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**Franke South Africa (Pty) Ltd**  
**Reg No. 2004/032793/07**

Call Centre Tel: 0861 372 653  
 Email: ks-callcenter.fsa.za@franke.com  
 Sales: enquiry.fsa@franke.com  
 Web: www.franke.co.za

Vat No. 4580273706

**PRIVATE AND CONFIDENTIAL**

**STANDARD TRADING TERMS**

Sole Owner     
  Partnership     
  (Pty) Ltd / Ltd     
  Close Corp     
  Other (Specify)

Registered Name: \_\_\_\_\_ "**Customer**" CIPC Registration No.: \_\_\_\_\_

Trading Name: \_\_\_\_\_

Registered Office / Business Physical Address: \_\_\_\_\_

Province / State: \_\_\_\_\_ Country: \_\_\_\_\_

Postal Address: \_\_\_\_\_ Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Type of Business: \_\_\_\_\_ Date commenced: \_\_\_\_\_

Auditors / Accounting Office / Bookkeepers Name: \_\_\_\_\_

Full Names of All Owners / Directors / Partners / Members	Designation	Identity No / Date of Birth	Residential Address	Cellular No./ Telephone No.
1.				
2.				
3.				

Are your latest Annual Financial Statements available for inspection? YES  NO

VAT No  (Copy of VAT certificate to be submitted)

Accounts Department: Contact: \_\_\_\_\_ Email: \_\_\_\_\_

Bankers: \_\_\_\_\_ Branch: \_\_\_\_\_

A/c No: \_\_\_\_\_ Branch Code: \_\_\_\_\_

Trade References [4 (four) must be given – **References must offer same or higher credit limit than requested**]

Name:	Telephone No.:	Contact Person:
1.		
2.		
3.		
4.		

**Anticipated purchases per month** \_\_\_\_\_ **Requested credit limit** \_\_\_\_\_

I, \_\_\_\_\_ (print full name), ID no \_\_\_\_\_

in my capacity as \_\_\_\_\_ hereby apply on behalf of the Customer for credit on the standard trading terms set out in this application for credit.

- I warrant on behalf of the Customer and in my personal capacity that:
  - I am duly authorised to make this application on behalf of the Customer; and
  - the information contained in this application is correct in every detail.
- The making or grant of this application does not terminate or affect any prior security that may have been given by the Customer.
- The Customer:
  - consents to Franke South Africa Pty Ltd ("Franke") from time to time obtaining such information as it reasonably requires from any credit bureau, the Customers' bankers, accountants and / or auditors and trade references or third parties in order to consider and / or review this application or the Customer's account;
  - accepts Franke's standard trading terms (South African Sales) in force as at the date of Franke's Confirmation of Order shall apply to all sales or supplies of goods or services by Franke to the Customer. A copy of Franke's current standard trading terms (South African Sales) are annexed to this application and any updates are published on its web site at www.franke.co.za;
  - agrees that Franke may:
    - withdraw or amend the terms upon which it grants credit at any time;
    - request the Customer to furnish security acceptable to Franke at any time.
  - agrees that Franke may give notice at the address stated in this credit application and on the terms dealing with notices set out in its Standard Trading Terms (South African Sales).

Dated at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signature \_\_\_\_\_ Print name \_\_\_\_\_

Witness signature \_\_\_\_\_ Name \_\_\_\_\_

# FRANKE SOUTH AFRICA (PTY) LTD

## Credit Application and Standard Trading Terms (South African Sales)

**Internal Use (for completion by Franke South Africa (Pty) Ltd)**

**Completed by Sales Manager**

**Check list:**

Copy of ID of Directors/Members/owners

Cancelled cheque/Letter from bankers

Client Allocation Form (by delivery address)

Trade discount Matrix

CIPC documents

Vat Certificate

Surety

Witness Signatures

Date application received (by sales dept.) \_\_\_\_\_

Completed by: Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Motivation by Regional Sales Manager \_\_\_\_\_

Credit limit recommended by Sales Manager \_\_\_\_\_ Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

References	1.	2.	3.	4.
Name of Trade Reference				
Name of contact				
Telephone No.				
Terms taken	days	days	days	days
Terms allowed	days	days	days	days
Credit limit	R	R	R	R
Monthly purchases	R	R	R	R
Age of account (years)				
Is account secured?	Yes / No	Yes / No	Yes / No	Yes / No
Opinion	Good / Bad / Satisfactory	Good / Bad / Satisfactory	Good / Bad / Satisfactory	Good / Bad / Satisfactory

