

1. Definitions

"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;

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

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

"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

"Services" means services supplied by LINAK to the Customer;

2. Basis of Contract

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

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

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

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

2.5 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 must be made in full upon delivery of the goods or services.

3.2 If credit terms are provided by LINAK payment for goods 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 Customer defaults in payment by the due date of any amount payable to LINAK, then all money which would become payable by the Customer to LINAK at a later date on any account, becomes immediately due and payable without the requirement of any notice to

the Customer, and LINAK may, without prejudice to any other remedy available to it :-

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

(b) charge the Customer 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;

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

(d) by notice in writing to the Customer, terminate any Agreement with the Customer 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) and (d) may also be relied upon, at the option of LINAK:

(a) where the Customer is an individual 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 Customer 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, provisional liquidator, administrator, receiver or receiver and manager appointed, 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 Customer.

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 Customer, as well as all other amounts owing on any account to LINAK by the Customer:-

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

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

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

(d) the Customer is required to hold the proceeds of any sale of the goods on trust for LINAK and if the Customer uses the goods in some manufacturing or construction process of its own or some third party, the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the goods, in trust for LINAK;

(e) 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,

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and for this purpose the Customer 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 Customer to LINAK under any Contract or Agreement is expressed net of GST. In addition to the amount payable, the Customer 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 Customer 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 Customer, 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

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. 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 Customer or any third party for failure to meet any estimated date.

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 Customer 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 Customer.
- 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 Customer requests LINAK to deliver goods directly to another person, that person takes possession of the goods for the Customer as the Customer's agent, and the Customer 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, 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, whether implied by statute, common law, trade usage, custom or otherwise, is expressly excluded.

- 9.2 Replacement or repair of the goods or reprovion of the services is the absolute limit of LINAK's liability arising under or in connection with the description, quality, condition, performance, assembly, manufacture, design, merchantability or fitness for purpose of the goods or services or alternatively the sale, use of, storage or any other dealings with the goods or service by the Customer or any third party.
 - 9.3 LINAK is not liable for any indirect or consequential losses or expenses suffered by the Customer 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.
 - 9.4 LINAK will not be liable for any loss or damage suffered by the Customer where LINAK has failed to meet any delivery date or cancels or suspends the supply of goods or services.
 - 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 Customer 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 Customer;
 - (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 Customer may receive in respect of the goods and/or services giving full details of the claim concerned.
 - 9.7 The Customer 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 Customer's failure to comply with any part of these Conditions.
- ### 10. Warranty
- 10.1 Subject to clause 10.4 LINAK warrants the goods it supplies to the Customer against defective materials and defective workmanship for the period of 12 months from the date of invoice.
 - 10.2 Any warranty does not apply in circumstances where:
 - (a) the goods or services are not defective;
 - (b) the goods were used or services required 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;

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- (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 Customer is in breach of the Conditions.

10.3 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 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.

10.4 Where LINAK supplies goods manufactured by a third party, the manufacturer's warranty is the only warranty provided to the Customer.

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 Customer is responsible and liable for the specific applications to which it puts the specific goods supplied by LINAK. LINAK will not be responsible for any goods manufactured by the Customer which include components supplied by LINAK.

11.4 The Customer 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 Customer 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 Customer must not copy the goods nor arrange for any third party to copy them.

12.3 If the Customer 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 Customer must ensure that any recipient is bound by similar terms as this clause 12.3.

13. Acknowledgements

13.1 The Customer acknowledges and agrees that:

- (a) 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;
- (b) it has the sole responsibility of satisfying itself that the goods are suitable for the Customer's use or any contemplated use by the Customer, whether or not such use is known by LINAK;
- (c) 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;
- (d) it assumes all responsibility for conformance of the goods with all laws, rules, regulations and ordinances of any governmental or quasi-governmental agency applicable to the use or operation of the goods;
- (e) it is responsible for undertaking all relevant training and safety precautions in relation to the use or operation of the goods;
- (f) 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 14.2, LINAK will not be liable for any defects, shortages, damage or non-compliance with the specifications unless:

- (a) the Customer notifies LINAK with full details within 7 days of delivery specifying the shortage or defect; and
- (b) LINAK is given the opportunity to inspect the goods and investigate the complaint before any further dealing with the goods.

14.2 If the Customer 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 defects, 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 LINAK will not under any circumstances accept goods for return that:

- (a) have not been stored or handled in accordance with LINAK's instructions or any legislative requirements pertaining to handling of the goods;
- (b) have been specifically produced, imported, exported or acquired to fulfil any contract;
- (c) have been altered in any way; or
- (d) are not in their original condition and packaging.

14.5 The Customer must:

- (a) obtain LINAK's prior written approval for the return of goods; and
- (b) pay all freight charges associated with return of the goods.

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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 Customer's order (even if it has already been accepted) by notice in writing to the Customer. LINAK will be under no liability to the Customer 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 Customer is binding on LINAK after that order has been accepted by LINAK.

16. Change of Ownership

The Customer agrees to notify LINAK in writing of any change of ownership of the Customer 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 Customer's failure to notify LINAK of such change.

17. Privacy

17.1 LINAK is bound by the *Privacy Act 1988* and takes steps to ensure that personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles ("NPP'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 Customer and held by LINAK, in accordance with the NPP's.

17.3 LINAK requires that the Customer comply with the NPP's in connection with any personal information supplied to it by LINAK in connection with any agreement between the Customer 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).