Standard Terms of Sale and Delivery for LINAK Australia Pty Ltd

1. Application

1.1 All deliveries of products ("Products") from LINAK Australia Pty. Ltd, 82-84 Abbott Road, Hallam VIC 3803 ("LINAK") to any purchaser ("Purchaser") shall be governed by these standard terms of sale and delivery (the "Terms") to the extent that they are not waived in writing by LINAK. LINAK's acceptance of Purchaser's order is expressly conditioned upon Purchaser's acceptance of these Terms and no addition to or modification shall be binding on LINAK unless expressly agreed to in writing.

1.2 The international trade terms specified in "*Incoterms 2020*" shall apply between LINAK and the Purchaser.

2. Ordering

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

2.2 If LINAK'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 content of the order confirmation.

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

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

3. Terms of delivery

3.1 All deliveries by LINAK shall be FCA Hallam (Incoterms 2020), 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 shall be performed using the means LINAK deems best without any liability for LINAK.

3.2 LINAK undertakes to take appropriate measures to deliver on time. If a delay nevertheless occurs, LINAK 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 and all tax, duty or tariffs which may be levied on the Products as well as any necessary expenses connected with the approval of the Products.

5. Prices

5.1 LINAK reserves the right to change prices until a final order confirmation has been issued. LINAK 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 Hallam (Incoterms 2020), unless otherwise specifically agreed in writing.

6.2 If payment is delayed, LINAK shall be entitled to claim (i) 2% interest per month or ii) the highest rate allowable under applicable law, whichever the lesser, on the purchase price, as well as to withhold all future consignments. LINAK shall also be entitled to demand that the Purchaser pays all reasonable costs incurred in connection with legal or non-legal action taken with the purpose of collecting payment.

6.3 The Purchaser shall not be entitled to withhold any payments in respect of alleged claims against LINAK, unless such claims have been accepted in writing by LINAK 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 nonetheless pay for the Products as if delivery had taken place, in the absence of any agreement to the contrary.

7. Retention of Title

7.1 Until such time as the full price payable is paid to LINAK by the Purchaser for each Product:

(a) property in, ownership of and title of Products sold by LINAK to the Purchaser shall not pass to the Purchaser;

(b) LINAK reserves the right in respect of any Products delivered, to dispose of the Products at any time to any person and on such terms and conditions as LINAK sees fit;

(c) the Purchaser must hold the Products in a fiduciary capacity for LINAK;

(d) the Purchaser shall store the Products separately from other items and in a manner which clearly identifies the Products as LINAK's property;

(e) notwithstanding the other provisions of this clause, the Purchaser is authorized to sell and effect delivery of the Products in the ordinary course of its ordinary business provided that (i) if the Purchaser is paid by the third party and the Purchaser has not paid LINAK for the Products, the Purchaser must hold the whole of the proceeds of the sale on trust for LINAK; or (ii) the Purchaser, upon LINAK's request, assigns claims against the applicable third party, which remain unpaid, to LINAK by providing an irrevocable Power of Attorney, but only until notified in writing to the contrary by LINAK; or the occurrence of an event listed in Clause 7.1(f);

(f) if the Purchaser or any person who has guaranteed the debts of the Purchaser to LINAK: (i) fails to pay the whole of the outstanding amounts due to LINAK in accordance with these Terms or (ii) breaches any other provision of these Terms, LINAK may, at its own discretion and without prejudice to other rights, declare the outstanding amounts due to LINAK immediately due for payment; and enter the premises at which the Products are kept ("Premises") and remove the Products from the Premises;

(g) the Purchaser agrees that LINAK shall be entitled but not obliged to sell any Products, possession of which is retaken by LINAK pursuant to Clause 7.1(f);

(h) the Purchaser grants to LINAK (under Clause 7.1(a)) a purchase money security interest, as defined in the Personal Properties Securities Act 2009 ("PPSA") in the Products and any proceeds of sale of the Products ("PMSI") to secure the purchase price of the Products, the cost of registering a financing statement will be paid by the Purchaser;

(j) the Purchaser agrees not to do or permit anything to be done that may result in the PMSI granted to LINAK ranking in priority behind any other security interest (as defined by the PPSA); and

(k) the Purchaser will take such further steps (including obtaining consents, supplying information, signing forms or executing documents) which may be required by LINAK to take further or better security under the PPSA in respect of the Products and proceeds of sale of the Products or to maintain the effectiveness or priority of any security interest under the PPSA.

