

## FRANKE UK LIMITED ("the Seller") CONDITIONS OF SALE

### 1. INTRODUCTION (INTERPRETATION)

a. In these Conditions of Sale ("Conditions"):

**"Acknowledgement of Order"** means an acknowledgement of order issued by the Seller to the Buyer in respect of the Goods and of which these Conditions form part;

**"Buyer"** means the person, firm or company named as the Buyer in the Contract;

**"Contract"** means the contract for the sale of the Goods by the Seller to the Buyer incorporating these Conditions;

**"Data Protection Legislation"** up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998;

**"Goods"** means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions; and

**"Insolvency Event"** means each and any of the following in relation to the Buyer being the **"Relevant Party"**

(a) Any action (corporate or otherwise), legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or renegotiation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Relevant Party (except that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction); (ii) a Debt Relief Order being made in respect of a party; (iii) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of the Relevant Party or any of its assets; (iv) the enforcement of any security over any assets of the Relevant Party; or (v) the expropriation, attachment, sequestration, distress or execution over or affecting any material asset of the Relevant Party, in each case which is not withdrawn or dismissed as soon as reasonably practicable;

(b) The Relevant Party is unable to pay its debts as they fall due or is insolvent taking into account contingent and prospective liabilities, as interpreted in accordance with relevant legal authority from time to time;

(c) The Relevant Party enters into a composition or arrangement with its creditors or any class of them; or

(d) The commencement of any similar procedure or step in relation to the Relevant Party in any jurisdiction other than England and Wales.

**"Product Intellectual Property"** all intellectual property rights owned or used by the Seller in connection with the manufacture and marketing of the Products (including trade marks, service marks, business names, goodwill and the right to sue for passing off, domain names, and rights in confidential information) in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**"Writing"** includes telex, cable, facsimile transmission, electronic mail and comparable means of communication.

b. These Conditions shall be incorporated in any agreement from time to time entered into between the Seller and the Buyer for the sale of any Goods by the Seller to the Buyer. These Conditions shall override any terms or conditions contained or referred to in the Buyer's order or in correspondence or implied by trade custom, practice or course of dealing unless specifically agreed to in Writing by an authorised representative of the Seller.

c. No variation of these Conditions shall be binding unless specifically agreed to in Writing by an authorised representative of the Seller.

d. No conditions, statement or representation whether made orally or contained in any advertisement, brochure, trade circular or similar literature shall be deemed to be incorporated into this Contract unless specifically agreed to in Writing by an authorised representative of the Seller.

e. The Buyer warrants to the Seller that any employee, agent or officer who submits an offer, or negotiates or otherwise deals with the Seller on the Buyer's behalf in relation to the Contract, has full power and authority to do so.

### 2. QUOTATIONS AND PRICES

a. All quotations are for information only and are not binding on the Seller unless otherwise stated. All quotations are valid for 30 days only and are thereafter subject to amendment or withdrawal and are submitted subject to these Conditions. The Seller shall not be bound to accept any order submitted as a result of any quotation. No order shall be binding unless confirmed in Writing by an authorised representative of the Seller on its Acknowledgement of Order Form in which case a Contract will be formed between the Buyer and the Seller in the terms set out in the Acknowledgement of Order and these Conditions.

b. The price for the Goods shall be the Seller's quoted price (unless varied pursuant to a. above) or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published list from time to time current at the date of acceptance of the order by the Seller on its Acknowledgement of Order Form. Where Goods are supplied for export from the United Kingdom, the price indicated in the Seller's published export price list shall apply unless the Buyer and the Seller have otherwise agreed a specific price for the Goods.

c. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

d. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

- e. The Seller may, in its absolute discretion accept returns of Goods which were originally delivered in full compliance with the terms of the Contract. In such circumstances the Buyer shall pay the Seller a restocking fee of 30% of the relevant purchase price in respect of the Contract or part thereof which has been cancelled. The Buyer and Seller agree that this figure is a genuine pre-estimate of loss which will be incurred by the Seller in the event of such a cancellation. Payment shall be by way of a deduction to the credit note being granted. VAT and other sales tax, levy, charge or other duty payable by the Buyer shall be added to the price at the rate applicable at the date of invoice from time to time at the relevant tax point.
- f. Except as otherwise stated under the terms of any quotation, or in any price list of the Seller, or specifically agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on the basis that the Goods are to be delivered to the Buyer's premises as stated in the Contract, or such other place as the Buyer and the Seller may agree and accordingly, in the case of Goods to be supplied for export, the Buyer shall in addition to the price, be liable for arranging and paying all costs of transport and insurance from the Seller's premises.
- g. Where the Goods are supplied for export from the United Kingdom the Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

### **3. PAYMENT**

- a. Terms strictly that payment should be received (cleared funds) within 30 days from the end of the month of preparation of the Seller's invoice except as otherwise specifically agreed in Writing between the Buyer and the Seller prior to delivery of the Goods. Payment of the full price, less any discount (where specifically agreed in Writing between the Buyer and the Seller) will be due irrespective of whether title in the Goods has passed on the due date for payment. All payments are to be made in Sterling to such bank account as the Seller shall nominate or in such other manner as the Seller may direct.
- b. Timely payment of the price is of the essence of the Contract. All amounts due by the Buyer shall be payable in full against the Seller's invoice without any compensation, set-off or counterclaim. The Seller reserves the right to charge interest at the rate of 3% per annum above the base rate from time to time of the Bank of England (accruing on a daily basis, and compounded monthly) on any overdue account from the due date for payment until payment is made in full, provided that this Condition shall in no way prejudice any other rights or remedies available to the Seller in terms of the Contract or otherwise.
- c. Payment for the Goods shall in any case become due in full immediately if the Buyer suffers an Insolvency Event and the Buyer shall notify the Seller immediately upon the occurrence of such an Insolvency Event.

### **4. DELIVERY**

- a. Except as otherwise agreed by the Buyer and the Seller in Writing, delivery of the Goods within the United Kingdom shall be made by the Seller delivering the Goods to the Buyer's premises as stated in the Contract, or such other place as the parties may agree. The mode of transport shall be at the Seller's discretion. Where the Goods are supplied for export from the United Kingdom, except as otherwise agreed by the Buyer and the Seller in Writing, delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection.
- b. In the event of the Buyer, or their customers, failing to accept any delivery or deliveries tendered in accordance with the Contract or order or, where applicable, failing to arrange for collection of the Goods from the Seller's premises within the seven days of notification by the Seller that the Goods are ready for collection the following shall apply:
- the Seller may make such arrangements as it thinks fit for the storage of the Goods, but shall not owe a duty of care in making these arrangements to the Buyer and shall not be liable to the Buyer for any loss or damage to the Goods caused by their storage;
  - the Buyer shall reimburse the Seller all costs and charges incurred by the Seller in connection with the storage of the Goods;
  - the Seller may immediately, or at any time after delivery has been tendered or, where applicable, the time for collection of the Goods has expired, treat the Contract as repudiated by the Buyer's breach and make such arrangements as it thinks appropriate for the disposal of the Goods;
  - the Buyer will in any case be liable, and compensate the Seller, for any losses and costs incurred by the Seller as a result of the Buyer's breach of the Contract; and
  - for the avoidance of doubt the Buyer shall bear the risk of any loss or damage to the Goods as from the time the Seller tenders delivery of the Goods in accordance with the Contract or, where applicable, notifies the Buyer the Goods are ready for collection at the Seller's premises.
- c. While the Seller will make every effort to effect delivery as soon as the Goods are ready or in accordance with pre-arranged dates, time of delivery is not of the essence of the Contract and no guarantee is to be implied as to delivery or shipment dates nor will the Seller accept liability for any loss or damage occasioned, directly or indirectly, by delay in delivery or failure to deliver however caused.
- d. Any receipt obtained by the Seller, whether marked "unchecked" or otherwise signed by or on behalf of the Buyer or by any carrier or nominated agent of the Buyer accepting or taking delivery of the Goods shall be conclusive evidence of delivery by the Seller to the Buyer of the Goods or of such part thereof as indicated by such receipt unless the Buyer notifies the Seller within 14 days of delivery that the delivery is short.
- e. The Seller shall not be obliged to give the Buyer notice relating to insurance of the Goods referred to in Section 32(3) of the Sale of Goods Act 1979.

