



CESSION OF BOOK DEBTS

CUSTOMER:

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CESSION OF BOOK DEBTS

SCHEDULE

CLAUSE REF.	DESCRIPTION	CONTENT
1.1.2	Customer's Full Names	
1.1.2	Customer's Registration Number, Trust Number and Court, or Identity Number of proprietor or each partner if a partnership	
2.2	Prior Cessions	<i>Yes / No</i>
2.2	Prior Cessions - if yes, name, address and contact details of Third Party to whom ceded	<i>Name:</i> <i>Address:</i> <i>Email:</i> <i>Tel:</i>
5.1	Periods for submission of Schedule of Book Debts	<i>Quarterly</i>
9.1	Customer's Physical Address	
9.1	Customer's Postal Address	
9.1	Customer's Telefax Number	
9.1	Customer's Email Address	

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CESSION OF BOOK DEBTS

1. DEFINITIONS AND INTERPRETATION

- 1.1. For the purposes of this cession:
- 1.1.1. "Book Debt" includes without limitation every direct or indirect claim by, and indebtedness, liability or other commitment of any nature owing to, the Customer and whether or not within the contemplation of the parties at the date of signature of this cession. In particular, "Book Debts" include all current and future debts, debts not yet due and payable, unliquidated and disputed claims, conditional, inchoate, un-matured and contingent debts and debts acquired by cession or otherwise;
- 1.1.2. "Book Debtor" means the person owing the Book Debt to the Customer;
- 1.1.3. "Customer" means the person whose details are specified in the Schedule as such, and who is a customer of Franke or is otherwise a surety or guarantor in respect of a customer's obligations to Franke;
- 1.1.4. "Calendar Month" means one of the 12 months of the year i.e. January to December;
- 1.1.5. "Franke" means Franke South Africa Pty Ltd, a company incorporated in South Africa, registration number 2004/032793/07;
- 1.1.6. "Prior Cession" has the meaning given to it in clause 2.2;
- 1.1.7. "Quarter" means 3 Calendar Months;
- 1.1.8. "Records" has the meaning given to it in clause 5.2;
- 1.1.9. "Schedule" means the schedule at the head of this cession, forming an integral part of this cession;
- 1.1.10. "Third Party" has the meaning given to it in clause 2.2.
- 1.2. This agreement is governed by and construed according to the law of South Africa.
- 1.3. This cession may be signed by the parties in any number of counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same agreement.
- 1.4. Since the provisions of this agreement have been settled by negotiation, the rule of construction that clauses must be interpreted against the party principally responsible for drafting will not apply.
- 1.5. Headings of clauses are inserted for the purpose of convenience only and must be ignored in the interpretation of this agreement.
- 1.6. Unless inconsistent with the context, words signifying any one gender will include the others, words signifying the singular will include the plural and vice versa and words signifying natural persons will include artificial persons and vice versa.

2. CESSION

- 2.1. As a continuing general covering security for the due and timely performance of all of the Customer's obligations, and payment of all of the Customer's indebtedness, from time to time, from any cause arising, to Franke and Franke's successors in title (and which includes all of Franke's divisions irrespective whether this cession is as a matter of process procured by, through or for a particular division of Franke), the Customer cedes and transfers to Franke, on the terms and conditions set out hereunder, all its Book Debts.
- 2.2. If as at the date of this cession the Customer has ceded some or all of the Book Debts ("the Prior Cession") in favour of any third party ("the Third Party"), as specified in the Schedule, then the Customer:
- 2.2.1. cedes and transfers to Franke, all of the Book Debts to the extent that they have not already been ceded to the Third Party in terms of the Prior Cession;
- 2.2.2. cedes and transfers to Franke, all of the Customer's reversionary rights and remaining title in and to, all of its Book Debts, to the extent that they have already been ceded to the Third Party in terms of the Prior Cession; and
- 2.2.3. simultaneously with termination of the Prior Cession for any reason, cedes and transfers to Franke, all of the Book Debts previously ceded to the Third Party in terms of the Prior Cession.
- 2.3. Franke hereby accepts the cession and transfer of all such rights, including reversionary rights, to the Book Debts in terms of this cession.

3. DURATION

- 3.1. This cession comes into effect on signature and endures notwithstanding any fluctuation in or extinction of the obligations of the Customer to Franke.
- 3.2. This cession remains in full force and effect unless and until released by Franke by way of a written hard copy document signed by a duly authorised representative of Franke.

