

## **GENERAL TERMS AND CONDITIONS FOR NATIONAL AND INTERNATIONAL SALES**

Franke Foodservice Systems GmbH  
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Germany

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### **General Information, Scope of Application**

1. The current version of the General Terms and Conditions of Franke Foodservice Systems GmbH ("Franke") applies to all contracts that relate to Franke's deliveries and services. The Terms and Conditions do not apply if the customer is a consumer. Any changes of the Terms and Conditions or of the resulting contract shall be in writing. The customer's General Terms and Conditions shall not be applicable, unless Franke has explicitly agreed to the adoption. The following order of precedence shall prevail for the effectiveness and interpretation of the various documents: the order confirmation, the offer, and these General Terms and Conditions.

2. The ineffectiveness or invalidity of individual provisions of these conditions shall not affect the validity of the other provisions and the existence of the resulting contract. The relevant statutory provisions or a regulation to be agreed between the parties shall apply in place of the ineffective or invalid provision.

### **Offer, Offer Documents, Planning Work, Copyrights**

3. Offers by Franke are always non-binding. With regard to illustrations, drawings and dimension, weight and performance data from Franke's offers, brochures, price lists, and catalogs, Franke reserves the right to make changes unless they have been expressly identified as binding.

4. Drawings/layouts and other confidential documents ("Information") shall remain the property of Franke and subject to copyright, even if this is not explicitly indicated. Such Information as well as offers/cost estimates and prices may not be disclosed to third parties without Franke's express, written consent. All information must be returned to us upon first request. If the order is not placed, this Information must be promptly returned to us without specific notice to this effect and may not be used.

5. If this Information is passed onto third parties or used for unauthorized purposes in violation of the above provision, and such violation is attributable to the customer, Franke is entitled to claim payment of a contractual penalty amounting to EUR 10,000. The right to further claims for damages is expressly reserved. Payment of the contractual penalty does not relieve from compliance to the obligations, as set out in Clause 4.

### **Delivery Dates, Dispatch, Transfer of Risk, Packaging**

6. Delivery dates and delivery periods are not binding, insofar as it has not been expressly agreed otherwise in writing. The information shall be provided in good faith, although without warranty, and shall be subject to the punctual delivery of Franke or punctual supply of customer's performance. Partial deliveries are permissible, provided this is reasonable to the customer. Deliveries shall be ex works Franke venue (EXW, Incoterms 2010). If, contrary to this agreement, Franke should commission transport, Franke accepts no liability. In the event of delays with delivery neither Franke nor the forwarder takes

responsibility. Franke does not accept the return of any transport or any other packaging; they become the customer's property, with the exception of pallets.

7. The customer must check the products immediately after delivery in respect of completeness, correspondence with the delivery documents and transport defects, and must report any identifiable deviations and defects in writing without delay. Insofar as a complaint is not issued within 5 days following receipt of the products, the delivery shall be deemed to have been contractually compliant, unless the deviation was not identifiable notwithstanding thorough examination.

### **Prices, Payment Terms**

8. Franke's prices are quoted ex works Franke (EXW, Incoterms 2010), exclusive of packaging and statutory VAT (if applicable). The minimum order value is EUR 25. Unless otherwise agreed, Franke's prices do not include assembly. The customer may order for assembly and Franke may subcontract the work to a third party. On Franke's instruction, such assembly may be charged to customer directly by the third party. All costs incurred in this context shall be borne by the customer. The quoted price includes all necessary certificates and documents in German and English for a sale in Germany. If a customer requires additional certificates and documents, such costs incurred are billed to the customer at cost.

9. Invoices are dispatched via email. Invoices must be paid in full within 10 days from invoicing by bank transfer. Payment by credit card is not permitted. The bill must be paid in the billing currency shown. In the case of kitchens and conversions, a deposit of 75% of the total amount is due in each case 30 days before the agreed delivery date. Franke may demand the entire amount straight away if the customer is in arrears. Delivery will then be made exclusively against advance payment. In the aforesaid cases, we may also make the processing of all orders from the customer dependent on advance payment or providing collateral.

