

LINAK New Zealand

Terms and Conditions of Sale



WE IMPROVE YOUR LIFE

1. Definitions

"Associated Companies" means LINAK A/S, Denmark, and any of its subsidiaries or associated companies including LINAK Australia Pty Limited;
"CGA" means the Consumer Guarantees Act 1993 and its amendments;
"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 goods and services tax in terms of the Goods and Services Tax Act 1985 and its amendments;
"LINAK" means LINAK New Zealand Limited (AK 1031062);
"PPSA" means the Personal Property Securities Act 1999 and its amendments;
"services" means services supplied by LINAK to the Customer.

2. Basis of Contract

- 2.1 These Conditions apply exclusively to every contract for the sale of goods or services by LINAK to the Customer. These Conditions cannot be varied or supplanted by any other conditions including the Customer's terms and conditions 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 without deduction or set-off 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 the end of the month in which LINAK's invoice is issued.

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 current unarranged overdraft interest rate charged by LINAK's bankers for the period from the due date until the date of payment in full. The charging of default interest will in no way imply the granting or an extension of credit from LINAK to the Customer;
 - (b) charge the Customer for all expenses and costs (including legal costs on a solicitor-client basis and reasonable debt collection agency fees) 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; or
- (c) where LINAK reasonably believes that the information which the Customer has provided in its application for credit is incorrect or no longer correct and the Customer has failed to give LINAK correct information satisfactory to it within 5 days of its request; or
- (d) where the Customer fails to comply with any provisions of clause 6.

5. Passing of Property

5.1 Where the context requires, this clause 5 shall be read subject to clause 6 below.

5.2 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, 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.

5.3 Upon default in payment of the purchase price of the goods and any other amounts owing, LINAK is entitled to take possession of and at its discretion sell or otherwise dispose of the goods removed, and credit any sale proceeds toward the monies owed to LINAK by the Customer without prejudice to any other remedy available to it as unpaid vendor at law or equity.