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4. WARRANTIES

The Customer warrants that:

- 4.1. it is the sole beneficial and, where applicable, registered, owner of the Book Debts and that no other person (other than the Third Party, if any, disclosed in the Schedule) has any right in or to such Book Debts;
- 4.2. the Book Debts are valid and enforceable and have not already been ceded, discounted, factored, encumbered, hypothecated, mortgaged or otherwise alienated or disposed of (other than to the Third Party, if any, disclosed in the Schedule);
- 4.3. where the Book Debts or part have been ceded to a Third Party disclosed in the Schedule above, the Customer has obtained the written consent of such Third Party to this cession and is otherwise entitled to cede the Book Debts to Franke in terms hereof;
- 4.4. the Customer has full power and authority to execute and deliver this cession and to implement this cession without the need to obtain any consent, vote or approval which has not been obtained;
- 4.5. this cession has been duly executed and delivered by the Customer and (assuming due and valid authorisation, execution, and delivery thereof by Franke) is a valid and binding obligation of the Customer, enforceable against the Customer in accordance with its terms;
- 4.6. the execution, delivery, or performance in terms of this cession by the Customer will not:
 - 4.6.1. violate any provision of the memorandum of incorporation or other constitutional document of the Customer (as applicable);
 - 4.6.2. result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, or acceleration) under, any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, lease, license, contract, or other instrument or document or obligation to which the Customer is a party or by which it or any of its assets may be bound;
 - 4.6.3. violate any order or laws applicable to the Customer, or any of its assets; or
 - 4.6.4. require on the part of the Customer any filing or registration with, notification to, or consents of any court or any other governmental entity or authority or other person.

5. DEBTORS' SCHEDULES, records & ACCESS TO INFORMATION

- 5.1. Upon the signing of this cession and at the end of each Quarter thereafter (or other period specified in the Schedule), or whenever requested by Franke, the Customer must deliver to Franke a schedule of Book Debts certified by the Customer's auditors, chief finance officer or anyone else approved in writing by Franke, and which schedule of Book Debts must include:
 - 5.1.1. the cause and amount of each Book Debt;
 - 5.1.2. the name and address of each Book Debtor; and
 - 5.1.3. particulars of any written agreement, document and security given in respect of each Book Debt.
- 5.2. At all times the Customer must keep up to date financial books, records and registers (collectively "the Records") of the Book Debts ceded to Franke including invoices, statements, vouchers, agreements, security documents and other documents, and must comply with any reasonable directions Franke may give in regard to the Records.
- 5.3. Franke is entitled at all reasonable times to have access to the Records as well as to the accounting systems of the Customer relating to any Book Debt for the purposes of inspection, copying and/or audit.
- 5.4. If Franke at any time so requests, the Customer must deliver to Franke, at the Customer's cost, the originals or copies of any such Records.
- 5.5. Within 30 days of the end of each financial year of the Customer, a certified copy of the Customer's annual financial statements ("AFS") for that year must be furnished by the Customer to Franke, and the Customer undertakes that each such AFS records the existence of this cession of Book Debts to Franke. Upon completion of audit or independent review, a signed copy of the AFS must be provided to Franke.

6. UNDERTAKINGS BY CUSTOMER

- 6.1. If the payment of any Book Debt is dependent upon fulfilment by the Customer of any obligation, the Customer must fulfil that obligation in a timely manner, failing which Franke may fulfil it or cause it to be fulfilled and recover from the Customer any loss, damages, claims, costs (including but not limited to legal costs on the attorney and own client scale) and any other expenses incurred by Franke in so doing.
- 6.2. Without Franke's prior written consent, the Customer must not:
 - 6.2.1. compromise any Book Debt or grant any extension or other indulgence in respect of any Book Debt;
 - 6.2.2. agree to vary the terms of any Book Debt;
 - 6.2.3. release any security, guarantee, indemnity or suretyship held for any Book Debt;
 - 6.2.4. grant any further cession of any Book Debts; or
 - 6.2.5. discount, factor, encumber, hypothecate, mortgage or otherwise alienate or dispose of any Book Debts.
- 6.3. The Customer must:
 - 6.3.1. take all reasonable steps to protect Franke's rights in terms of this cession including where necessary by notification of the cession to Book Debtors and creditors; and
 - 6.3.2. provide Franke with such additional security which is acceptable to Franke if the Book Debts are reduced in value or otherwise become unacceptable to Franke in its sole discretion as security.

