

General terms and conditions of sale and delivery

The following are the terms and conditions under which LINAK U.S. Inc. (>>Seller<<) shall quote for sale or sell actuators and control systems (>>Products<<) to any person offering to purchase or purchasing the Products (>>Purchaser<<). These terms and conditions supersede all prior quotations, pro forma invoices, proposals, negotiations and representations, if any. In the event that this document is deemed to be an offer, acceptance is expressly conditioned on Purchaser's assent to all terms hereof, including those which are additional to or different from the terms contained in any terms and conditions of Purchaser. If these terms and conditions are not assented to, Purchaser must specifically object in writing to Seller, at once, but in any event within 5 days after receipt hereof. Mere tender of Purchaser's terms does not constitute a specific objection. Acceptance of the Products sold hereunder shall constitute assent to these conditions. Seller hereby objects to and rejects any and all additional or different terms proposed by Purchaser, no matter where contained.

1. Prices

Seller reserves the right to invoice the products at the prices in effect at the time of final confirmation of the purchase order. Seller further reserves the right to change prices after confirmation of the purchase order if there is a change in wages, price of materials, government charges or other costs over which Seller exercised no reasonable control.

Seller's price does not include any present or future customs duties, sales, use, excise, value added or other municipal, state or federal taxes.

Purchaser agrees to reimburse Seller for any and all taxes and fees or costs for approvals which may become payable with respect to Purchaser's purchase or use of the Products.

2. Terms of Payment

Purchaser shall pay to Seller the price of the Products, in accordance with the payment terms, as specified on the reverse side hereof, and absent any other specific arrangement between Purchaser and Seller, payment is due ex works Louisville, Kentucky. Purchaser waives any right to reduce any amount due by means of counterclaims or set off of any kind whatsoever. An additional charge of 2% above the prime rate as announced from time to time by Citibank, N.A. per month, but not to exceed the lawful maximum, may be added on any amount that is 30 days in arrears of payment, if, at any time between the signing of the order and completion of the transaction, the financial condition of Purchaser does not reasonably justify adherence to the terms of payment previously agreed upon, Seller may require adequate insurance of Purchaser's due performance and may suspend delivery until such assurance is received. All costs of collection, including reasonable attorney's fees, for amounts owed by Purchaser and outstanding, shall be for Purchaser's account.

3. Delivery

Seller shall deliver the Products and risk of loss shall pass ex works (incoterms 2000) Seller's place of business in Louisville, Kentucky. Purchaser bears all risk of losses, damages and delays in transit even if Seller arranges for and/or pays for freight and/or insurance. Absent any other specific arrangements between Purchaser and Seller, freight and insurance are at Purchaser's expense. If no instructions are given to Seller, Seller may arrange freight but shall bear no responsibility thereof, insurance will be purchased only upon Purchaser's specific written request. Stated delivery dates are non-binding estimates only unless specifically stated in writing to be binding.

Seller shall not be liable for unavoidable delays in delivery caused indirectly or directly or in any manner by fires, floods, accidents, riots, acts of God, war, governmental interference, embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials, supplies, transportation delays or any other cause (whether or not similar in nature to any of those specified herein) either beyond its control or which it cannot remedy without material economic hardship. In no event shall Seller be obligated to purchase goods from others in order to enable it to supply Products to Purchaser. In no event shall the contract of sale be subject to cancellation by the Purchaser as a result of delays in delivery or for any other cause, except by mutual written agreement of the parties.

If completion or delivery of the Product is delayed due to the fault of Purchaser, Purchaser shall be charged for storage of the Products. Seller shall be entitled to dispose of the Products if Purchaser delays delivery of the Products beyond a reasonable period of time.

Unless otherwise agreed in writing at the time an order is placed, Seller reserves the right to make partial shipments independently of the remaining portion of the order, and to submit invoices for partial shipments in accordance with these terms and conditions.

4. Acceptance of Orders

All purchase orders are subject to acceptance and approval at Seller's office in Louisville, Kentucky or Ontario, Canada. No sales representative, agent of employee or Seller is authorized to accept any purchase order. Such acceptance requires the written approval of an authorized office of Seller.

5. Warranty

Liability for defects in products delivered is limited as follows: LINAK U.S. Inc. is only obliged to perform re-delivery or repair. Subject to the provisions of paragraph 7. Seller 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 twelve months from the date of production unless otherwise agreed. If the product should fail to conform to this agreement or to any warranty outlined herein, Purchaser's remedies shall be limited to the repair or replacement, at Seller's option of the nonconforming Products or parts thereof. Purchaser shall return any defective Products or parts to the Seller's service facilities freight and insurance prepaid with an explanation of why the Product is being returned. If Seller accepts the Product as defective and sends Purchaser a replacement product then Seller will reimburse Purchaser for the reasonable costs of freight and insurance paid by Purchaser to send seller the defective Product. No part may be returned without Seller's prior approval. LINAK U.S. Inc. will not in any circumstances remove, replace and remount LINAK Products which have been incorporated in other non LINAK products. Re-delivery or repair under the guarantee will not be performed in any circumstances outside the LINAK U.S. Inc. places of business. Any defective Products or parts which have been replaced shall become Seller's property.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, WRITTEN OR ORAL, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES PROVIDED IN THE PARAGRAPH 5 SHALL BE THE SOLE AND EXCLUSIVE REMEDIES OF PURCHASER OF SUBSEQUENT PURCHASERS AND OF ANY OTHER PERSON WITH RESPECT TO BREACH OF SUCH WARRANTIES.