6. A Security Interest Created

6.1 For the purposes of the PPSA, the Customer grants a **security interest** to LINAK in:

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- (a) all electric actuators, system electronics and associated accessories and components; and
- (b) any goods for which any of the goods referred to in paragraph (a) of this clause 6.1 have been exchanged or traded or that have been acquired in lieu of those goods; sold or supplied by LINAK, to secure payment for the goods (and any interest or other charges payable in relation to the goods) and to secure all monies payable by the Customer to LINAK at any time on any account. The Customer further agrees that LINAK's security interest in the goods extends to the Proceeds (as defined in clause 16 of the PPSA) of the goods. The Customer acknowledges that the security interest will continue until LINAK provides the Customer with a final release.
- 6.2 LINAK may at its sole discretion and in such manner as it determines allocate payments made by the Customer to outstanding amounts due in relation to any goods supplied by LINAK.
- 6.3 Until payment is made the Customer will, where the goods have been purchased for resale, store the goods separately from goods not supplied by LINAK. The Customer will not move the goods outside New Zealand and will not do or omit to do, or allow to be done or omit to be done, anything which could adversely affect the goods or the security interest created by these Conditions.
- 6.4 To the extent permitted by law, if the Customer defaults under these Conditions or under any other payment obligation to LINAK:
- (a) each security interest created in favour of LINAK will become immediately enforceable;
- (b) LINAK may, at any time, by notice to the Customer declare all or any part of the monies owing by the Customer to be due and payable immediately, upon demand or at a later date as LINAK may specify;
- (c) LINAK may:
- (i) take possession of and either sell or retain the goods;
- (ii) pay any expenses incurred in the exercise of any such powers out of the revenue from, or proceeds of realisation of, the goods.
- (iii) appoint a receiver in respect of any goods (without the Customer's consent) and any receiver is authorised to do anything referred to in these Conditions and otherwise to exercise all rights and powers conferred on a receiver by law;
- (d) the Customer will pay all of LINAK's costs, losses and other liabilities (including legal expenses on a solicitor-client basis) incurred or sustained by LINAK in connection with the exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any right arising pursuant to the security interest granted under these Conditions;
- (e) LINAK:
- (i) has the rights of a natural person in relation to the goods;
- (ii) has all other rights conferred by law (including under Part 9 of the PPSA) in relation to the goods; and
- (iii) may, in the Customer's name or otherwise, at any time, do anything that the Customer could do in relation to the goods.
- 6.5 Nothing expressed in the other provisions of this clause 6 limits or otherwise adversely affects LINAK's rights under the PPSA.
- 6.6 Where LINAK takes possession of the goods, it may sell the goods by any means at any time and from any sale proceeds, deduct all costs incurred in connection with the sale and all monies owed (even if not due and payable) to LINAK by the Customer on any account (to the extent to which LINAK has priority over any other interested parties).
- LINAK may recover from the Customer any shortfall on any sale or attempted sale.
- 6.7 The Customer waives its rights:
- (a) under Section 114(1)(a) of the PPSA, to receive a Notice of Intention to Sell;
- (b) under Section 116 of the PPSA, to receive a Statement of Account;
- (c) under Section 120(2) of the PPSA, to receive notice of any proposal of LINAK to retain collateral;
- (d) under Section 121 of the PPSA, to object to any of LINAK's proposals to retain collateral;
- (e) under Section 125 of the PPSA, to not have goods damaged if LINAK removes an accession;
- (f) under Section 129 of the PPSA, to receive notice of the removal of an accession;
- (g) under Section 131 of the PPSA, to apply to the Court for an order concerning the removal of an accession;
- (h) under Section 132 of the PPSA, to redeem collateral, if LINAK has sold the collateral, or if LINAK is deemed to have taken any collateral in satisfaction or part-satisfaction of the Customer's obligations;
- (i) under Sections 133 and 134 of the PPSA, to reinstate the Security Agreement; and
- (j) to receive a copy of the Verification Statement or a Financing Change Statement relating to LINAK's security interest.
- 6.8 If the Customer changes its name, it must give written notice to LINAK of its new name 1 week prior to the effective date of the change.
- 6.9 If requested by LINAK, the Customer must promptly do all things (including signing any document) and provide all information necessary to enable LINAK to perfect and maintain the perfection of any and each security interest granted to LINAK by the Customer (including by registration of a Financing Statement).
- 6.10 Within 2 working days of a written request from LINAK, the Customer must supply LINAK with copies of all security interests registered over its personal property. The Customer authorises LINAK and its agent(s) to request information from any secured party relating to any security interest which is held in any personal property that is or has been in the Customer's possession or control.
- 6.11 The Customer will pay all reasonable costs, including legal costs on a solicitor-client basis, associated with the discharge or amendment of any financing statement registered by LINAK, whether or not the change was initiated by the Customer.
- 7. Pricing**
- 7.1 Each amount, of whatever description, specified as the price payable by the Customer to LINAK under any contract or agreement is expressed net of GST. In addition to the price payable, the Customer must pay to LINAK on demand, all GST and other government duties, levies or taxes 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.
- 7.2 The Customer must arrange and pay for all costs associated with the carriage and insurance of the goods from LINAK's nominated collection address.
- 7.3 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.
- 7.4 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.

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8. 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.

9. Delivery

9.1 Unless otherwise agreed in writing, all goods from LINAK are sold ex-works.

9.2 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.

9.3 Subject to clause 9.4, 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.

9.4 If the Customer fails to give the notice as required in clause 9.3, it is deemed to have accepted the goods and will be bound to pay for them.

9.5 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.

9.6 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.

9.7 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.

9.8 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.

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;
- (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. Liability

11.1 The provisions of the CGA shall apply to each contract for the sale of goods and/or services by LINAK to a Customer who does not acquire or does not hold itself out as acquiring the goods and/or services for the purposes of a business. The CGA shall not apply to any contract for the sale of goods and/or services to a customer acquiring LINAK's goods and/or services for the purposes of a business.

