

# General Sales Terms and Conditions INTERNATIONAL

These General Sales Terms and Conditions (hereinafter Terms) apply and govern to all offers, orders and deliveries of Franke Kaffeemaschinen AG, registered at Franke-Strasse 9, 4663 Aarburg Switzerland (hereinafter Franke) to its business customers (B2B) for coffee machines, accessories, service parts and consumables ("Products") outside of Switzerland.

Deviating general terms and conditions of purchase by the customer are explicitly excluded. Any conditions stipulated by the customer which are in contradiction to these Terms shall only be valid if expressly acknowledged by Franke in writing.

## **1. Offers and Orders**

- 1.1. Offers by Franke are non-binding, unless it states an acceptance period.
- 1.2. Franke reserves the right to adjust its price list for the Products at any time.
- 1.3. A purchase order placed by Customer is valid and binding. A legal contract incorporating this Terms is established when it has been confirmed in the written acknowledgment stating acceptance by Franke and inasmuch as specified therein.
- 1.4. Franke shall be entitled to make any changes to the Products which lead to improvements provided such changes do not result in a price increase.

## **2. Terms of payment and transfer of benefits**

- 2.1. Unless otherwise agreed in writing, all prices and delivery terms are FCA (Incoterms 2020), excluding taxes. Payments are due with immediate effect from receipt of invoice and must be paid according to the agreed terms of payment.
- 2.2. If the customer does not adhere to the agreed terms of payment and fails to make payment by the payment date, the customer is liable for interest from the agreed date on which the payment was due at a rate of 12 % p.a. Franke may at its option suspend supply of Products to the Customer, including the withholding of Delivery in respect of orders previously made by the Customer and accepted by Franke or ask for prepayment until all amounts owing to Franke are paid. The exercise of this remedy by Franke does not prevent it from exercising any other remedy Franke has under this Agreement or under the law.
- 2.3. Where payments are made by the Customer to Franke without allocation to specific debts or Products, payments will be deemed to have been made on the basis that the oldest debts are paid first.
- 2.4. Franke remains the legal and beneficial owner of all Products and retains title until all amounts in accordance with the contract and secured by the Products have been received. The customer undertakes to cooperate in any measures necessary for the protection of Franke's title and at the demand of Franke to issue his written consent without delay to the recording of the retention of title according to applicable law.

## **3. One-Year limited statutory warranty**

- 3.1. Franke provides a one-year limited statutory warranty for the Products to its customers from the date of purchase and warrants that all Products shall be: (a) be free from all liens, encumbrances, and other claims against title; (b) be new and free of defects in design, material and workmanship, except for the Product that is clearly identified for sale to customer as refurbished, remanufactured, or used (c) meet the technical specifications and will be reasonably fit for any particular purpose that was made known to the customer.
- 3.2. The customer shall inspect the Products for defects within 10 days and shall immediately notify Franke in writing of any defect or non-conformity being present at the time of purchase. If the customer fails to do so, the goods shall be deemed to have been accepted. Upon request of Franke, the customer shall return defect Products to Franke for a technical analysis at his own expense.

- 3.3. Franke will at its discretion repair the defective Product, replace or reimburse the purchase price of the associated Product to the customer upon receipt of satisfactory evidence that the product was defective or non-conform with the contract of sale.
- 3.4. All deficiencies which cannot be proven to have their origin in bad material, faulty design or poor workmanship, e.g. those resulting from normal wear, improper maintenance, failure to observe the operating instructions, excessive or wrong loading, use of any unsuitable material, influence of chemical action, installation work not undertaken by the Franke or an authorized dealer, or resulting from other reasons beyond Franke's control are excluded from the Franke's liability for defects. NO WARRANTIES OTHER THAN THE WARRANTIES SET FORTH IN THIS SECTION ARE EXPRESSED OR IMPLIED BY FRANKE. FRANKE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT AND END-USER WARRANTY.

