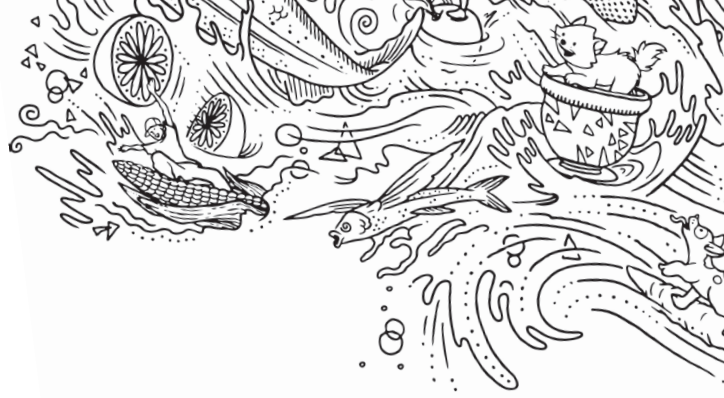


# FRANKE SOUTH AFRICA

## CONDITIONS OF SALE



### Standard Terms and Conditions of Sale

#### 1. Application and Interpretation

- 1.1 In these terms and conditions a reference to:
- (a) “Franke” means Franke South Africa (Company registration number 2004/032793/07);
  - (b) “Consumer” means a consumer as defined in the CPA; the “CPA” means the Consumer Protection Act 68 of 2008, as amended.
  - (c) the “Customer” means the person to whom Franke has agreed to supply goods or services.
  - (d) the “NCA” means National Credit Act 34 of 2005, as amended.
- 1.2 These terms and conditions:
- (a) apply to all supplies of goods or services by Franke South Africa (Franke) to the Customer;
  - (b) together with Franke’s confirmation of order contain the entire understanding of the parties as to their subject matter.
- 1.3 Neither party shall be bound by any condition, warranty, representation or undertaking of any kind, whether express or implied, except as set forth in the agreement contemplated in clause 1 (the Agreement).
- 1.4 No purported amendment or modification of the Agreement shall be valid unless in writing and signed by both parties.

#### 2. Notices

- 2.1 All notices referred to in the Agreement may be sent by email to:
- (a) Franke at [KS-Financedrs.za@franke.com](mailto:KS-Financedrs.za@franke.com); and
  - (b) the Customer at the accounts department email; or
  - (c) such other email address nominated by the party concerned on 14 (fourteen) days’ written notice to the other.
- 2.2 An email referred to in clause 2.1 is deemed to have been received when it enters the information system of the recipient. The recipient bears the onus of proving that an email that has left the information system of the sender has not entered the recipient’s information system.

#### 3. Orders Standard Stock Items

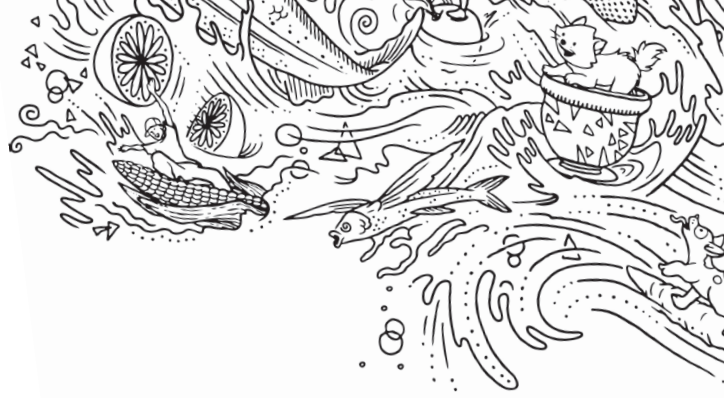
- 3.1 Orders for goods or services must be made in writing to Franke’s Call Centre (the Call Centre). All calls made to or from the Call Centre are recorded by Franke. Those recordings belong to Franke and may be used by it as Franke deems fit.
- 3.2 A certificate issued by the Call Centre Administrator whose appointment, authority and qualification need not be proved is sufficient proof of the fact and contents of any telephone call or email to the Call Centre for the purposes of obtaining judgement.
- 3.3 Franke is not obliged to accept orders for goods or services even if the Customer has successfully made application for credit.
- 3.4 Goods may only be returned in terms of the Franke’s goods returns policy in place at the time of a return is requested.

#### 4. Quotations and Orders for Custom-Made or Specially Manufactured Goods

- 4.1 These standard terms and conditions of sale also apply to all quotations unless the quotation specifically states otherwise.
- 4.2 No quotation shall be binding upon Franke unless it is set out in writing in an official Franke quotation form signed by a duly authorised representative of Franke.
- 4.3 A quotation is valid for a period of 60 (sixty) days from the date of the quotation unless the quotation states otherwise.
- 4.4 Franke may withdraw a quotation within a reasonable time on written notice to a Customer.
- 4.5 The acceptance of a quotation does not give rise to a legally binding agreement. That will only take place upon Franke dispatching written confirmation of order without qualification.