8. Intellectual property rights

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

8.2 If the provision in clause 8.1 is violated, the Purchaser shall pay LINAK compensation for any loss attributable to unlawful copying; and all costs incurred in connection with the legal and non-legal pursuit of LINAK 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, the Purchaser of the project shall indemnify LINAK 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. Embedded Software

9.1 If Products are delivered with embedded software, LINAK provides the Purchaser with a non-exclusive, software license in the form of a right to use such software solely for the purposes set out in applicable Product specification. Aside from this, the Purchaser obtains no rights in the form of license, patent, copyright, trademark or other proprietary right connected with such software. The Purchaser shall not obtain any rights to software source code nor shall the Purchaser attempt to access such source code.

9.2 If Products are delivered with embedded software, the Purchaser shall be responsible for keeping the software up to date following delivery, by installing necessary updates offered by LINAK.

10. Technical changes and approval

10.1 LINAK 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.

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

10.3 The Purchaser shall be fully liable for its application, use and operation of any Product, whether or not such application, use or operation has been approved by LINAK. 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 cannot assess the impact of all the conditions under which the Products shall 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 the Products. Products may not in any circumstances be used in aircraft or in connection with nuclear power of any kind.

10.4 The Purchaser undertakes to apply for all necessary national or international approvals of any application in which Products are used.

11.Complaints

11.1 If the Purchaser wishes to claim that the delivered Products are defective, the Purchaser must complain immediately to LINAK.

11.2 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, the Purchaser shall submit such complaints to LINAK no later than 5 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.

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

12.Cost-free repairs and replacement

12.1 At its sole discretion, LINAK agrees to repair, replace or credit Products that are found to be defective, at time of delivery, due to faulty manufacture, design and/or defective materials, provided that the Purchaser makes a claim to LINAK within 18 months from the date of invoice, unless otherwise agreed (the "Claim Period"). If batteries are provided by LINAK as a part of a Product, the Claim Period for such batteries pursuant to this clause shall be 12 months from the date of invoice.

12.2 If the Purchaser discovers defects within the Claim Period, the Purchaser shall in writing inform LINAK of such alleged defects and the Product shall then be sent to LINAK or to any other address determined and designated by LINAK with freight and insurance paid by the sender, accompanied by a description of the reason for such return. If LINAK accepts that the Product is defective and the Purchaser has complained within the Claim Period, LINAK shall dispatch the Product after replacement or repair free of charge. LINAK shall reimburse the Purchaser for the freight costs incurred by the Purchaser in sending the defective Product to LINAK's place of business, but only if LINAK has approved in writing of the method of dispatch and the costs incurred prior to the dispatch of the Products. If however, LINAK's analysis shows that the Product is not defective, LINAK may return the Product to the Purchaser at the Purchaser's cost and risk, and LINAK may charge a fee for the time and materials used in analysing the allegedly defective Product.

12.3 Re-delivery or repair under this clause shall under no circumstances be performed outside LINAK places of business, unless otherwise agreed by LINAK. LINAK shall not in any circumstances remove, replace or remount Products which have been incorporated in other non-Products.

12.4 Excluded from cost-free repairs and replacements are Products delivered with embedded software where claims arise from (i) combination of Products with any hardware or software not manufactured or not provided by LINAK; (ii) the Purchaser's specifications being different from the agreed written specifications; (iii) nonconformity not discovered by LINAK during release and quality testing nor by the Purchaser during the Purchaser's quality testing and approval; (iv) failure to update such software as necessary; and (v) any alteration or modification to Products, except those alternations or modifications made by LINAK or specifically agreed to by LINAK in writing.

