

## FRANKE UK LIMITED TERMS AND CONDITIONS OF PURCHASE

### 1. INTERPRETATION

#### 1.1 Definitions:

<b>Business Day</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>Conditions</b>	the terms and conditions set out in this document as amended from time to time in accordance with clause 17.3.
<b>Contract</b>	the contract between Franke and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.
<b>Delivery Date</b>	the date specified in the Order unless agreed otherwise between Franke and the Supplier.
<b>Delivery Location</b>	the address for delivery of Goods as set out in the Order.
<b>Goods</b>	the goods (or any part of them) set out in the Order.
<b>Mandatory Policies</b>	Franke's business policies and codes on Anti-Slavery and Anti-Bribery.
<b>Order</b>	Franke's order for the Goods, as set out in Franke's standard purchase order form.
<b>Specification</b>	the latest version of the specification for the Goods agreed by Franke, including any related plans and drawings.
<b>Supplier</b>	the person or firm from whom Franke purchases the Goods as identified in the Order.

#### 1.2 Interpretation:

- 1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.2 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.3 a reference to **writing** or **written** includes faxes and emails.

### 2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

- 2.2 The Order constitutes an offer by Franke to purchase the Goods in accordance with these Conditions. Franke shall not be liable for any order of the Goods unless such order is issued on Franke's standard purchase order form.
- 2.3 The Order shall be deemed to be accepted on the earlier of:
- 2.3.1 the Supplier issuing a written acceptance of the Order; and
- 2.3.2 the Supplier doing any act consistent with fulfilling the Order,
- at which point the Contract shall come into existence.
- 2.4 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.
- 2.5 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Franke.
- 2.6 For the avoidance of doubt, nothing in this Contract shall impose any minimum order or minimum purchase obligations on Franke.

### **3. THE GOODS**

- 3.1 The Supplier warrants and undertakes that the Goods shall:
- 3.1.1 be clear and free from all liens and encumbrances;
- 3.1.2 correspond with their description and any applicable Specification;
- 3.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by Franke expressly or by implication, and in this respect Franke relies on the Supplier's skill and judgement;
- 3.1.4 be free from defects in design, material and workmanship and remain so for the period of time specified in the warranty terms agreed with the Supplier. Where no warranty terms are agreed with the supplier a warranty period of 5 years shall apply;
- 3.1.5 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and
- 3.1.6 where sold by reference to a sample, the Goods will correspond to the sample in quality and be free from any defect which would not be apparent upon the inspection of any sample.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

#### **4. DELIVERY**

4.1 The Supplier shall ensure that:

4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition and be fit for resale in that form by Franke;

4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number, the type (and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.3 if the Supplier requires the return of any packaging material (including pallets) to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be collected by the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

4.2.1 on the Delivery Date; and

4.2.2 at the Delivery Location (or as otherwise notified to the Supplier by Franke); and

4.2.3 in accordance with the terms specified in the Order.

4.3 Any applicable Incoterm shall be identified in the Order. Risk in the Goods shall pass as prescribed by the Incoterm identified in the Order, or as otherwise agreed in the Order.

4.4 Without prejudice to clause 4.2, in the absence of any Incoterm or other term agreed in the Order, delivery of the Goods shall be Delivery Duty Paid (DDP) Incoterms 2010.

4.5 If the Supplier anticipates that it will, for any reason, be unable to fulfil an Order in line with the Delivery Date, the Supplier shall notify Franke immediately. Franke may, at its discretion agree an alternative Delivery Date. Where the Supplier's failure to meet the Delivery Date jeopardises Franke's ability to meet its obligations to its customers, Franke shall be entitled to the remedies set out in clause 6.

4.6 If the Supplier:

4.6.1 delivers less than 95% of the quantity of Goods ordered, Franke may reject the Goods; or

4.6.2 delivers more than 105% of the quantity of Goods ordered, Franke may at its discretion reject the Goods or the excess Goods and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and Franke accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.7 The Supplier shall not deliver the Goods in instalments without Franke's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one

instalment on time or at all, or any defect in an instalment shall entitle Franke to the remedies set out in clause 6.

## **5. TITLE**

5.1 Notwithstanding clause 3.2 title in the Goods shall pass to Franke on the earlier of:

5.1.1 payment for the Goods being made by Franke; and

5.1.2 resale of the Goods by Franke, in which case title to the Goods shall pass to Franke at the time specified in clause 5.2.

5.2 Franke may use or resell the Goods before it has made payment for the Goods. In doing so it does so as principal and not the Supplier's agent and title to the Goods shall pass from the Supplier to Franke immediately before the time at which resale occurs.

## **6. ACCEPTANCE AND DEFECTIVE PRODUCTS**

6.1 Franke shall not be deemed to have accepted any Goods until it has had a reasonable time following delivery to inspect them, or in the case of a latent defect in the Goods, following the latent defect becoming apparent.