### **5. RISK AND PROPERTY**

- a. Risk of damage to or loss of the Goods shall pass to the Buyer:
- in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
  - in the case of the Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- b. Notwithstanding delivery and the passing of risk the property in and title to the Goods shall remain with the Seller until the Buyer has paid (a) the price of the Goods under this Contract in full and (b) all other money owed by the Buyer to the Seller and/or any other subsidiary, holding or associate company of the Seller or any other account or pursuant to any other contract for which payment is then due. Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary bailee, keeping the Goods separate from those of the Buyer and third parties, free from any lien, security, charge or encumbrance and properly stored, protected and insured as identified as the Seller's property.

c. Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods. For the purpose of repossessing the Goods or any part thereof, the Buyer hereby grants an irrevocable licence to the Seller, its employees, agents or contractors to enter upon those premises at which the Goods are stored and the Buyer shall pay to the Seller the cost of removal and transport of the Goods or any part thereof.

d. The Buyer shall be entitled to resell the Goods in the ordinary course of its business. Where the Buyer resells Goods which, in accordance with this Condition 5, remain the Seller's property, ownership of these Goods shall pass to the Buyer immediately prior to resale by the Buyer. If the Buyer becomes subject to an Insolvency Event, the Buyer's right to re-sell or otherwise deal in the Goods shall automatically terminate and the Seller shall be entitled to repossess any of the Goods in respect of which title has not passed as aforesaid.

## **6. DEFECTIVE GOODS AND QUALITY**

a. The Seller warrants that on delivery [and for the duration of any warranty period included in the Acknowledgement of Order or otherwise notified by the Seller to the Buyer in writing] the Goods shall comply with the Specification or, if no Specification is contained in the Contract, shall be of satisfactory quality.

b. Subject to condition (c) below and regardless of whether the Buyer has marked the delivery note "unchecked" or otherwise, the Seller shall not be liable in respect of any kind of claim or complaint against it that the Goods are not in conformity with the Contract unless the Buyer notifies it thereof in Writing within 14 days of delivery of the Goods (or in the case of non-delivery, within 14 days of the agreed delivery date) PROVIDED THAT (i) the Goods shall have been treated properly at all times, and (ii) no alteration, modification, repair or addition has been made to the Goods or any part thereof by or on behalf of the Buyer. Where any valid claim in respect of any of the Goods is notified to the Seller, the Seller shall have the option of replacing or crediting the net invoiced value of the Goods in respect of which any kind of valid claim is made thereby fully discharging all legal liability in respect thereof. In the event of the Seller opting to replace the Goods, the Seller shall arrange and pay for the return of the defective Goods from the place or original consignment and for delivery to the same place of Goods in replacement.

c. Where it is agreed that the Seller is to deliver the Goods to the Buyer, otherwise than at the Seller's premises, and the Seller uses the services of a carrier to effect delivery, the Seller shall not be liable in respect of any kind of claim or complaint against it that the Goods are lost or damaged in transit unless the Buyer notifies the Seller thereof in Writing within such time as will enable the Seller to comply with the carrier's conditions of carriage as affecting loss or damage in transit. Where any valid claim in respect of Goods lost or damaged in transit is notified to the Seller within the stated time limit, the Seller shall have the option of either repairing or, at its sole option, replacing free of charge such Goods lost or damaged in transit thereby fully discharging all legal liability in respect thereof. In the event of the Seller opting to replace the Goods, the Seller shall arrange and pay for the return of the Goods (where applicable) from the place of original consignment and for delivery to the same place of Goods in replacement.