12.5 In case of defects in software covered by clause 12.1, cf. clause 12.4 the Purchaser's sole remedy and LINAK aggregated liability shall be limited to LINAK providing and/or replacing any defective parts in the Products by supplying new software components to the Purchaser. LINAK shall not be responsible for replacement of Products or part of Products in the Purchaser's applications, including but not limited to any kind of field updates.

12.6 Unless otherwise expressly stated in these Terms, Products are supplied "AS IS", "WHERE IS" and "WITH ALL FAULTS", LINAK does not extend any warranty, written, expressed nor implied for implied merchantability or fitness for particular purpose.

12.7 Products shall not be subject to clause 12.1 regarding cost-free repairs or replacement, if LINAK has determined, in its sole discretion, that the Purchaser has misused the Products in any manner, has failed to use the Products in accordance with industry standards and practices or has failed to use the Products in accordance with any instructions, if any, provided by LINAK. Further LINAK accepts no liability for wear and tear nor for Products which have been subject to violent treatment or inadequate maintenance.

13.Product liability

13.1 LINAK shall be liable for product liability in accordance with applicable legislation in this connection but does not assume liability in any degree beyond that specified by applicable legislation.

13.2 The Purchaser shall indemnify LINAK to the extent that LINAK is liable vis-à-vis third parties for any damage or loss for which LINAK is not liable vis-à-vis the Purchaser in accordance with clause 13.1 above.

14.Limitation of liability

14.1 LINAK shall not be held responsible nor liable for any special, indirect, consequential, punitive or exemplary damage or loss, which might arise out of faulty Products, delay in the delivery of Products, product liability, recall or otherwise, irrespective of cause, including but not limited to, loss of production, loss of profit, loss of data and/or loss of goodwill.

15.Export Control

15.1 The Purchaser acknowledges that LINAK is required to comply with applicable export / import laws and regulations relating to the sale, export, import, transfer, assignment, disposal and use of the Products. The Purchaser agrees that Products will not at any time directly or indirectly be used, exported, re-exported, imported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with any export / import laws and regulations.

16.Protection of personal data

16.1 As a part of handling sales and Service requests from the Purchaser, LINAK shall process contact and invoice data. Any personal data LINAK may process may be shared with other LINAK group companies. Personal data will not be shared with any third parties other than data processors who process data on behalf of LINAK based on a data processor agreement. Further information can be found in LINAK's Privacy Policy which can be found at www.linak.com.au.

17.Force majeure

17.1 LINAK is entitled to cancel orders or suspend delivery of the Products and shall not be liable for any non-delivery, faulty or delayed delivery, which partly or wholly is caused by circumstances beyond LINAK's reasonable control, including, but not limited to, riots, civil unrest, war terrorism, health emergencies, health epidemic, fire, insurrection, requisition, seizure, embargo or defects or delays in deliveries by sub-suppliers, strikes, lockouts, slowdowns, lack of transportation, scarcity of materials, and insufficient supplies of energy. Any of the Purchaser's contractual rights are suspended or become void in any such circumstances referred to in this clause. The Purchaser is not entitled to any kind of damages or to make claim whatsoever in case of cancellation or delayed delivery due to such circumstances.

18.Confidentiality

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

19.Partial Invalidity

19.1 If one or more of the terms and conditions in these Terms or any part of a term is deemed invalid, unenforceable, illegal or inoperable, the validity, enforceability, legality or operability of all further terms and conditions shall not be affected or diminished thereby.

20.Applicable law and venue for disputes

20.1 Any disagreements or disputes between LINAK and the Purchaser shall be settled by the laws of Victoria without regard to its conflict of law rules.

20.2 Unless LINAK gives its written consent to a process of arbitration, which shall then take place in Melbourne, all disputes shall be settled by legal proceedings at the Victorian Courts and the Federal Court of Australia (Victoria Registry).

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