6.2 If any Goods delivered to Franke are not delivered on the Delivery Date, do not comply with clause 3 or are otherwise not in conformity with the Contract, then, without prejudice to any other right or remedy available to it, Franke may reject those Goods and exercise any one or more of the following remedies:

6.2.1 terminate the Contract in accordance with clause 14;

6.2.2 require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense within a mutually agreed timeframe;

6.2.3 return them to the Supplier at the Supplier's own risk and expense and require the Supplier to provide a full refund of the price of the rejected Goods (if paid) forthwith;

6.2.4 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

6.2.5 recover from the Supplier any costs incurred by Franke in obtaining substitute goods from a third party; and

6.2.6 claim damages for any other costs, loss or expenses incurred by Franke which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract (including those arising from Franke's inability to fulfil its customers' orders).

6.3 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6.4 Franke's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

## **7. PRICE AND PAYMENT**

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.
- 7.2 The price of the Goods:
- 7.2.1 excludes amounts in respect of value added tax (**VAT**), which Franke shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - 7.2.2 includes the costs of packaging, insurance and carriage of the Goods as well as duties and taxes (with the exception of VAT, see clause 7.2.1).
- 7.3 No price increases or extra charges shall be effective unless agreed in advance in writing with Franke.
- 7.4 The Supplier may invoice Franke for price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery. The Supplier shall ensure that the invoice includes the date of the Order, the Order number, the invoice number, the Supplier's VAT registration number and any supporting documents that Franke may reasonably require.
- 7.5 Franke shall pay correctly submitted invoices in accordance with the payment terms agreed with the Supplier, and where no such terms are agreed, within 60 days from the end of the month in which it received and agreed the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 7.6 Franke may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to Franke against any liability of Franke to the Supplier. If the liabilities to be set off are expressed in different currencies, Franke may convert either liability at a market rate of exchange for the purposes of the set off. Any exercise by Franke of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

## **8. INTELLECTUAL PROPERTY RIGHTS AND FRANKE MATERIALS**

- 8.1 The Supplier acknowledges that all plans, drawings, process information, patterns, designs, Specifications, and data supplied by Franke to the Supplier (**Franke Materials**) and all rights in the Franke Materials are and shall remain the exclusive property of Franke. The Supplier shall keep the Franke Materials in safe custody at its own risk, maintain them in good condition until returned to Franke and not dispose or use the same other than in accordance with Franke's written instructions or authorisation.
- 8.2 The Supplier acknowledges that it may, by express written instruction from Franke, be required to affix Franke's trade marks to the Goods. In such circumstances and to the extent necessary, Franke grants to the Supplier the non-exclusive, non-transferrable, terminable right to use the trade mark and other Franke Materials in relation to the manufacture and supply of the Goods for the duration of the Contract and strictly in conformance with Franke's instructions for use.

- 8.3 The Supplier acknowledges and accepts that Franke is the sole owner of any and all intellectual property rights in the trade marks and the Supplier undertakes that:
- 8.3.1 it shall not use any trademarks, trade names or get-up which resemble Franke's trade marks and which would be likely to confuse or mislead the public or any section of the public;
  - 8.3.2 not do or omit to do, or authorise any third party to do anything that could invalidate or be inconsistent with Franke's ownership of or validity and enforceability of Franke's intellectual property rights in the trade marks and the Franke Materials;
  - 8.3.3 it shall observe all directions and instructions given to it by Franke about the use and application of the trade marks;
  - 8.3.4 it shall not do or omit to do, or permit to be done, any act that will or may weaken, damage or be detrimental to Franke's intellectual property rights or the reputation or goodwill associated with the trade marks vested in Franke.
- 8.4 Franke reserves the right to terminate the licence granted pursuant to clause 8.2 at any time.
- 8.5 The Supplier warrants that Goods not made to Franke's Specification are original and do not infringe the intellectual property rights of any third party and no additional rights or licence is required for Franke to purchase or subsequently resell the Goods whether as supplied or modified or included as a component in other products.

## **9. INDEMNITY**

- 9.1 The Supplier shall indemnify, keep indemnified and hold harmless Franke against all liabilities, costs, expenses, damages and losses (including but not limited to any direct and indirect losses, penalties and legal costs together with all other professional costs and expenses) suffered or incurred by Franke as a result of or in connection with:
- 9.1.1 any claim made against Franke for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply, resale, modification or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
  - 9.1.2 any claim made against Franke by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
  - 9.1.3 any loss or damage suffered by Franke or any claim made against it arising from or in connection with any security incident (including but not limited to any cybersecurity incident) suffered by the Supplier; and
  - 9.1.4 any claim made against Franke by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

9.2 This clause 9 shall survive termination of the Contract.

## **10. INSURANCE**

10.1 During the term of the Contract and for a period of five (5) years thereafter, the Supplier shall maintain in force, with a reputable insurance company product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on Franke's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

10.2 The Supplier must notify Franke immediately if it is required to undertake a product recall. Franke shall at the Supplier's cost, give such assistance as the Supplier requires for the purpose of recalling as a matter of urgency any quantities of the Goods. In addition, the Supplier shall defend, indemnify and hold harmless Franke against any costs, claims, demands, losses and expenses arising out of or in connection with any recall of the Goods.