# FRANKE SOUTH AFRICA

## CONDITIONS OF SALE



- 4.6 Franke may within a reasonable time withdraw a confirmation of order that was issued in error or correct any error contained in its confirmation of order.
- 4.7 The Customer may not cancel or amend any order that has been confirmed by Franke.
- 4.8 Franke retains ownership of the rights of copyright and all intellectual property rights that repose in any drawings, designs, specifications and moulds prepared or built by it in connection with custom-made or specially manufactured goods unless otherwise provided in its written confirmation of order.
- 4.9 Franke does not accept responsibility for the design of custom-made or specially manufactured goods.
- 4.10 Custom-made or specially manufactured goods may not be returned for credit.

### 5. Price

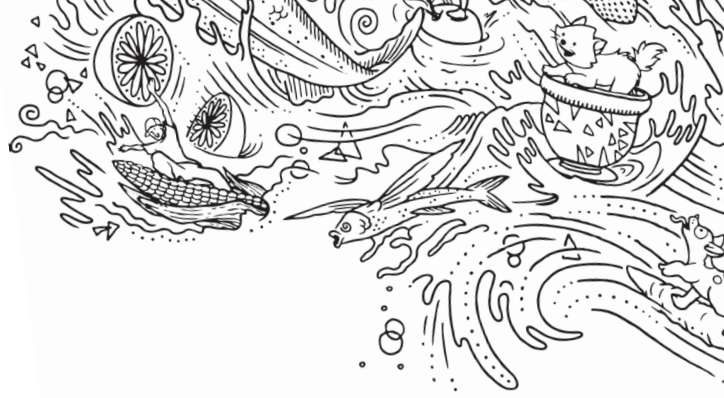
- 5.1 Unless otherwise stated Franke's prices are quoted exclusive of Value Added Tax which tax is payable by the Customer over and above that price.
- 5.2 Franke reserves the right to amend its prices from time to time on reasonable notice to the Customer.
- 5.3 The price payable for goods and services shall be the price stated in Franke's ruling price list as at the date of order unless Franke agrees otherwise in writing.
- 5.4 Any discounts that may apply are those ruling at date of dispatch unless the terms of the discount expressly state otherwise. Save where Franke has agreed otherwise with the Customer in writing, Franke reserves the right to withdraw or revise a discount at any time.

### 6. Delivery

- 6.1 In the absence of any written agreement to the contrary all deliveries of goods are ex-works Franke.
- 6.2 The customer is responsible for receiving, unloading and checking the goods where Franke delivery is not ex-works Franke.
- 6.3 If a date and time for delivery is agreed between Franke and the customer, Franke shall use its best endeavours to fulfil its delivery obligations by that time. Franke shall notify the customer if for whatever reason it cannot make timeous delivery and shall give the Customer reasonable notice of its revised delivery date. Time is not of the essence to the Agreement unless the Agreement expressly states that it is.
- 6.4 Franke may make part deliveries and may invoice for such part deliveries.
- 6.5 Subject to what is set out in this clause the Customer accepts that goods described on a Franke delivery note signed by the Customer or the Customer's employee or representative were delivered in the quantities described in the delivery note and free of any visible damage or defects unless the customer notifies Franke to the contrary in the manner described in clause 8.
- 6.6 The Customer may not cancel an order because of a delay in delivery unless Franke fails to remedy that delay within 30 (thirty) days of receipt of a written notice calling upon Franke to do so. Cancellation shall only apply to the undelivered portion of an order where there has been short delivery.
- 6.7 Franke shall not be liable for any loss or damage the Customer may suffer as a consequence of early or late delivery or the cancellation or partial cancellation of an order on account of non-delivery.
- 6.8 Delivery shall be deemed to be correct as regards the number of packages delivered unless the extent of the short or over-delivery is recorded on the delivery note and that notation is countersigned by the person making delivery on behalf of Franke.
- 6.9 The Customer may refuse a delivery of goods:
- (a) if the goods are not those described in the delivery note; or
  - (b) to the extent that the quantity of the goods exceeds the quantity listed in the delivery;

# FRANKE SOUTH AFRICA

## CONDITIONS OF SALE



(c) to the extent that the goods are visibly damaged.

The customer may not otherwise refuse delivery. In particular the Customer may not refuse a delivery because it is short, early or delayed.

### 7. Risk and Ownership

Risk shall pass to the Customer on delivery. Ownership shall pass to the Customer on the earlier of the Customer paying for those goods or supplying them to a third party in the ordinary course of business and without retention of ownership.

