

Franke Australia Pty Ltd Wholesale Trading Terms and Conditions

1 General

1.1 In these Wholesale Trading Terms and Conditions (**Terms and Conditions**):

- (a) **Consignment Goods** means goods supplied by Franke Australia to the Customer on a consignment basis pursuant to clause 7;
- (b) **Customer** means:
 - (i) where the Customer has completed an Application For Credit, the customer named in the Application For Credit; or
 - (ii) where the Customer has not completed an Application For Credit, the person, company or partnership who orders the Goods from Franke Australia;
- (c) **Display Goods** means goods (including display units or display cabinets) installed by Franke Australia at the Customer's premises pursuant to clause 8 for the purpose of displaying PR Kitchen System's products to consumers;
- (d) **Goods** means all Franke, Duravit, Franke Professional Series, Falmec Commercial or KWC Product goods (including, but not limited to, Consignment Goods and Display Goods) supplied by Franke Australia to the Customer pursuant to these Terms and Conditions;
- (e) **Price** means the price payable by the Customer to Franke Australia for the Goods as specified in the order confirmation, excluding GST;
- (f) **Franke Australia** means Franke Australia Pty Ltd (ACN 138 663 279); and
- (g) **Trading Agreement** means a trading agreement between the Customer and Franke Australia in respect of the supply of Franke, Duravit, Franke Professional Series, Falmec Commercial and/or KWC products.

1.2 These Terms and Conditions:

- (a) apply to the sale and supply of all the Goods or services by Franke Australia to the exclusion of all any other terms and conditions whatsoever, whether contained or implied in or from any order from the Customer or from any conduct of or representations made by the Customer or Franke Australia;
- (b) will be deemed accepted by the Customer upon the Customer placing an order for Goods or services;
- (c) will be incorporated in any order placed by the Customer with Franke Australia;
- (d) will prevail over all other conditions of the Customer's order to the extent of any inconsistency (except where waived by Franke Australia in writing);
- (e) will not be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Competition and Consumer Act 2010*) and which by law cannot be excluded, restricted or modified.

1.3 If the Customer has entered into a Trading Agreement with Franke Australia, the terms of that Trading Agreement will override these Terms and Conditions.

1.4 If you have any query or require clarification of these Terms and Conditions please do not hesitate to contact Franke Australia sales staff.

2 Inspection and Return of Goods.

2.1 At Franke Australia we take pride in the quality and standard of product we deliver. All Goods are stringently inspected and approved for delivery prior to leaving the Franke Australia warehouse. In order to ensure this quality and standard follows through the delivery process we ask our Customer to immediately inspect the Goods upon delivery or collection.

2.2 Any claim the Customer may have with respect to any matter of defect, quality or quantity of product, or allegation that the Goods are not in accordance with the agreed specification shall be made to Franke Australia within 90 days of delivery or collection of Goods. If you fail to give such notice within the specified period, it will be deemed that you have accepted the condition of the Goods and shall be bound to pay for the same.

2.3 If the Customer wishes to return Goods because the Goods are faulty or not of the quality or quantity required, the Customer must request the return in writing to Franke Australia, specifying the details of the fault. Franke Australia will, in its discretion, determine whether to accept a return of Goods. If a return is accepted by notice in writing to the Customer, Franke Australia will bear all transport and delivery costs incurred by the Customer returning the Goods. Franke Australia will not accept returns of Goods or have any responsibility for the Customer's cost of returning Goods, other than in accordance with this clause 2.3.

3 **Delivery.**

Any delivery times notified to the Customer are estimates only. Franke Australia is not liable for delays in delivery as a result of events beyond Franke Australia's reasonable control. If the Customer requests postponement of delivery beyond the notified or specified delivery date, Franke Australia may, at its discretion, agree to do so provided the Customer pays for any additional costs, charges, storage charges, expenses and overheads incurred by Franke Australia.