## **11. USAGE INFORMATION**

11.1 The Supplier shall supply to Franke with the Goods, full, proper and clear information and labels as to the proper and safe construction, assembly, handling, use, storage and disposal of the Goods, together with any warnings and labels as to their possible misuse or mishandling and about any manner in which their construction, assembly, handling, storage and disposal could be unsafe.

11.2 Such information should be supplied in a form to ensure that Franke can use the Goods for the purpose it requires without causing any defect or damage to the Goods (for example when the Goods form a component of another product) and/or can supply the Goods to its customers free from any defect or damage and with the relevant information about construction, assembly, handling, storage and disposal.

## **12. CONFIDENTIALITY**

12.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

12.2 This clause 12 shall survive termination of the Contract.

## **13. COMPLIANCE WITH RELEVANT LAWS AND POLICIES**

13.1 In performing its obligations under the Contract, the Supplier shall:

- 13.1.1 comply with all applicable laws, statutes, regulations from time to time in force; and
- 13.1.2 comply with the Mandatory Policies.
- 13.2 Franke may immediately terminate the Contract for any breach of clause 13.

#### **14. TERMINATION**

- 14.1 Franke may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. Franke shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the date of termination. In no event shall Franke be liable for any loss of anticipated profits, any consequential loss nor the costs of shipment which may arise from such termination.
- 14.2 Without limiting its other rights or remedies, Franke may terminate the Contract with immediate effect by giving written notice to the Supplier if:
  - 14.2.1 the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within reasonable time of being notified in writing to do so;
  - 14.2.2 the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 14.2.3 the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his assets, or ceasing to carry on business or if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 14.2.4 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 14.2.5 the Supplier's financial position deteriorates to such an extent that in Franke's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 14.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 14.4 In the event of termination, for any reason whatsoever, the Supplier agrees and undertakes to immediately deliver up to Franke all data, Specifications, studies, drawings, calculation notes, document, materials (including the Franke Materials) it holds in connection with the Contract and destroy any copies of the same.



14.5 Clauses that expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **15. FORCE MAJEURE**

15.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 weeks, the party not affected may terminate this agreement by giving 14 days' written notice to the affected party.

## **16. BREXIT**

16.1 Each of Franke and the Supplier acknowledge that if at any time after the UK ceases to be a member state of the European Union (**Brexit**), a Brexit Trigger Event (defined at clause 16.2) occurs which has, or is likely to have, an adverse impact on Franke, Franke may:

16.1.1 require the Supplier to negotiate in good faith an amendment to the Contract (including to the price of the Goods) or take such action as required to alleviate the Brexit Trigger Event;

16.1.2 if no such action is taken or amendment is made to the Contract within 30 days, terminate the Contract by giving the Supplier not more than 7 calendar days written notice. On termination under this clause, clause 14.1 shall apply.

16.2 Brexit Trigger Event means any of the following events occurring at any time after Brexit:

16.2.1 an adverse impact on the Supplier's ability to perform the Contract in accordance with its terms and the law;

16.2.2 the requirement to obtain any new or revised licence, permission, registration, authorisation or exemption that is either a statutory or industry requirement;

16.2.3 the imposition of taxes, duties and tariffs or the costs, fees or charges associated with labour or materials required to produce the Goods under this Contract means that the price of the Goods under this Contract exceeds the market value for similar products by at least 5%.

16.3 Save as expressly provided in this clause 16, a Brexit Trigger Event shall not terminate or alter (or give any party a right to terminate or alter) this Contract, or invalidate any of its terms or discharge or excuse performance under it. If there is any inconsistency between the provisions in the clause and any other provision in this Contract, the provisions of this clause shall prevail.

## **17. GENERAL**

### **17.1 Assignment and other dealings**

17.1.1 Franke may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

- 17.1.2 The Supplier may not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Franke.
- 17.2 The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of Franke. If Franke consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.
- 17.3 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Franke.
- 17.4 Except as set out in clause 2.4, no failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 17.5 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.6 **Notices**
- 17.6.1 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- 17.6.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.6.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.
- 17.6.3 This clause does not apply to the service of any proceedings or other documents in any legal action, or other method of dispute resolution.
- 17.7 No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.
- 17.8 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

17.9 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.