The foregoing warranties shall not apply to parts not manufactured by LINAK U.S. Inc. or its affiliates: such products are sold as is. Seller is further not responsible for Products improperly installed, misapplied, improperly maintained, defective electrical installation or other acts of the Purchaser or any third person.

Seller makes no warranties in its catalogues or other written material and any misunderstanding of the Purchaser to such effect shall not be the responsibility of the Seller. The Purchaser shall be solely responsible for the application of the Products notwithstanding whether such application has been consented to or approved by Seller.

Upon receipt of Products, Purchaser is obligated to examine the Products for defects or other deviation from the written contract between the parties. Any claims must be presented to the Seller within ten days after delivery of the Products to Purchaser's premises.

6. Approvals; Exclusion of Certain Claims

The Purchaser is solely responsible for all governmental or other approval required to use the products of other items into which the Products are incorporated. LINAK Products must under no circumstance be used in off-shore installations or aircraft of any kind.

IN NO EVENT SHALL SELLER BE LIABLE UNDER THIS AGREEMENT OR WITH RESPECT TO THE PRODUCTS OR THEIR USE FOR AN INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, WHETHER CLAIMED ON THE BASIS OF BREACH OF CONTRACT (FOR DELAY IN DELIVERY OR OTHERWISE) OR WARRANTY TORT (INCLUDING STRICT LIABILITY) OR ANY OTHER LEGAL THEORY EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

It is the responsibility of the Purchaser to insure that the Products specified meet the performance criteria defined by the Purchaser for their application. Seller cannot know 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, 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.

7. Inspection/Copying/Alterations

Purchaser shall notify Seller of any claim or objection reasonably discoverable upon inspection of the Products within 10 days after delivery to Purchaser's facilities. The retention of the Products by Purchaser beyond this period or the use of the Products for any purpose whatsoever shall constitute an unconditional acceptance of the same by Purchaser, with respect to such patency defects and no claim or liability in this respect shall survive or be enforceable against the Seller.

Seller hereby licenses to Purchaser the intellectual property rights involved in the construction of the Products. The Product may not be copied nor provided to a third party for copying. The Purchaser shall indemnify Seller for all legal fees and expenses incurred by Seller to prevent such actions and/or protect Seller's intellectual property rights in the Products. Seller reserves the right to alter the Products including after confirmation of order, provided that such changes do not materially affect technical specifications specifically agreed to in writing by Seller.

8. Confidentiality

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

9. Changes and Cancellations

Orders accepted by Seller are not subject to changes, cancellations or suspension, except with the Seller's written consent and then only upon terms that will indemnify Seller against any reasonable costs or losses incurred due to such change or cancellation.

10. Agreement; Modifications

No terms or conditions other than those stated herein and no agreement or understanding, oral or written, purporting to modify these terms and conditions shall be binding on Seller unless hereafter made in writing and signed by the authorized representative of Seller. Sale representatives and agents have no authority to make such agreements or modifications.

11. Security Interest

Purchaser hereby grants Seller a continuing security interest in any Products and in the proceeds thereof (including proceeds of sale or insurance) until the entire purchase price for the Products currently or previously sold to Purchaser is paid and until all late payment, interest, legal fees and expenses required to enforce Seller's rights and any costs, expenses, taxes or other charges required to be paid to Purchaser by Seller have been paid in full. Purchaser specifically agrees that Seller may file one or more financing statements or other documents and take all action necessary or appropriate in order to create, perfect, preserve or enforce Seller's security interest in the Products pursuant to the Uniform Commercial Code and other applicable law, and hereby grants to Seller a power of attorney to execute such statements or documents in Purchaser's name. Seller's reasonable costs and expenses (including, but not limited to, attorney's fees and expenses) for pursuing, searching for, receiving, taking, keeping, storing, advertising and selling the Products shall be paid by the Purchaser, who shall remain liable for any deficiency resulting from a sale of the Products and shall pay any such deficiency forthwith on demand. The requirement of reasonable notice of sales shall be met if such notice is mailed and addressed to Purchaser at its last address appearing on Seller's records at least 10 days prior to the date of sale.

12. No Modification or Waiver

The failure of omission of Seller to insist in any instance, upon strict performance by Purchaser of any term or condition of this agreement or to exercise any of its rights hereunder shall not be deemed to be a modification of any term hereof or a waiver or relinquishment of the future performance of any such term or condition by Seller, not shall such failure or omission constitute a waiver of the right of Seller to insist upon future performance by Purchaser of any such term or condition.

13. Applicable Law and Venue

This agreement shall be governed by and construed in accordance with the laws of the State of Kentucky, without regard to the principles of conflict of laws and the provisions of the United Nations Convention on Contracts for the International Sale of Goods are excluded in their entirety.

Exclusive jurisdiction and venue of any dispute arising out of or with respect to this Agreement or otherwise relating to the commercial relationship of the parties shall be vested in the Federal and/or state courts located in the City of Louisville, State of Kentucky as shall have jurisdiction over the subject matter hereof and to the extent permitted by law all parties hereto consent to such jurisdiction and venue; provided however, that if such court finds that it lack jurisdiction or venue, any party hereto may pursue its claim in any other court.



30% Post-consumer product



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