4 **Cancellation of Orders and Restocking.**

- 4.1 You must notify Franke Australia in writing if you want to cancel an order, return Goods to Franke Australia or swap Goods that have been received before returning those Goods to Franke Australia.
- 4.2 If the Customer cancels an order accepted by Franke Australia before the Goods are despatched from Franke Australia's warehouse, no cancellation fee will be charged to the Customer.
- 4.3 Clauses 4.4 and 4.7 apply to order cancellations and requests to swap Goods which are made by the Customer within 90 days of Franke Australia's invoice to the Customer for the relevant Goods.
- 4.4 The Customer may cancel an Order and return Goods after the Goods have been despatched from Franke Australia's warehouse provided:
 - (a) the Customer is responsible for, and must pay all the costs and expenses of returning the Goods to Franke Australia;
 - (b) the Customer must pay Franke Australia a restocking fee equal to 20% of the Price for the returned Goods;
 - (c) the Goods are in the same condition as sold by Franke Australia and are not damaged or used; and
 - (d) the Goods are packaged in exactly the same way as they were delivered by Franke Australia.
- 4.5 Franke Australia will refund the Customer the Price (less the restocking fee) for the relevant Goods so long as that the stock is in "as new" condition. The Customer agrees that Franke Australia is entitled to deduct from any refund the cost of repair or replacement for damaged Goods or Goods that are not in "as new" condition and if a refund is not permitted, the Customer must pay such costs to Franke Australia within seven (7) days of notification to the Customer of such cost.
- 4.6 The Customer acknowledges that the restocking fee charged pursuant to clause 4.4(b) represents the costs incurred by Franke Australia in accepting and restocking the returned Goods.
- 4.7 The Customer may swap the Goods provided:
 - (a) the Customer is responsible for, and must pay all the costs and expenses of returning the Goods to Franke Australia;
 - (b) the Customer must pay Franke Australia a restocking fee equal to 10% of the Price for the returned Goods;
 - (c) the Goods are in the same condition as sold by Franke Australia and are not damaged or used; and
 - (d) the Goods are packaged in exactly the same way as they were delivered by Franke Australia.
- 4.8 Franke Australia will refund the Customer the Price (less the restocking fee) for the relevant Goods so long as that the stock is in "as new" condition, the replacement product will be sent out. The Customer agrees that Franke Australia is entitled to deduct from any refund the cost of repair or replacement for damaged Goods or Goods that are not in "as new" condition, and if a refund is not permitted, the Customer must pay such costs to Franke Australia within seven (7) days of notification to the Customer of such cost.
- 4.9 The Customer acknowledges that the restocking fee charged pursuant to clause 4.7(b) represents the costs incurred by Franke Australia in accepting and restocking the returned Goods.
- 4.10 If a Customer wishes to cancel an Order for Goods or swap Goods and the cancellation request or request to swap is initiated more than 30 days from the date of Franke Australia's invoice, Franke Australia may, at its discretion, accept or reject the cancellation request or request to swap, and if it is rejected, Franke Australia may at its discretion, offer the Customer a credit in respect of the Price for the Goods to assist the Customer in selling the product through their store.

5 **Price and Payment Terms.**

- 5.1 Payment for all Goods shall become due on the date specified on the Franke Australia invoice.
- 5.2 In the event of any payments or part thereof remaining unpaid after such period of seven (7) days from the due date for payment Franke Australia in its absolute discretion may:
 - (a) charge interest thereon at the rate of eighteen per cent (18%) per annum during the period such unpaid balance remains unpaid and such interest shall be added to the said balance due from the Customer to Franke Australia and calculated on a daily basis; and
 - (b) charge an account-keeping fee of \$10.00 plus GST for each reminder notice sent to the Customer by Franke Australia.