Comment on references \_\_\_\_\_

Credit Bureau / Bank and credit check been obtained YES  NO

If YES, report to be attached

Credit insurance required? YES  NO

If YES, report to be attached

Comment on report \_\_\_\_\_

Date handed to credit control dept. \_\_\_\_\_ Reference checked by: \_\_\_\_\_ Date \_\_\_\_\_

Details of security held (if any) \_\_\_\_\_

Is tax invoice required upon delivery? YES  NO  Terms \_\_\_\_\_

	Initial Limit	Date	Revised	Date	Revised	Date
Credit limit applied for						
Credit limit approved						
Approved by National Sales Manager						
Approved by Financial Manager						
Approved by Managing Director (if > R1 million)						
Letter of acceptance of application						

Account No. \_\_\_\_\_ Date Captured \_\_\_\_\_ Signature \_\_\_\_\_



**Franke Officially Released Edition Number 1.0 of 2019**

***Dated 1 March 2019***

**STANDARD TRADING TERMS**  
**(SOUTH AFRICAN SALES)**

**CUSTOMER:** .....

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### Franke South Africa Pty Ltd

#### STANDARD TRADING TERMS (SOUTH AFRICAN SALES)

#### 1. APPLICATION, INTERPRETATION AND GOVERNING LAW

- 1.1. Unless the context indicates otherwise, in these trading terms a reference to:
- 1.1.1. "**Agreement**" means this agreement to supply goods or services ordered by the Customer from time to time;
- 1.1.2. "**Call Centre**" means Franke's official duly authorised call centre;
- 1.1.3. "**Confirmation of Order**" means a formal written acceptance issued by Franke in respect of any Order placed by the Customer for goods or services;
- 1.1.4. "**Consumer**" means a consumer as defined in the CPA or the NCA, as applicable;
- 1.1.5. "**CPA**" means the Consumer Protection Act 68 of 2008, as amended or replaced from time to time;
- 1.1.6. "**Franke**" means Franke South Africa (Pty) Ltd (Company registration number 2004/032793/07);
- 1.1.7. "**Customer**" means the person to whom Franke has agreed to supply goods or services;
- 1.1.8. "**NCA**" means the National Credit Act 34 of 2005, as amended or replaced from time to time;
- 1.1.9. "**Order**" means an order for goods or services issued by the Customer;
- 1.1.10. "**POPI**" means the Protection of Personal Information Act 4 of 2013, as amended or replaced from time to time;
- 1.1.11. "**Written**" or "**In Writing**" includes by way of handwriting, typewriting, faxing and emailing;
- 1.1.12. "**Working Day**" means any day other than a Saturday, Sunday or South African public holiday.
- 1.2. These trading terms, as may be amended by Franke from time to time via its website or on written notice to the Customer:
- 1.2.1. apply to all supplies of goods or services by Franke to the Customer;
- 1.2.2. together with the relevant Order and Confirmation of Order, if any, is the entire Agreement between the parties regarding the subject matter and in the event of any conflict or inconsistency the Confirmation of Order and these trading terms prevail.
- 1.3. Neither party is bound by any term, condition, warranty, representation or undertaking, except as set forth in the Agreement and, in particular, any standard trading terms of the Customer do not apply.
- 1.4. No purported amendment or modification of the Agreement is valid unless in writing and signed by both parties.

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- 1.5. If any provision of the Agreement is found to be invalid or void, such provision is severed from the remaining provisions, which continue to be of full force and effect.
- 1.6. No relaxation or waiver by Franke of its rights or indulgence granted to the Customer at any time prejudices or constitutes a waiver of Franke's rights (unless it is a written waiver signed in hard copy by both parties) and Franke is entitled to exercise its rights thereafter as if such relaxation, waiver or indulgence had not taken place
- 1.7. The Agreement is governed by and must be construed in accordance with South African law.
- 1.8. Customer may not cede or assign any of its rights or obligations in terms of the Agreement.

## 2. NOTICES

- 2.1. All notices referred to in the Agreement may be sent by email to:
  - 2.1.1. Franke South Africa to [KS-Financedrs.za@franke.com](mailto:KS-Financedrs.za@franke.com); or to such other addresses as advised by Franke in writing;
  - 2.1.2. the Customer at its email address nominated in the credit application or its accounts department email address; or
  - 2.1.3. 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 on the first Working Day following transmission.
- 2.3. All notices to Franke must contain the relevant Franke Confirmation of Order number, delivery note number and/or invoice number.