### **Retention of Title**

10. The supplied goods shall remain Franke's property until all claims arising from the business relationship with the customer are met. No pledges or assignments as security by the customer are permitted, and the customer must inform Franke immediately if there are any interventions by third parties with respect to the goods. The customer is obliged to treat Franke's reserved goods with care and to insure them against damage and loss, and to identify and store them separately as Franke's property to enable them to be sorted at any time. The customer herewith assigns any claims against the insurance to Franke, insofar as they relate to Franke's property in the event of loss or damage. The customer is entitled to resell the goods in the ordinary course of business provided that full payment has been made to us, or he expressly draws the purchaser's attention to the fact in writing that Franke retains title to the goods in question. The customer shall immediately assign to Franke, by way of pledge, the full value of any claims arising from the resale or any other legal basis (such as insurance, unlawful acts, connection with real estate). If insolvency proceedings are brought against the customer, he is not entitled to sell on or assign ownership of the goods that are still the property of Franke, until he has settled all outstanding debts to Franke. For behavior contrary to the contract, in particular failure to make payment following reminder, the customer is obliged to return the goods DDP (Incoterms 2010) to Franke's venue (including unloading at the customer's risk and cost).

11. If the law of the country in which the goods are located does not allow the intended retention of title, or only in a restricted form, Franke may reserve other rights to the goods. The customer must assist in all the necessary measures (e.g. registrations) to assert the retention of title or any alternative rights, to protect said rights.

## Disposal

12. The customer, if he is located in Germany, assumes responsibility for the proper disposal of the delivered goods after the end of its service in accordance with legal regulations at the customer's own expense. The customer holds Franke harmless from the obligations under Section 10, Paragraph 2, of the German Electrical and Electronic Equipment Act (ElektroG) and Section 9 of the Directive on waste electrical and electronic equipment 2002/96/EU (WEEE), and Section 13 of the WEEE Directive (take-back obligation for manufacturers) and from claims by third parties in this connection. In the event that the customer requests disposal by Franke, Franke will prepare a quotation for the customer for the return and disposal of the goods at the time of disposal. The customer will be charged for transport and disposal costs.

13. The customer who is located in an EU Member State other than Germany is obliged, as the importer and commercial user of the electrical and electronic devices, to dispose the delivered goods at his own expense after the end of service. In this case, Franke cannot be regarded as the manufacturer.

14. The customer who is located outside the EU does not fall within the regulatory scope of the WEEE Directives. As the importer and commercial user of electrical and electronic devices he is however obliged to dispose these goods after the end of service in accordance with the relevant applicable regulations.

## Liability for Defects, Warranty

15. If the goods delivered by Franke are defective, the customer's warranty claims shall be based on the statutory provisions, with the provision that the customer may only request rectification in the first instance. If the rectification fails, or Franke considers it to be disproportionate, the customer is entitled to reduce the purchase price or to withdraw from the contract. If the defect is due to a defective third-party product, Franke may assign the warranty claims against its supplier to the customer. In this case, a claim may only be brought against Franke, if and insofar as the customer has been unsuccessful in bringing a warranty claim against the manufacturer of the third-party product. Unsuccessful in bringing a claim means that the customer has pursued the claim through the courts, has notified the dispute for the purpose of support by Franke, and a final ruling of the court of last resort has been made, or if insolvency proceedings have been brought against the manufacturer of the third-party product.

16. Defects must be reported immediately in writing, but at the latest 5 (five) working days after their discovery. The warranty period is 12 months from the transfer of risk for goods manufactured by Franke. The warranty for all consumables supplies, lamps and glass, and wearing parts is explicitly excluded. For goods not manufactured by Franke but by third party suppliers, the warranty conditions of the third party will apply. This particularly applies with regard to spare parts. Should customers of Franke have warranty and guarantee agreements directly with third-party manufacturers (OEMs), such agreements cannot be brought against Franke, and all Franke's warranties are excluded in such cases.

## Compensation for Damages

17. Franke only accepts liability for gross negligence and willful intent and in the event of a culpable breach of an essential contractual obligation, without which proper performance of the contract is absolutely impossible, and on whose performance the customer may regularly rely ("Cardinal Obligation"). In the event of a slightly negligent breach of a Cardinal Obligation, Franke's liability is limited to foreseeable damages typical to the contract; Franke accepts no liability in the event of a slightly negligent breach of accessory contractual obligations. In the case of initial impossibility of performance, Franke is only liable if Franke was aware of the impediment; Franke was gross negligently unaware, or a Cardinal Obligation is breached because of the initial impossibility.