- 5.3 Notwithstanding the imposition of interest charges pursuant to clause 5.2, such interest charges shall not be regarded as allowing any time for payment of any amount owing but are agreed as constituting compensation payable to Franke Australia because of delay in payment. Notwithstanding the imposition of any interest charges in respect of monies unpaid, all such monies shall remain immediately due and payable to Franke Australia and Franke Australia shall be entitled to take legal proceedings at any time for recovery of any monies bearing interest charges pursuant to this Clause.
- 5.4 The Customer fully indemnifies and will keep indemnified Franke Australia for all debt collection expenses, legal costs and disbursements incurred in relation to the collection of or attempt(s) to collect any outstanding amounts due to Franke Australia.
- The Customer agrees that all payments are to be made without retention.
- 5.5 **Title, Default and Security for Goods**
- 6 Words and phrases used in this clause which are defined in the *Personal Property Securities Act 2009 (Cth)* ("the PPS Act") have the same meanings as in the PPS Act.
- 6.1 To the extent permitted by law, if the Customer:
- 6.2
- (a) defaults in making any payment to Franke Australia on or before the due date for payment;
 - (b) fails to comply with any of its obligations under these Terms and Conditions;
 - (c) calls a meeting of its creditors;
 - (d) becomes insolvent;
 - (e) is bankrupt;
 - (f) is a company in or going into liquidation, or
 - (g) has an administrator, a receiver manager or official manager appointed,
- then Franke Australia may at its option suspend or cancel further deliveries to the Customer and recover and retake possession of the Goods supplied by Franke Australia to the Customer and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner and/or unpaid supplier or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement and recover the Goods, the Customer irrevocably authorises Franke Australia and its agents are to enter any of the Customer's premises.
- 6.3 Legal and equitable ownership of Goods supplied by Franke Australia will not pass to the Customer until Franke Australia has received all monies owing to it in full in respect of the relevant Goods. This constitutes a security interest in all present and future Goods supplied by Franke Australia to the Customer and which have not become the property of the Customer absolutely and in the proceeds of such Goods.
- 6.4 The risk in the Goods (including, but not limited to, loss of or damage to the Goods) will pass to the Customer upon delivery of the Goods by Franke Australia to the Customer, its agent or its carrier.
- 6.5 These Terms and Conditions constitute a Security Agreement for the purposes of the PPS Act.
- 6.6 The security interest held by Franke Australia includes an interest in Goods that become an accession to other goods.
- 6.7 Until such time as the Customer has made payment of all monies owing for Goods supplied by Franke Australia:
- (a) Franke Australia grants the Customer a licence to use, fix or install the Goods;
 - (b) the Customer undertakes to store the Goods on its premises separately from its own Goods or those of any other person and marked as the property of Franke Australia;
 - (c) where the Goods are re-sold by the Customer to a third party, the Customer must keep an amount from the proceeds of sale which is equal to the debt owed to Franke Australia in a separate identifiable account as the beneficial property of Franke Australia and must immediately pay such amount to Franke Australia upon request or when due to Franke Australia;
 - (d) except in the ordinary course of the Customer's business, the Customer must not allow the Goods to be taken outside Australia or allow the Goods to become an accession to or commingled with any other property;
 - (e) if the Customer uses the Goods in some manufacturing or construction process of its own or of some third party, then the Customer must hold such part of the proceeds of such manufacturing or construction process as relates to the goods in trust for Franke Australia;
 - (f) the Customer will not otherwise deal with the Goods in any way which may be adverse to Franke Australia;
 - (g) the Customer will not grant a security interest to any other person, or allow any encumbrance to arise in respect of the Goods except in accordance with this clause; and
 - (h) Franke Australia may give notice in writing to the Customer to return the Goods or any part of them to Franke Australia, in which event the Customer will forfeit any rights to obtain ownership of the Goods, the licence

granted pursuant to sub-clause 6.7(a) will be terminated and any monies partly paid by the Customer will be forfeited to Franke Australia.

- 6.8 The security interest granted to Franke Australia under these Terms and Conditions is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time.
- 6.9 To the extent permitted by law, the Customer irrevocably waives any right it may have to:
- (a) receive notices or statements under sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPS Act; and
 - (b) redeem the Goods under section 142 of the PPS Act;
 - (c) reinstate these Terms and Conditions under section 143 of the PPS Act; and
 - (d) receive a verification statement.
- 6.10 The Customer will do all things and execute all documents reasonably necessary to give effect to the security interest created under these Terms and Conditions or comply with any reasonable request by Franke Australia in connection with the PPS Act.
- 6.11 The Customer must not change its company, business name or contact details (including its registered office or place of business) without giving Franke Australia at least fourteen (14) days prior written notice.
- 6.12 The Customer indemnifies and will keep indemnified Franke Australia for any costs, fees and expenses Franke Australia incurs in the enforcement of the security interest.
- 6.13 Receipt by Franke Australia of any form of payment for goods other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the security interest will continue to apply in relation to those goods.
- 6.14 This clause applies notwithstanding any arrangement under which Franke Australia provides credit to the Customer. To the extent that there is any inconsistency with any such arrangement, this clause will prevail.