d. The Seller does not warrant the suitability of the Goods for any use or purpose. Subject to the above and except to the extent that liability may not be lawfully excluded the Seller shall not be liable in respect of any warranties, conditions, terms or representations, express or implied, statutory or otherwise in respect of the quality or fitness for any particular purpose of the Goods or otherwise howsoever. Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer will not be affected by these Conditions.

e. The Seller shall not in any circumstances be liable to the Buyer or to any other person for any loss of profit, loss of revenue, loss of goodwill, loss of anticipated savings or for any consequential or indirect losses or damage arising directly or indirectly (whether as a result of the negligence of the Seller or otherwise howsoever) in connection with the supply of Goods or their use by the Buyer.

f. The aggregate liability of the Seller howsoever arising from or in connection with the supply of the Goods (whether for breach of contract, negligence, misrepresentation or otherwise howsoever) shall be limited to the aggregate invoice price for the Goods in question.

g. Nothing herein contained shall be construed as an attempt to exclude or limit the liability of the Seller in negligence for the death of or injury to any person or for any other liability to the extent that such liability cannot, by law, be excluded or limited.

## **7. INSTRUCTIONS AND INDEMNITY**

a. The Buyer shall comply with the Seller's instructions and any other instructions or information supplied to the Buyer for the use of the Goods, including the manufacturer's instructions where different from the Seller's.

b. The Buyer shall indemnify and keep indemnified the Seller from all costs, claims, demands, expenses and liabilities of whatever nature, including, without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss (including loss of profit) which may be made against the Seller or which the Seller may sustain, pay or incur arising out of or in connection with the failure of the Buyer to comply with such instructions or information for the use of the Goods.

## **8. FORCE MAJEURE**

The Seller shall not be in breach of the Contract for any failure of or delay in performance which is due wholly or partially to causes beyond the Seller's reasonable control, including but not limited to restrictions by Government or other Competent Authority, strikes, lock-outs, trade disputes or labour disturbance, failure in the Seller's anticipated supplies of raw materials, break down of plant or machinery, fire, explosion, flood, drought, difficulty in obtaining workmen or transport.

## **9. TERMINATION**

In the event of any payment due by the Buyer to the Seller not being paid on the due date, or in the event of the Buyer suffering an Insolvency Event, or if the Buyer shall cease or threaten to cease, trading or carrying on business, or if the Buyer shall without prior written consent of the Seller, sell or otherwise dispose of the whole or substantially the whole of its assets, or if the Seller reasonably apprehends that any of the foregoing events is about to occur (and notifies the Buyer accordingly), the Seller shall be entitled to treat the Contract of which these Conditions form part and any other contract between the Seller and the Buyer as repudiated and shall be entitled to terminate the Contract immediately on notice to the Buyer.

## **10. SEVERABILITY**

If and to the extent that any of these Conditions shall be determined to be invalid, unlawful or unenforceable, such term or conditions shall to that extent be severed from the remaining terms and conditions which shall continue to be valid to the fullest extent permitted by law.

## **11. WAIVER**

No waiver by the Seller of any breach of the Contract by the Buyer shall be effective unless given in writing (and failure or delay to exercise a right shall not constitute a waiver) and no waiver by the Seller shall constitute a waiver of any subsequent breach of the same of any other provision.

## **12. ASSIGNATION**

The Contract is personal to the Buyer who shall not assign or transfer in whole or in part the benefit and/or the burden thereof without the prior written consent of the Seller.

## **13. NOTICES**

Any notice or communication to be sent in connection with the Contract shall be deemed to be sufficiently served if sent in Writing and:

- i. if sent by pre-paid first class post to the party to whom it is given at its last known address, in which case it shall be effective on the second day after posting; and
- ii. if sent by fax or telex to the recipient's fax or telex number, it shall be effective on transmission.

## **14. GOVERNING LAW**

The Contract, these Conditions and any dispute as claim arising out of or in connection with them or their subject matter or formation will be governed by and construed in accordance with English law and the parties hereto submit to the exclusive jurisdiction of the English Courts.

## **15. DATA PROTECTION AND DATA PROCESSING**

- a. In order to process orders and fulfil its contractual obligations to the Buyer for the sale of Goods, the Seller will use and process Personal Information (as defined in the Data Protection Legislation) of employees, agents and officers of the Buyer. For the purposes of the Data Protection Legislation, the Buyer is the data controller and the Seller is the data processor of this Personal Data (where Data Controller and Data Processor have the meanings defined in the Data Protection Legislation).
- b. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Condition is in addition to, and does not relieve, remove or replace, either party's obligations under the Data Protection Legislation.
- c. Without prejudice to the generality of this Condition 15, the Seller shall, in relation to any Personal Data (as defined in the Data Protection Legislation) processed in connection with the performance by the Seller of its obligations under the Contract:
  - i. process that Personal Data only on the documented instructions of the Buyer (for example, to fulfil the Buyer's order) unless the Seller is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Seller to process Personal Data;
  - ii. ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - iii. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - iv. not transfer any Personal Data outside of the European Economic Area (other than Switzerland, in respect of which the European Union Commission has made a positive finding of adequacy).
- d. The Seller will notify the Buyer without undue delay on becoming aware of a Personal Data breach.
- e. Unless unambiguous, affirmative consent has been given by the relevant individuals, the Seller will not use the Buyer's Personal Data for marketing purposes.
- f. At the written direction of the Buyer, the Seller will delete or return Personal Data and copies thereof to the Buyer or on termination of the agreement unless required by applicable legislation to store the Personal Data (for example, the Seller is required by HMRC to retain copies of invoices for a period of 6 years from the end of the financial year to which they relate).
- g. The Buyer consents to the Seller appointing third party processors, such as logistics partners used for delivery of the Goods, in order to fulfil the Buyer's orders and the Seller's contractual obligations to the Buyer. The Seller confirms that it has entered, or (as the case may be) will enter into, with any third party processors, a written agreement incorporating terms which are substantially similar to those set out in this Condition 15. As between the Buyer and the Seller, the Seller shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Condition 15.

## 16. INTELLECTUAL PROPERTY

- a. The Buyer acknowledges that the Product Intellectual Property belongs to the Seller.
- b. The Buyer accepts that It is only permitted to use the Product Intellectual Property for the purposes of and during the term of this Contract and only as authorised by the Seller in writing and it shall have no right to use or to allow others to use the Product Intellectual Property or any part of it.
- c. The Buyer shall not remove, alter or otherwise tamper with any trade marks, trade names, logos, numbers or other means of identification on the Goods or the packaging therefor which come into the Buyer's possession, custody or control, and shall not place any trade mark or trade name of its own on the Goods or any packaging or other materials used in connection therewith.
- d. The Buyer shall not do or omit to do, or authorise any third party to do or to omit to do, anything which could invalidate or be inconsistent with the Seller's ownership of or the validity and enforceability of the Product Intellectual Property.
- e. The Buyer shall notify the Seller of any actual, threatened or suspected infringement of any Product Intellectual Property of which the Buyer becomes aware.
- f. The Buyer shall notify the Seller of any claim by any third party of which it becomes aware that the import or sale of the Products infringes any rights of any other person.
- g. The Buyer shall, at the Seller's request and expense and on a full indemnity basis (but not otherwise), take all such steps during the term of this Contract as the Seller may reasonably require to assist the Seller in maintaining the Product Intellectual Property as valid and effective, or to take or defend any court or other dispute proceedings concerning intellectual property matters.