#### **4. Intellectual Property**

- 4.1. All intellectual property rights pertaining to the products or the product documentation are held by and shall remain with Franke. Any usage, copying or modification shall require our approval. The customer agrees that except where expressly set out in this Agreement, nothing in this Agreement confers any contractual or proprietary right upon the customer to use or otherwise deal with or dispose of any trademark of Franke and that all goodwill relating to use of such trademarks will accrue to Franke.
- 4.2. Software Protection: All Intellectual Property rights in the control software which enables routine operation, product usage data, maintenance and repair of the Products ("Control Software") shall remain the property of Franke. The customer and its customers are hereby authorized to use the Control Software for operation of the Products for their own purposes, but they shall have no other right or interest in the Control Software, and in particular no right to reproduce, decompile, reverse engineer or otherwise to attempt to derive information in the Control Software or permit or induce the foregoing.
- 4.3. Nothing in this Agreement, nor any amendments thereto, shall limit or restrict Franke with respect to Feedback provided to Franke related to the Products. The customer agrees that Franke will be free to copy, modify, create derivative works, publicly display, disclose, distribute, license, incorporate and otherwise use the Feedback, including derivative works thereto, for any and all commercial or non-commercial purposes.

#### **5. Franke's limitation of liability**

- 5.1. The liability of Franke, irrespective on what ground they are based, are exhaustively covered by these Terms, is limited to unlawful intent and gross negligence. Franke shall only be liable for direct damages resulting from the Product but not for indirect, consequential or similar damages such as loss of profit, loss arising from business interruption, reputational damages etc. Franke will not be obligated to defend, settle or be liable for fees, costs and damages for any claims to the extent that the alleged infringement arises out of or from: (i) a combination of the Products with other products or technology; (ii) a modification to the Products, information or technology where such modification was not provided by Franke; and/or (iii) the defect on which a claim is based was not in the Product when delivered by Franke.
- 5.2. In the event of a claim or action or suspected infringement of third party rights resulting from the Products, Franke may at its expense and option either: (i) procure for the customer the right to continue selling Products; (ii) replace the Products and/materials with non-infringing Products and materials; or (iii) terminate this Agreement. Franke shall have no liability for continued infringement by the customer after the exercise of option (i), (ii) and/or (iii) above by Franke.
- 5.3. In any event and to the extent permissible by applicable law, Franke's aggregate and total liability (including for any claims made against the customer by a third party) under this Agreement will be limited to the price paid by the customer to Franke for

- Product(s) that are the basis of the applicable claim but in any event it will be limited to the sum of CHF 10'000.-.
- 5.4. If personal injury or damage to the property of third parties occurs through actions or omissions of the customer or of persons employed or appointed by him to perform any of his obligations, and if a claim is made against Franke, then the latter shall be entitled to take recourse against the customer.

## **6. Data privacy**

- 6.1. Each party has to comply with all applicable data protection law and provision, as amended from time to time, comply with all reasonable directions of the other concerning matters of privacy.
- 6.2. 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.
- 6.3. If 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.
- 6.4. Franke collects personal data when customer submits it to Franke through registration, completion of forms or e-mails, as part of an order for products, after-sale support for products, 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.
- 6.5. 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 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.
- 6.6. 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.
- 6.7. 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 Section. 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.
- 6.8. Franke's full privacy statement can be found on the website: [www.franke.com](http://www.franke.com).

## **7. Miscellaneous**

- 7.1. This Agreement contains the entire understanding of the parties with respect to the Products subject matter and substitutes and merges any previous agreement, particularly any previous warranty agreements, be it written or oral, among the Parties hereto. This Agreement, including this Section, may only be amended, waived, rescinded or terminated in writing.
- 7.2. Should a provision of these Terms prove to be wholly or partly invalid, the parties shall jointly seek an arrangement which has a legal and economic effect as similar as possible to the invalid provision.
- 7.3. Export: The re-export of products or software may be subject to Swiss and/or foreign export control provisions. The customer undertakes to ensure that he is informed about the relevant foreign trade regulations and export control provisions, and if necessary, to obtain the permits which may be required to export the products.

**8. Jurisdiction and applicable law**

- 8.1. Applicable Law: This Agreement shall in all respects be governed by, and construed and interpreted in accordance with, the substantive laws of Switzerland with the exclusion of the Vienna Convention on the International Sale of Goods (CISG) and the any conflict of laws principles.
- 8.2. Jurisdiction: Exclusive place of jurisdiction over all disputes arising directly or indirectly out of or in relation with this business relationship shall be at registered office of Franke in Switzerland. Franke shall however be entitled to initiate action before any other competent court.

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