Goods on Consignment

- 7 From time to time, Franke Australia may supply goods to the Customer on a consignment basis (**Consignment Goods**) in accordance with this clause 7.
- 7.1 After the Customer takes delivery of the Consignment Goods, it shall store the Consignment Goods in its own facilities pending sale. The Customer must co-operate with Franke Australia to monitor actual sales of the Consignment Goods, the volume of the Consignment Goods remaining in storage and the volume of additional quantities needing to be supplied.
- 7.2 During storage of the Consignment Goods at its facilities, the Customer will take all reasonable steps to ensure that the Consignment Goods are properly stored and handled and that they remain in good order and useable condition. In doing so, the Customer acknowledges and agrees that the Consignment Goods remain for all purposes the property of Franke Australia until the Consignment Goods have been sold to the Customer on mutually agreed terms.
- 7.3 The Customer must promptly return any Consignment Goods to Franke Australia within 24 hours of being requested to do so or in the event of its liquidation, administration or receivership. In the event such request is not followed, then Franke Australia (or its agents) may enter upon and into land and premises owned, occupied or used by the Customer where the Consignment Goods are situated and take possession of the Consignment Goods.
- 7.4 The Customer must not use the Consignment Goods for any other purpose and must not purport to transfer or assign any rights in the Consignment Goods to any other person.
- 7.5 The Supplier will at all times retain legal and equitable title in any Consignment Goods supplied to the Customer. This constitutes a security interest in all present and future Consignment Goods supplied by the Supplier to the Customer and in the proceeds of such Consignment Goods. The provisions of clause 6 apply to Consignment Goods as "Goods".

Displays

- 8 Franke Australia may, from time to time in its sole discretion, agree to install display units or cabinets (**Display Goods**) at no additional charge in the Customer's premises for the purpose of displaying Goods to consumers. The Customer grants Franke Australia a fee-free licence to place such display in the Customer's premises. The Customer agrees it will not modify such displays or use them for any other purpose and that such displays shall remain the property of Franke Australia at all times. In the event any display units or cabinets are damaged, the Customer must promptly notify Franke Australia and the Customer shall be liable for repairing the display units or cabinets. Franke Australia may remove or replace the displays at any time in its discretion, including upon the liquidation, administration or receivership of the Customer.
- 8.1 The Supplier will at all times retain legal and equitable title in any Display Goods supplied to the Customer. This constitutes a security interest in all present and future Display Goods supplied by the Supplier to the Customer and in the proceeds of such Display Goods. The provisions of clause 6 apply to Display Goods as "Goods".
- 8.2

Suspension or Cancellation of Credit Facility

- 9 Credit facilities may be suspended should the Customer fail to pay an account within the terms specified, or for any reason whatsoever at Franke Australia's discretion. Suspension shall remain in force until the outstanding amount is paid. Any

credit facility granted by Franke Australia to the Customer shall continue until terminated by Franke Australia. Termination of credit facilities will be advised in writing to the Customer. If the Customer is experiencing difficulty in providing payment within the terms then please contact your Franke Australia Sales Representative to discuss a solution.

10 **Termination**

Franke Australia continuance to deliver or sell shall always be conditional upon it being satisfied of the Customer's ability to pay and comply with these Terms and Conditions. If Franke Australia ceases to be so satisfied for any reason it may suspend and/or terminate deliveries and shall not be liable in any way for any claim, damage, expense or cost arising there from, and all money then outstanding by the Customer shall immediately become due and payable.

11 **General Liability & Warranties**

11.1 To the fullest extent permitted by law, no warranties are implied and the total liability of Franke Australia, its employees, servants and agents is limited to one or more of the following at the option of Franke Australia:

- (a) replacement of the Goods or services supplied or supply of equivalent Goods or services;
- (b) payment of the cost of replacing the Goods or services or of acquiring equivalent Goods or services; or
- (c) payment of the cost of having the Goods or services repaired;

and does not extend to consequential loss or damage, including without limitation, loss of profits, loss of revenue, loss of income, loss of use, loss of business opportunity, loss of production, loss of anticipated savings, pure economic loss, loss of or damage to reputation or good will, or loss or damage associated with the interruption of the Customer's business, howsoever caused.

