

# TERMS & CONDITIONS OF SALE – FRANKE SISSONS LTD

## July 2008



### 1. General

All quotations issued and orders received are subject to these Conditions of Sales and no alterations shall take effect unless confirmed in writing by Franke Sissons Limited, (hereinafter referred to as "the Seller"). No terms, condition or warranty not recorded herein shall be binding on the Seller, except where such is necessarily imported into the contract under any Statute or at Common Law.

### 2. Prices

- (i) Errors and omissions are subject to correction
- (ii) Unless otherwise stated in writing, prices charged would be those ruling at the date of despatch.
- (iii) Unless otherwise specified, prices include for the supply and delivery only of the goods but not for their off-loading, positioning and installation.
- (iv) All prices shown are subject to VAT at the standard rate. Prices are correct at the time of printing but are subject to alteration without prior notification.

### 3. Payment

- (i) In respect of an initial order and whenever else specified by the Seller, the Buyer shall pay the Seller in full as a condition precedent to despatching the goods. In all other cases, payment must be made in full by no later than 30 days from the date of the invoice.
- (ii) Where payment is not received by the due date, the Seller reserves the right to charge interest on outstanding amounts for each month or part of any month that payment is overdue, at the rate of 1½ per cent per month, or part thereof, and/or at the Seller's option to suspend all deliveries of all goods to the Buyer.
- (iii) Should the Seller be prevented by the Buyer from effecting delivery on the due date, the full price of the goods shall become payable as if the goods had been delivered.

### 4. Delivery

- (i) Any time expressed for delivery shall be deemed to be an estimate only, time not being of the essence for the contract unless separately agreed to in writing by the Seller. The Seller accepts no liability for any loss sustained by the Buyer through late delivery and further where a time for delivery has been agreed but delivery is delayed for any reason beyond the control of the Seller, a reasonable extension of time shall be allowed to the Seller.
- (ii) Where working drawings have to be approved by either the Buyer or his agent then the estimated delivery period is to be applied from the date of receipt in writing by the Seller of this approval.
- (iii) Where a time for delivery is agreed and the Buyer fails for whatever reason to accept the delivery, the Seller reserves the right to make a reasonable charge for storage. Should delivery not be possible after one week's delay the Seller shall be entitled to submit his invoice and the normal conditions of payment will apply.
- (iv) The Buyer shall provide adequate labour and unloading facilities at the place of delivery at his own risk and expense.
- (v) If advance notice of the approximate arrival time of the delivery vehicle is required this must be stated on the order.
- (vi) A 10% site delivery charge is made for all consignments delivered to addresses other than the Buyer's Warehouse, except,
  - a) Items delivered against Housing Contract orders where the delivered quantity is 25 units or more.
  - b) Where the net value of the delivery to one address is more than the value stated on the Seller's current price list.
- (vii) Normal standard product consignments will be delivered next day, on the UK Mainland without charge, to an order value of £5,000. Consignments above this value may require special transport and Franke Sissons reserve the right to charge as necessary. All deliveries to Republic of Ireland, Scottish Highlands and the Channel Islands are on a standard 3 day carrier service and these deliveries are priced on an "ex-works" basis. Deliveries to Northern Ireland are on a standard 3 day carrier, carriage paid. If standard product consignments are required pre-10.30am on the next working, then a minimum charge of £35 will be made.
- (viii) Orders less than £200 net value, excluding VAT, will incur a delivery charge of £20.

#### Special Deliveries

- (i) Franke Sissons reserve the right to charge as necessary for special deliveries or timed deliveries (including Saturdays), made at the request of the customer.

### 5. Restocking Charges

- (i) Products can be accepted for return provided that they are in the Bold Type (i.e. stocked products) in the current price list, for a restocking charge of 25% of the original invoice value, with a minimum charge of £100, up to a value of £10,000. Products that are not in bold text (i.e. non stocked products) can be returned but at a restocking charge of 75% up to a value of £5,000. In both cases the products need to be less than 6 months old. Non-standard products cannot be accepted for return.

### 6. Cancellation of Order

- (i) Standard Items – A cancellation of 25% of the net invoice value will be made to cover the Seller's administration and other costs.
- (ii) Order for Off Standard & Special Items – Once manufacture has commenced, cancellation of items made to a Buyer's specific requirements will involve, in addition to the cancellation charge (referred to in para 6 (i)), all manufacturing and other costs incurred by the Seller up to the time of cancellation.
- (iii) Once goods have been delivered they are not in any circumstances returnable without the Seller's agreement in writing.