18. Franke is not liable for any compensation for loss of profits, loss of use, and other consequential damage.

19. If Franke's liability is limited or excluded because of the aforesaid clauses, this shall also apply to the liability of employees, representatives, and other vicarious agents. Claims for compensation are not affected by the acceptance of a guarantee or procurement risk, or by injury to life, body, or health, fraudulent concealment of a defect and claims based on product liability legislation. With the exception of claims that result from tort and claims for goods which are used in accordance with their usual purpose for a building and which caused its defectiveness,, respective claims of customer shall be time-barred after one year.

### **Cancellation of Orders, Return Shipments**

20. Orders may only be canceled in out of warranty processing following written consent by Franke. In case an order for ordered goods is canceled, Franke reserves the right to charge a processing fee amounting to 20% of the goods value, but a minimum of EUR 15. In the event that projects that have been placed are canceled (new-build kitchens or modifications, or other contracts for the supply of items to be manufactured), Franke reserves the right to invoice relevant cancellation fees equal to the expenditure incurred by Franke.

21. Ordered goods may only be returned out of warranty following written approval by Franke and within a maximum of 24 hours since delivery. The return shipment to Franke must be dispatched immediately after approval, stating the RMA (Return Merchandise Authorization) number provided by Franke. The goods must be received by Franke within 10 working days after allocation of the RMA number at the latest, and the goods must be returned unused and in the original packaging. Franke reimburses the value of the goods in the form of a credit note, provided these conditions have been met. No cash payment will be made. Franke reserves the right to charge a fee for processing and return of 20% of the goods' value, but a minimum EUR 15. A return shipment of goods with a net purchase price less EUR 20 is not permitted, and there is no entitlement to a refund for the value of the goods by a credit note.

### **Data Protection and Processing**

22. Personal data is any information relating to an identified or identifiable natural person ('Data Subject') as defined in the applicable data protection law.

Personal data will be gathered, processed and used by Franke in compliance with the applicable data protection law and all of our employees, Franke group companies and third party service providers who have access to personal data are obliged to respect the confidentiality of the personal data.

In the event that Franke is provided and receives personal data via customer or a point of sale for such purpose describe above, Franke is an independent controller under applicable data protection law.

Franke collects personal data when customer submits it to us, through registration, completion of forms or e-mails, as part of an order for products or services, after-sale support for products or services, inquiries or requests about products being ordered and similar situations in which data subject has chosen to provide the information to Franke or via a point of sale to Franke.

Some personal data provided (name, address, phone number and email address) will be processed by Franke for marketing, advertising or promoting purposes. We assume that this is of mutual interest for our customer and for the Data Subject to upkeep a good business relationship and the respective Data Subject can object to the processing of his/her data for this purpose at any time without giving reasons by

contacting Franke.

Some of the personal data provided may be stored or processed in other jurisdictions, such as the United States, whose data protection laws may differ from this jurisdiction. In such cases, Franke ensures that appropriate protections are in place to require the data processor in that country to maintain protections on the personal data that are equivalent to those that apply in the country of Franke.

Customer is obliged to inform any point of sale and its end-users that it complies with applicable data protection law and personal data will be processed by Franke according to the terms and limitation set forth in this Clause. Customer shall, without limitation, defend, hold harmless and indemnify Franke in the event of damage that is attributable to customer's transferring of personal data or in breach of applicable data protection law.

Our full privacy statement can be found on our website: [www.franke.com](http://www.franke.com).

### **Place of Jurisdiction, Applicable Law, Place of Performance**

23. German law applies to the exclusion of the UN Convention on the International Sale of Goods and provisions for the conflict of laws.

24. Place of performance for all claims arising out of or from contracts signed with Franke is Frank's registered office. Exclusive jurisdiction for all claims from either side arising from or in connection with the business relationship shall be Bad Säckingen. Franke is entitled to call any other legally admissible court. Alternatively, Franke is entitled – as a claimant – to have a dispute that arises under these conditions in connection with the business relationship settled under the rules of arbitration of the German Institution of Arbitration (DIS), to the exclusion of the right to ordinary legal process; place of arbitration is Franke's registered office; language for the arbitral proceedings is at discretion of Franke in English or German.

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