11.2 Subject to clause 11.1, to the maximum extent permitted by law, except as specifically set out in these conditions, or contained in any warranty statement provided with the goods or services, all terms, conditions or warranties in respect of the quality, merchantability, fitness for purpose, condition, description assembly, manufacture, design or performance (or otherwise) of the goods or services supplied by LINAK to the Customer, whether implied by statute, common law, law merchant, trade usage, custom or otherwise, are expressly excluded from the contract created by these Conditions.

11.3 In the event that the Customer is proven at law to have a valid claim for damages against LINAK of any nature whatsoever (whether in contract or tort or otherwise including a breach of clause 10.1) then, to the maximum extent permitted by law, LINAK's liability to the Customer in respect of each supply of goods or services will be limited to the purchase price of the goods or services supplied to the Customer in the transaction concerned. LINAK is not otherwise liable to the Customer for damage to, loss of, or deterioration of goods or services, however that loss, damage or deterioration is caused or arises.

11.4 LINAK will not in any circumstances including a breach of clause 10.1 be 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, whether or not LINAK had knowledge that such losses might be incurred.

11.5 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.

11.6 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 legislation applicable to the sale of goods or the provision of services which cannot lawfully be excluded, restricted or modified.

11.7 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) not to give any express written guarantees on behalf of LINAK except with LINAK's express written approval;
- (c) 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;
- (d) any of the Customer's literature that it may supply to its own customers and which relates to LINAK's goods, will comply with the CGA;

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- (e) 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.
- 11.8 Where the Customer purchases goods for re-supply as, or incorporation into, goods ordinarily acquired for personal household or domestic use or consumption ("Consumer Goods") the Customer undertakes that:
- (a) if the Customer supplies the Consumer Goods directly to an end user/consumer the Customer will do so using terms and conditions of supply which exclude liability for any claims under the CGA; and
 - (b) if the Customer supplies Consumer Goods to a third party for re-supply, the Customer will ensure that the third party, and each person in the distribution chain will exclude liability in its contract for supply for any claims under the CGA.
- 11.9 The Customer indemnifies LINAK against all liabilities and costs (including legal costs on a solicitor-client 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.
- 12. Technological Changes and Approvals**
- 12.1 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.
- 12.2 LINAK is not responsible for any misunderstanding of information contained in any catalogues and other written material supplied by LINAK.
- 12.3 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.
- 12.4 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.
- 13. Intellectual Property**
- 13.1 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.
- 13.2 The Customer agrees it will 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 or permit or arrange for any third party to copy them.
- 13.3 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 13.1 and complies with clause 13.2 by written agreement. Further the Customer must ensure that any recipient is bound by similar terms as this clause 13.3.
- 14. Acknowledgements**
- 14.1 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.
- 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.
- 15.2 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.
- 15.3 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 For the purpose of facilitating the efficient running of LINAK's business, the Customer authorises LINAK and its Associated Companies to:
- (a) collect all information LINAK will require from any third parties and authorises those third parties to release the information to LINAK;
 - (b) hold all the information provided by the Customer or any third parties to LINAK;
 - (c) use the information provided including giving the information to any other person to facilitate the collection of debts from the Customer.
- 17.2 The Customer's information will be collected, held and used by LINAK on the condition that:
- (a) it will be held at LINAK's office or the offices of its Associated Companies;
 - (b) it will be accessible to any of LINAK's or its Associated Companies' employees and agents who need to access the information for the efficient running of LINAK's or its Associated Companies' business; and
 - (c) the Customer may request access to and correction of the information held by LINAK or its Associated Companies at any time.
- 17.3 The Customer consents to LINAK or any of its Associated Companies using any electronic address, provided by the Customer to LINAK in any Credit Application or otherwise, for the purpose of marketing or promoting any goods and services offered by LINAK or its Associated Companies.
- 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 and construed in accordance with the laws of New Zealand. In relation to any legal action or proceedings arising out of or in connection with these Conditions ("Proceedings"), each party irrevocably submits to the exclusive jurisdiction of the Courts of New Zealand and waives any objections to the proceedings in any such Court on the grounds of venue or on the grounds that the Proceedings have been brought in an inconvenient forum.