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7. REALISATION

- 7.1. This clause 7 applies to Book Debts to the extent that:
- 7.1.1. they are not ceded to a Third Party in terms of a Prior Cession;
 - 7.1.2. the Prior Cession no longer applies to such Book Debts for any reason;
 - 7.1.3. the relevant provision of this clause does not conflict with the terms of any Prior Cession; or
 - 7.1.4. the Third Party has given its consent to the requisite action being taken by Franke.
- 7.2. If the Customer is in breach of any of its obligations to Franke as secured hereunder then Franke may notify Book Debtors and/or collect some or all of the Book Debts.
- 7.3. Unless prevented by the Prior Cession Franke is entitled:
- 7.3.1. to notify all or any of the Book Debtors of this cession;
 - 7.3.2. to institute, compromise or withdraw as it in its discretion deems fit any legal proceedings in respect of any of the Book Debts; and/or
 - 7.3.3. to claim and receive from the Book Debtor all monies which it receives from time to time in payment or in reduction of the relevant Book Debts; and/or
 - 7.3.4. to apply all monies paid to it in terms hereof against the Customer's indebtedness to it.
- 7.4. If instructed by Franke, the Customer must:
- 7.4.1. endorse all or any invoices, statements, accounts, delivery notes and other similar documents with wording acceptable to Franke specifying that payment of the Book Debt must be made to Franke and payment to the Customer or anyone else will not constitute valid payment;
 - 7.4.2. provide Franke with all or any invoices and statements in hard and soft formats with physical and email addresses for despatch by Franke;
 - 7.4.3. refuse to accept any payment tendered in respect of any of the Book Debts and ensure payment is made to Franke; and/or
 - 7.4.4. collect some or all of the Book Debts as Franke's agent and at the Customer's cost, and ensure immediate payment to Franke.
- 7.5. The Customer must carry out any directions Franke may give in regard to the collection of Book Debts, or residual amounts and, in the absence of directions, the Customer shall collect the Book Debts or residual amounts only in the ordinary course of business.
- 7.6. Franke may appropriate all amounts received pursuant to collection of the Book Debts firstly to the payment of any costs incurred in connection with such collection or hereunder, thereafter to interest if any, and finally to the capital amount owing by the Customer to Franke.

8. BREACH, COSTS AND RECOVERIES

- 8.1. If the Customer is in breach of this cession then Franke may, without prejudice to any of its other rights:
- 8.1.1. require immediate payment of all amounts owing by the Customer from any cause whether they are then due and payable or not;
 - 8.1.2. cancel any credit facilities granted to the Customer and/or any orders for goods or services placed by the Customer; and/or
 - 8.1.3. terminate any other agreement between Franke and the Customer.
- 8.2. The Customer is liable to Franke for and must on demand pay any costs (both as between party and party and between attorney and own client) incurred by Franke in recovering any of the Book Debts, whether or not legal proceedings are instituted.
- 8.3. An account and certificate signed by any manager of Franke (whose appointment and authority need not be proved) showing the amount of the Customer's indebtedness to Franke at the date of that certificate is:
- 8.3.1. prima facie proof of the particulars set out in that account and certificate; and
 - 8.3.2. valid as a liquid document against the Customer in any competent court for the purposes of obtaining a judgment or provisional sentence against the Customer.
- 8.4. At Franke's election any claim against the Customer arising out of this cession may be brought in any Magistrate's Court having jurisdiction over the Customer notwithstanding that the amount of that claim may exceed the jurisdiction of that Court and the Customer hereby further submits to the non-exclusive jurisdiction of High Court of South Africa, KZN Local Division, Durban, and the High Court of South Africa, KZN Division, Pietermaritzburg. If instituting proceedings in the High Court or any other competent court, Franke is not limited to costs on the Magistrate's Court scale.

9. NOTICES AND ADDRESSES FOR SERVICE

- 9.1. Franke may send any notice or communication to the Customer in terms of this agreement by hand, email, telefax or post to the addresses/telefax numbers in the Schedule, which physical address the Customer selects as its *domicilium citandi et executandi*.
- 9.2. The Customer may change its address/telefax number to any other address/telefax number within South Africa. Such change will only take effect upon receipt of such notice by Franke.
- 9.3. Any notice or communication:
- 9.3.1. if delivered by hand during business hours to the person apparently in charge of the premises selected by the Customer for the delivery of notices, is deemed to have been received on the date of delivery;
 - 9.3.2. if sent by post to the selected address of the Customer, is deemed to have been received 6 days after posting;
 - 9.3.3. if telefaxed to the selected telefax number of the Customer, is deemed to have been received on the first business day following the date of transmission; and

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- 9.3.4. if sent by email to the selected email address of the Customer, is deemed to have been received on the first business day following the date of transmission from the information system of the sender.
- 9.4. Any written notice or communication which has actually been received by the Customer is regarded as sufficient notice even if it has not been sent in the manner or to the address/telefax number provided for above.

10. MISCELLANEOUS PROVISIONS

- 10.1. This is the whole agreement between the parties containing all of the express provisions agreed on by the parties with regard to the subject matter hereof.
- 10.2. No party may rely on any representation which allegedly induced that party to enter into this agreement, unless the representation is recorded herein.
- 10.3. No agreement varying, adding to, deleting from or cancelling this agreement and no waiver of any right under this agreement shall be effective unless in writing and signed by or on behalf of the parties.
- 10.4. No relaxation by Franke of any of its rights in terms of this agreement at any time shall prejudice or be a waiver of Franke's rights (unless it is a signed written waiver) and it shall be entitled to exercise its rights thereafter as if such relaxation had not taken place.
- 10.5. The Customer may not cede, delegate, assign or sub-contract any of its rights or obligations in terms of this agreement without Franke's prior written consent.

Signed by the Customer at this day of

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.....
who by his signature warrants that he is duly authorised

Signatory's Full Name :

Title :

Identity Number :

As Witnesses:

1. Signature :

Print Name :

2. Signature :

Print Name :

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