### 8. Notification of Visibly Damaged or Defective Goods

8.1 The notice referred to in clause 6.5 must:

- (a) be given within two working days (i.e. excluding Saturday, Sunday and public holidays) after delivery;
- (b) must be sent by email to [callcenter.fsa@franke.com](mailto:callcenter.fsa@franke.com); and
- (c) give full details of the damage or defect in such manner as Franke may from time to time reasonably require.

8.2 The Customer must not use or permit the use of any goods which are visibly damaged or defective while that damage or defect persists.

8.3 The Customer must allow Franke a reasonable opportunity to inspect any goods that it claims are defective.

### 9. Invoices, Statements and Payment

9.1 Franke invoices customers against delivery. Franke prepares statements monthly and are dated the last day of the month.

9.2 Franke may deliver invoices and statements to customers by email at the address referred to in clause 2.1(b).

9.3 Unless Franke notifies the Customer in writing of some other payment date, payment is due by no later than the last day working of the month following the date of Franke's statement. Payment must reflect in Franke's bank account for payment on or before that date.

9.4 All payments due to Franke are to be made via electronic funds transfer service (EFTS), into the bank account nominated by Franke, from time to time. Upon the opening of a customer account, the customer will be advised in writing of the bank account details of Franke, on its official letterhead. This letter will be signed jointly by the Managing Director and Financial Manager of Franke and will always be supported by a letter received from Franke bankers, signed by the Relationship Manager of that bank.

9.5 All changes to Franke's bank account details will always be subject to a 30 day notice period and subject to all the communication procedures mentioned in clause 9.4.

9.6 All payments shall be free of exchange and without deduction, set off or demand. Thus under no circumstances is customer allowed to withhold or set off payment in respect of goods it wishes to return to Franke, outstanding credit notes and rebates.

9.7 Subject to any limit or prohibition that may be imposed under the NCA, Franke may recover interest on any overdue amount at 2% (two per cent) above the prime rate of interest charged by its principal bankers in respect of overdrafts from time to time. A certificate issued by a manager of that bank whose appointment, authority and qualification need not be proved shall be prima facie proof of that rate.

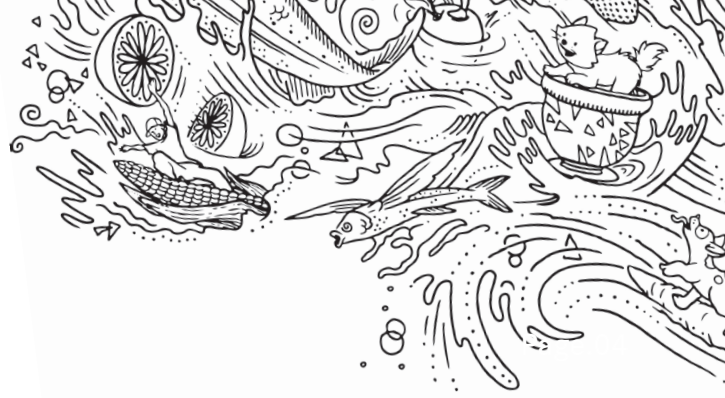
9.8 A certificate issued under the hand of any director or manager of Franke, whose appointment, authority and qualification need not be proved shall be prima facie proof of amounts owing and/or due by the Customer to Franke.

### 10. Consumer Rights and Warranties

10.1 Agreements for the supply by Franke of goods or services must be interpreted in accordance with the CPA and the NCA insofar as these acts are applicable. The terms of these acts will take precedence over any agreement to which these terms and conditions apply insofar as any term or condition of such agreements contravenes either of those acts.

# FRANKE SOUTH AFRICA

## CONDITIONS OF SALE



- 10.2 Save as set out in clause 10.3(b):
- (a) all sales of goods by Franke are voetstoets; and
  - (b) all warranties of whatsoever nature regarding the goods and/or services sold or supplied by Franke are excluded.
- 10.3 Notwithstanding clause 10.2 Franke's goods and/or services may be sold or supplied subject to the following warranties:
- (a) such warranties as may be imposed by the CPA; and
  - (b) such other express written warranties as Franke may give from time to time in respect of the goods or services it supplies. A summary of these warranties is published on Franke's website at [www.franke.co.za](http://www.franke.co.za) or [www.zipsa.co.za](http://www.zipsa.co.za) for Zip branded products.
- 10.4 The Customer must:
- (a) notify the Franke Call Centre immediately it becomes aware or suspects that any goods supplied by Franke might be defective;
  - (b) ensure that the goods supplied by Franke are suitably stored and handled; and
  - (c) take reasonable steps to ensure that it only supplies goods it received from Franke to Consumers for their intended purpose and in accordance with any instructions that Franke may give from time to time in this regard.
- 10.5 The Customer must not:
- (a) sell or supply goods sold or supplied by Franke without the user manuals or special instructions supplied by Franke in respect of those goods; or
  - (b) retail goods sold or supplied by Franke to a Consumer without taking reasonable steps to assure itself that the Consumer is aware of and comprehends the user manual and special instructions supplied by Franke in respect of those goods.