## 3. ORDERS FOR STANDARD STOCK ITEMS AND RETURNS

- 3.1. Orders for standard stock goods or services must be submitted in writing to the Call Centre.
- 3.2. 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.
- 3.3. A certificate issued by the Call Centre manager or Franke's National Sales Manager, whose appointment, authority and qualification need not be proved, is prima facie proof of the fact and contents of any telephone call or email to the Call Centre for the purposes of obtaining judgement.
- 3.4. Franke is not obliged to accept any Orders even if the Customer has successfully made application for credit.
- 3.5. The Customer may not cancel or amend any Order for stock item goods after the earlier of (a) a Confirmation of Order has been issued, or (b) the stock item goods have been despatched from Franke's premises for delivery.
- 3.6. Standard stock item goods may only be returned upon receipt of written agreement from Franke to accept their return. In addition, all such goods returned may only be credited to the Customer at the price at which they were invoiced less a handling fee equivalent to 15% of the invoiced value of the goods unless returned pursuant to a valid warranty claim in terms of this Agreement.

## 4. QUOTATIONS AND ORDERS FOR CUSTOM-MADE GOODS

- 4.1. These standard trading terms also apply to all quotations by Franke and Orders for custom-made goods unless the quotation specifically states otherwise.
- 4.2. No quotation is binding upon Franke unless it is set out in writing in an official Franke quotation form and 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. Within 5 Working Days of being issued, Franke may withdraw a quotation on written notice to the Customer.
- 4.5. The acceptance of a quotation does not give rise to a legally binding agreement unless and until Franke has issued the Customer with a Confirmation of Order.
- 4.6. Within 5 Working Days of being issued, Franke may by written notice to the Customer withdraw a Confirmation of Order that was issued in error or correct any error.
- 4.7. The Customer may not cancel or amend any Order for custom-made goods after the earlier of (a) the issue of the Confirmation of Order, or (b) the manufacture of custom-made goods has commenced.
- 4.8. Franke retains ownership of the rights of copyright and all other intellectual property rights in and to any drawings, designs, specifications, data, documents and moulds prepared or built by it or its employees, agents or subcontractors in connection with custom-made goods unless otherwise expressly provided in its written Confirmation of Order.
- 4.9. Franke does not accept responsibility for the design of custom-made goods.
- 4.10. Custom-made goods may not be returned for credit, refund or otherwise.

## 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.

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- 5.2. Franke reserves the right to amend its prices, and any applicable rebates and discounts from time to time on 30 days' written notice to the Customer, or otherwise via its website, save in respect of goods on Order after Acceptance of Order has been issued.
- 5.3. The prices payable for stock item goods and services are the prices stated in Franke's ruling price list as at the earlier of the date of Acceptance of Order or delivery, unless Franke agrees otherwise in writing.
- 5.4. No discounts or rebates apply unless expressly agreed to in writing by a duly authorised representative of Franke.

## 6. DELIVERY

- 6.1. In the absence of any written agreement to the contrary all deliveries of goods ordered are made at the physical address within South Africa selected by the Customer in writing.
- 6.2. The Customer is responsible for receiving, unloading and checking the goods.
- 6.3. If a date and time for delivery is agreed in writing between Franke and the Customer, Franke will use its reasonable commercial endeavours to fulfil its delivery obligations by that time. Time is not fundamental or of the essence to the Agreement unless the Agreement expressly states in writing that it is.
- 6.4. Franke may make part deliveries and may invoice for such part deliveries.
- 6.5. At the time of delivery, the Customer must immediately check the goods in the presence of the person making delivery on behalf of Franke.
- 6.6. The Customer accepts that goods described on a Franke delivery note signed for or receipted 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 writing by clearly endorsing Franke's copy of the delivery note with details of the short delivery or the damage or defects and such endorsement is counter-signed by the person making delivery on behalf of Franke.
- 6.7. Accordingly, Franke is not liable for any short delivery, damage or defects to the extent that no such notice, endorsement and countersignature have been duly given and made in terms of the preceding clause.
- 6.8. 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 only applies to the undelivered portion of an Order where there has been short delivery.
- 6.9. Franke is not 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.
- 6.10. The Customer may refuse a delivery of goods:
  - 6.10.1. if the goods are not those described in the delivery note;
  - 6.10.2. to the extent that the quantity of the goods exceeds the quantity listed in the delivery note; or
  - 6.10.3. to the extent that the goods are visibly damaged or defective, or do not materially comply with the Agreement.
- 6.11. 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, OWNERSHIP, REPOSSESSION AND RESALE