12 **Consumer Warranty**

12.1 This clause applies where the Customer is a consumer for the purposes of the Australian Consumer Law and overrides clause 11, General Liability & Warranties, to the extent of any inconsistency.

12.2 In Australia, our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or a refund for a major failure and for compensation for any other reasonable foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

12.3 As well as your consumer guarantees under the Australian Consumer Law, Franke Australia offers consumers an additional express warranty, the details of which are available on Franke Australia' website at www.prkws.com. The benefits provided to the Customer under this warranty are in addition to other rights and remedies available to the Customer at law.

12.4 Should the Customer ever need to make a warranty related enquiry about the Goods, the Customer must cease using the Goods and contact Franke Australia by telephone (03) 9700 9100 or in writing to customer@prkws.com.au or at 83 Bangholme Road, Dandenong South 3175 and provide the model number, serial number, copy of purchase receipt and address details where the goods are installed.

12.5 All warranty claims and costs must be pre-approved by Franke Australia.

12.6 The Customer is responsible for the costs of returning defective Goods to Franke Australia or its agent, except where the Goods cannot be returned, removed or transported without significant cost to the Customer because of the size, height or method of installation of the goods, or because of the nature of the defect.

13 **Privacy**

13.1 Franke Australia understands that you value your privacy and wish to have your personal information kept secure. You can view the full text of our Privacy Policy and Privacy Collection Notice (which sets out how we collect and deal with your personal information) on Franke Australia' website at www.prkws.com or upon request from us.

13.2 Franke Australia' Privacy Policy contains information about how you may access the personal information it holds about you, and seek the correction of such information, if you believe it to be incorrect. The Privacy Policy also contains information about how you may complain about a breach of the Australian Privacy Principles and how Franke Australia will deal with such a complaint. If you would like any further information about Franke Australia' privacy policies or practices, please email accounts@prkws.com.au.

14 **Complaints/Customer Care**

Franke Australia' takes its customer service seriously and want to hear about any problems that you may have had or the level of service you have been provided with. To notify us of these issues, please collect all the relevant information on your query and direct it by email to service@prkws.com.au.

15 **Miscellaneous**

15.1 No manager, employee, servant, agent or representative of Franke Australia (other than a director and then only in writing) has any authority to vary these Terms and Conditions or any of them and without limiting the generality of the foregoing no warranty, representation, promise, agreement, term or condition whether express or implied made by any such person shall be deemed to be included in or form part of these Terms and Conditions or operate in any way collateral to these Terms and

Conditions other than those warranties, representations, promises, agreements, terms or conditions which expressly appear herein or which are implied by law and not excluded under these Terms and Conditions.

- 15.2 The Customer shall not be entitled to withhold or set off payment of any amount due to Franke Australia under these Terms and Conditions whether in respect of any claim of the Customer in respect of faulty or defective goods, materials or services or for any other reason which is contested or liability for which is not admitted by Franke Australia.
- 15.3 No order or accepted quotation may be cancelled except with consent in writing and on terms which will indemnify Franke Australia against all losses.
- 15.4 Any delay in or failure by Franke Australia to insist upon strict performance of any term, warranty or condition of these Terms and Conditions shall not be deemed a waiver thereof or of any rights Franke Australia may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.
- 15.5 If any provision of these Terms and Conditions shall be determined by any statute or any court having jurisdiction in relation thereto to be illegal, invalid, void, voidable or unenforceable the legality validity or enforceability of the remainder of these Terms and Conditions shall not be affected and the illegal, invalid, void, voidable or unenforceable provision shall be deemed deleted to the same extent and effect as if never incorporated herein but the remainder of these Terms and Conditions shall continue in full force and effect.
- 15.6 These Terms and Conditions shall survive any accepted repudiation or other termination of the contract to supply to goods or services existing between Franke Australia and the Customer.
- 15.7 These Terms and Conditions shall be governed and interpreted according to the laws of Victoria and the parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria.