not made known, either expressly or by implication to LINAK any purpose for which it requires the goods and services and it has the sole responsibility of satisfying itself that the goods are suitable for the Purchaser's use;
 - where it is not a consumer, it has the sole responsibility of satisfying itself that the goods are suitable for the Purchaser's use or any contemplated use by the Purchaser, whether or not such use is known by LINAK;
 - any description of the goods provided in marketing materials, a quotation or invoice is given by way of identification only and does not constitute a contract of sale by description;
 - where it uses the goods in the manufacture of other products, it assumes all responsibility for conformance of the resulting goods with all laws, rules, regulations and ordinances of any governmental or quasigovernmental agency applicable to the use or operation of the goods and products;
 - it is responsible for undertaking all relevant training and safety precautions in relation to the use or operation of the goods;
 - the goods must not in any circumstances be used in aircraft or in connection with nuclear power of any kind.
- 14. Returns**
- 14.1 Subject to clause 14.4 and 14.6, LINAK will not be liable for any shortages, damage or non-compliance with the specifications unless:
- the Purchaser notifies LINAK with full details within 7 days of delivery specifying the shortage or defect; and
 - LINAK is given the opportunity to inspect the goods and investigate the complaint before any further dealing with the goods.
- 14.2 If the Purchaser fails to give the notice as required in clause 14.1, it is deemed to have accepted the goods and will be bound to pay for them.
- 14.3 Where any shortages, claim for damage or non-compliance is accepted by LINAK, LINAK may, at its option, replace the goods or refund the price of the goods.
- 14.4 Subject to clause 14.6, LINAK will not under any circumstances accept goods for return that:
- have not been stored or handled in accordance with LINAK's instructions or any legislative requirements pertaining to handling of the goods;
 - have been specifically produced, imported, exported or acquired to fulfil any contract;
 - have been altered in any way; or
 - are not in their original condition and packaging.
- 14.5 The Purchaser must:
- obtain LINAK's prior written approval for the return of goods; and
 - pay all freight charges associated with return of the goods.
- 14.6 If the Purchaser is a consumer, nothing in this clause 14 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.
- 15. Cancellation**
- 15.1 If, through circumstances beyond the control of LINAK, LINAK is unable to supply the goods or services, then LINAK may cancel the Purchaser's order (even if it has already been accepted) by notice in writing to the Purchaser. LINAK will be under no liability to the Purchaser or any third party for any damages or losses, direct or indirect, resulting from such cancellation.
- 15.2 No purported cancellation or suspension of an order or any part thereof by the Purchaser is binding on LINAK after that order has been accepted by LINAK.
- 16. Change of Ownership**
- 16.1 The Purchaser agrees to notify LINAK in writing of any change of ownership of the Purchaser or business within 7 days of such change and hereby indemnifies LINAK against any loss or damage incurred by LINAK as a result of the Purchaser's failure to notify LINAK of such change.
- 17. Privacy**
- 17.1 LINAK is bound by the Privacy Act 1988 as amended from time to time ("Privacy Act") and takes steps to ensure that personal information obtained in connection with the Purchaser will be appropriately collected, stored, used, disclosed and transferred in accordance with the Australian Privacy Principles as amended or replaced from time to time ("APP's"). Such information may be accessed by request to LINAK in accordance with the Privacy Act.
- 17.2 LINAK and its Associated Companies' employees and agents may have access to personal information collected pursuant to any agreement between LINAK and the Purchaser and held by LINAK, in accordance with the APP's.
- 17.3 LINAK requires that the Purchaser comply with the APP's in connection with any personal information supplied to it by LINAK in connection with any agreement between the Purchaser and LINAK.
- 18. General**
- 18.1 If LINAK fails to enforce any terms or to exercise its rights under these Conditions at any time, LINAK has not waived those rights.
- 18.2 If any provision of these Conditions is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect and the parties shall adjust their respective rights and obligations in accordance with the spirit and intent of the parties as shown by these Conditions.
- 18.3 These Conditions will be governed by the laws of Victoria and the parties hereby submit to the exclusive jurisdiction of the Victorian Courts and the Federal Court of Australia (Victoria Registry).