- 7.1. Risk in the goods passes to the Customer on delivery. Ownership passes 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.
- 7.2. Where, following delivery, the goods are stored on leased premises, the Customer must notify the landlord in writing of Franke's ownership of the goods and that they are excluded from any landlord's hypothec.
- 7.3. Where, as a result of any failure to make payment in full or in part, Franke exercises its right of ownership and repossession, any matching goods found on any premises of the Customer or the place where delivery was originally made are deemed to be the goods sold and delivered to the Customer by Franke of which Franke is the owner due to non-payment or part-payment, and may be repossessed by Franke.

## 8. INVOICES, STATEMENTS AND PAYMENT

- 8.1. Franke invoices Customers against delivery. Franke prepares statements monthly and are dated the last day of the month.
- 8.2. Franke may deliver invoices and statements to the Customer by email at the address referred to in clause 2.1.2.
- 8.3. Unless Franke notifies the Customer in writing of some other payment date, payment is due, and must reflect as cleared funds in Franke's nominated bank account, by no later than the last Working Day of the month immediately following the date of Franke's corresponding invoice e.g. if the invoice is dated August then payment must be made and must reflect as cleared funds in Franke's nominated bank account by 30 September.

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- 8.4. Where, pursuant to clause 5.4, the customer is entitled to claim an early settlement discount, payment by the Customer must be made on or before due date strictly in compliance with clause 8.3, failing which, the settlement discount is disallowed.
- 8.5. All payments to Franke must be made via electronic funds transfer service (EFTS), into the bank account nominated by Franke in writing, from time to time.
- 8.6. Upon the opening of a Customer account, or a change in bank account details, the Customer will be advised in writing of the bank account details of Franke, on its official letterhead. This letter will be signed by at least 2 duly authorised representatives of Franke and supported by a letter received from Franke's bankers, signed by the Relationship Manager of that bank.
- 8.7. 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 preceding clause 8.6.
- 8.8. All amounts owing by the Customer must be paid to Franke without deduction, set off or demand. Under no circumstances is the Customer allowed to withhold or set off payment in respect of goods it wishes to return to Franke, outstanding credit notes and rebates or otherwise.
- 8.9. Franke may recover from the Customer interest compounded monthly on any overdue amount at 2% (two per cent) above the prime overdraft lending rate of interest charged by its principal bankers from time to time.
- 8.10. 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 and payable by the Customer to Franke.

## 9. CONSUMER RIGHTS AND WARRANTIES

- 9.1. This Agreement must be interpreted in accordance with the CPA and the NCA insofar as these acts are applicable. In the event of any conflict or inconsistency the terms of these acts prevail.
- 9.2. Save as set out in clause 9.3.2:
  - 9.2.1. all sales of goods by Franke are voetstoets; and
  - 9.2.2. Franke gives no warranties of whatsoever nature regarding the goods and/or services sold or supplied by Franke and any common law warranties are excluded.
- 9.3. Notwithstanding clause 9.2 Franke's goods and/or services may be sold or supplied subject to the following warranties:
  - 9.3.1. such warranties as may be imposed by the CPA or otherwise by any applicable law; and
  - 9.3.2. such other express written warranties as Franke may give in writing from time to time pursuant to its warranty policy in respect of the goods or services it supplies. The warranty policy and the terms of these warranties are 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.
- 9.4. The Customer must:
  - 9.4.1. notify the Call Centre immediately it becomes aware or suspects that any goods supplied by Franke might be defective;
  - 9.4.2. ensure that the goods supplied by Franke are suitably stored and handled;
  - 9.4.3. 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;
  - 9.4.4. allow Franke a reasonable opportunity to inspect, photograph or test any goods that it claims are damaged or defective; and
  - 9.4.5. in all of its dealings with Consumers and others comply with the provisions of all relevant laws including the NCA and the CPA.
- 9.5. The Customer must not:
  - 9.5.1. on-sell or on-supply goods sold or supplied by Franke without the user manuals or special instructions supplied by Franke in respect of those goods;
  - 9.5.2. 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; or
  - 9.5.3. sell, use or permit the use of any goods which are damaged or defective while that damage or defect persists.