### 11. Limitation Of Liability And Indemnities

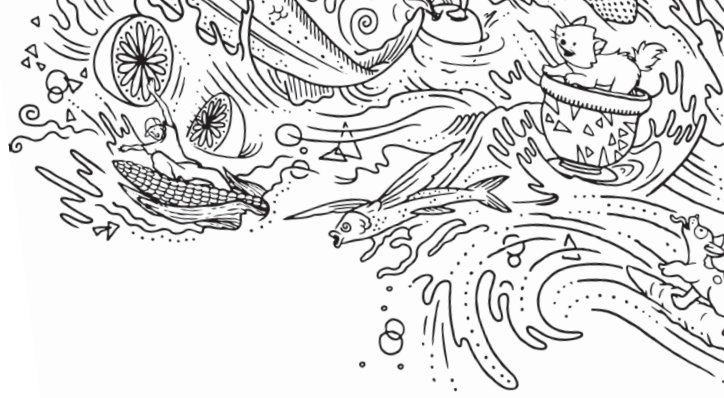
- 11.1 Save for claims made in terms of Section 61 of the CPA all claims by either Franke or the customer against the other for consequential damages are excluded.
- 11.2 Notwithstanding clause 11.1:
- (a) the Customer indemnifies Franke and holds it harmless against any claim brought against Franke by a third party in terms of the CPA howsoever arising from a supply of goods by Franke, other than claims arising as a result of a breach by Franke of its obligations under the CPA;
  - (b) Franke indemnifies the Customer and holds it harmless against any claim brought against the Customer by a third party howsoever arising from a supply of goods by Franke in breach of its obligations under the terms of the CPA;
  - (c) each party indemnifies the other for any claims that may be brought against it by a third party to the extent that the liability for that claim arose either in whole or in part as a consequence of the other party's breach of any of the terms and conditions contained in the Agreement.

### 12. Breach and Disputes

- 12.1 Franke may summarily suspend its performance under or cancel the Agreement if:
- (a) the Customer is in default of any of its obligations owing to Franke; or
  - (b) Franke believes that the Customer will not be able to timeously meet any obligation owing to Franke when it falls due.
- 12.2 Franke's right to terminate or suspend the operation of the Agreement is in addition to any other rights to claim specific performance, suspend or cancel that Agreement which Franke may enjoy, none of which is excluded.
- 12.3 The Customer consents in terms of Section 45 of the Magistrates Court Act 32 of 1944 (as amended) to the Magistrates' Court having jurisdiction under section 28 of that act notwithstanding that the amount of the claim may otherwise exceed the jurisdiction of the Magistrates' Court. Franke may nonetheless elect to institute legal proceedings in some other court that has jurisdiction.

# FRANKE SOUTH AFRICA

## CONDITIONS OF SALE



- 12.4 The Customer chooses the physical address contained in its application for credit as the address at which legal processes may be served or such other physical address within the Republic of South Africa as the Customer may nominate from time to time on 14 (fourteen) days' written notice to Franke.
- 12.5 The Customer shall be liable for costs on the scale between attorney and own client in the event of Franke successfully instituting legal proceedings against it.
- 12.6 The Customer shall in addition be liable to Franke for any other costs incurred by Franke in collecting amounts owing by the Customer to Franke including without limitation tracing agent's fees and any fee or commission prescribed under the Debt Collection Act 114 of 1998, as amended.
- 13. Force Majeure**
- Franke shall not be liable for any failure to perform any obligation under the Agreement where such performance has been delayed, hindered or prevented by conditions beyond the control of that party including but not limited to acts of God, fire, government directions and/or war. Where conditions beyond Franke's control prevent performance of the obligations of that party then those obligations as well as any reciprocal obligations of the other party shall be suspended until the termination of those conditions whereupon the obligations of the parties shall be resumed. If Franke wishes to invoke this clause it shall notify the other party of the circumstances upon which it relies within 7 (seven) days of the commencement of those conditions. Such party shall take reasonable steps to minimise the losses arising from such conditions.
- 14. Severability**
- If any provision of the Agreement is found by a court of law to be invalid or void, such provision shall be severed from the remaining provisions, which shall continue to be of force and effect.
- 15. Indulgences and Waiver**
- 15.1 The failure of Franke at any time to require performance of any term of the Agreement shall not affect its right to require performance of that term or of any other term in the future.
- 15.2 No waiver by Franke in respect to a breach of any term of the Agreement shall be construed as a waiver with respect to any continuing or subsequent breach of that term, or as a waiver of any other right under this applicable agreement.
- 16. Applicable Law**
- South African law shall apply to the interpretation and enforcement of the Agreement.