## 10. LIMITATION OF LIABILITY AND INDEMNITIES

- 10.1. Save for claims made in terms of Section 61 of the CPA and subject to clause 10.3, no party is liable to the other for any indirect or consequential damages, and whether arising from that party's negligence or otherwise.
- 10.2. Franke's liability in respect of defects in any goods or services is limited by the provisions of clause 9.2 or by the terms of the warranties referred to in clause 9.3, to the extent that such warranties apply to the goods or services so supplied by Franke.

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- 10.3. Notwithstanding clause 10.1:
- 10.3.1. the Customer indemnifies Franke and holds it harmless against any claim brought against Franke by a third party in terms of the CPA however 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;
- 10.3.2. Franke indemnifies the Customer and holds it harmless against any claim brought against the Customer by a third party however arising from a supply of goods by Franke in breach of its obligations under the terms of the CPA;
- 10.3.3. 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.

## 11. REVIEW OF CREDIT TERMS, BREACH, DISPUTES AND COSTS

- 11.1. Franke may at any time with or without notice review the credit terms and alter, amend or withdraw the credit terms previously granted to the Customer in its discretion.
- 11.2. Without prejudice to any of its other rights, Franke may summarily withdraw credit, only supply goods or services going forward on a cash upfront basis or suspend its performance under or cancel any Order or the Agreement if:
- 11.2.1. the Customer is in default of any of its obligations to Franke; or
- 11.2.2. Franke reasonably believes that the Customer will not be able to meet any obligation to Franke when it falls due.
- 11.3. 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. The Customer further submits to the non-exclusive jurisdiction of the High Court of South Africa, KZN Local Division, Durban, and the High Court of South Africa, KZN Division, Pietermaritzburg (in which event Franke is not restricted to costs on the Magistrate's Court scale). Franke may nonetheless elect to institute legal proceedings in some other court that has jurisdiction.
- 11.4. The Customer selects 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.
- 11.5. The Customer is liable for costs on the scale between attorney and own client in the event of Franke successfully instituting legal proceedings against it.
- 11.6. The Customer is, in addition, liable to Franke for any other costs incurred by Franke in collecting amounts owing by the Customer to Franke including and without limitation, tracing agent's fees and any fee or commission prescribed under the Debt Collectors Act 114 of 1998, as amended.

## 12. FORCE MAJEURE

Franke is not liable for any failure to perform any obligation under the Agreement where such performance is delayed, hindered or prevented by any conditions or circumstances beyond the reasonable control of Franke including acts of God, fire, flood, strike, industrial action, civil commotion, terrorism, delay by suppliers, embargo, load shedding and/or war. The affected obligations are suspended until such conditions and circumstances no longer apply and a a period of 5 Working Days to recover therefrom has elapsed.

## 13. CREDIT INFORMATION, POPI, REFERENCES & SECURITY

- 13.1. The Customer authorises Franke to at any time:
- 13.1.1. verify information provided by the Customer to Franke by any means including the carrying out of credit bureau and third party checks; and
- 13.1.2. receive from any credit bureau or third party any information relating to the Customer to establish compliance with the Agreement, creditworthiness or state of indebtedness.
- 13.2. The Customer acknowledges and agrees that:
- 13.2.1. Franke may transmit to its credit bureau and to any regulatory authority data relating to the Agreement;
- 13.2.2. information on non-compliance by the Customer with the terms and conditions of the Agreement may be transferred by Franke to its credit bureau;
- 13.2.3. Franke's credit bureau provides a credit profile and possibly a credit score on the Customer's creditworthiness;
- 13.2.4. Franke may disclose any information relating to the Customer, including credit information, to its holding companies or any subsidiary of its holding companies; and
- 13.2.5. Franke may disclose credit information of the Customer to any third party with whom the Customer has, or intends to have, credit relations.

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- 13.3. To the extent that it applies, Franke and the Customer must comply with the provisions of POPI in respect of the processing of any personal information provided by one party to the other.
- 13.4. Franke may at any time require the Customer to provide additional credit references and/or security acceptable to Franke in respect of the Customer's obligations hereunder, including by way of suretyship, guarantee, mortgage, cession or notarial bond over movables.

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