### 7. Damage or Loss in Transit

- (i) The Seller's responsibility ends with the arrival of goods at the designated delivery point. The Seller is not liable for any damage or loss during unloading or thereafter.
- (ii) The Buyer or his agent should examine goods on arrival and details of any damage or loss entered on the Carrier's note.
- (iii) In the event of non-arrival or shortage of goods, no claim will be accepted unless notification is given to the Seller within 10 days from the date of the Seller's invoice.
- (iv) Damaged goods will not be replaced or repaired if they have been used or installed.

### 8. Carriage

- (i) An additional charge will normally be made for packing and delivery outside the mainland of the United Kingdom.
- (ii) A handling charge, inclusive of postage, packaging and administrative costs will be made on small orders as stated on the Seller's current price list.
- (iii) Any special delivery arrangements by passenger train, carriers or similar requests by the Buyer will be charged at cost.

### 9. Property and Risk

- (i) Title to each item of the goods supplied by the Seller remains vested in the Seller until the purchase price and all other monies owing by the Buyer in relation to those goods or the price (whether or not due) are paid in full.

- (ii) In addition, and without prejudice to sub-condition (i) above, title to goods supplied by the Seller remains vested in the Seller until such time as there are no monies owing by the Buyer to the Seller on any account (whether or not due).
  - (iii) Notwithstanding this reservation of title the Buyer may resell any goods in the ordinary course of business which remains the property of the Seller, in which event the Buyer shall remit the proceeds of sale to the Seller and in such a way that they are kept separate and are readily identifiable.
  - (iv) The Seller shall be entitled (but not obliged) at any time to recover and dispose of any goods to which it has retained title under this clause and the Buyer will be deemed to have granted to the Seller an irrevocable licence, for so long as any monies shall remain owing to the Seller to enter the Buyer's premises to inspect and recover any such goods.
  - (v) The Buyer agrees to undertake in respect of all goods that remain the property of the Seller:
    - (a) To store the same in such a way that they are readily identifiable as the property of the Seller.
    - (b) To insure the same to their full value.
    - (c) To hold the same in all respects as bailee for the Seller.
  - (vi) Where the property in the goods has not passed, the Seller may nevertheless maintain an action against the Buyer for the purchase prices and all other monies then owing to the Company in relation to the goods notwithstanding Section 49 of the Sales of Goods Act 1979.
  - (vii) If the Seller repossesses or resells its goods it shall credit the Buyer in the Seller's accounts (in each case after deduction of all expenses of recovery and/or sale) with the lesser of (i) the net value or proceeds of sale (as the Seller may elect) of the goods and (ii) the invoiced price (excluding value added tax) to the Buyer of the goods.
  - (viii) Notwithstanding the provisions of Condition 8(i) and 8(ii) above the goods shall be at the risk of the Buyer from the time when they are tendered for the delivery at an agreed destination or are available for collection by the Buyer or cease to be in the Seller's possession and in particular when they are delivered into the possession or custody of a carrier, forwarding agent, warehouseman or other bailee or agent for the purposes of transmission whether or not such person contracts with or is instructed by the Seller or Buyer.
10. **Drawings**  
All drawings by the Seller shall remain the Seller's property and copyright, and therefore must not be wholly or partially used or copied without the Seller's written permission.
11. **Description**  
Illustrations and dimensions, in the Seller's catalogue or documents, although correct in general detail, do not constitute a sale by description. The Seller's policy is one of continuing improvement and the Seller reserves the right to vary or modify the design, specification, or surface finish without notice, unless written undertaking has been given to the contrary.
12. **Replacement**  
Where the goods supplied by the Seller are of the Seller's design and manufacture the Seller will make good any defects in those goods subject to the following conditions:-
  - (i) The Buyer shall notify the Seller in writing at the Seller's address, Franke Sissons Ltd, Carrwood Road, Sheepbridge, Chesterfield, S41 9QB within 10 days of the date of delivery.
  - (ii) The Seller shall be provided with an adequate opportunity to examine the goods.
  - (iii) The Seller shall not be obliged to replace any goods or make any allowances or other arrangement if, in the reasonable opinion of the Seller, the defect has arisen from accident, misuse, neglect, installation, lack of reasonable maintenance, or any other cause beyond the reasonable control of the Seller.
  - (iv) Where the defect is reasonably attributed to the fault of the Seller, the Seller shall replace or repair the defective goods, but shall not be liable for any costs of removal of the defective goods, or installation of replacement goods, nor any consequential loss or damage arising there from.
  - (v) The Seller will not accept any charges for remedial work that is carried out without his express authority and approval.
  - (vi) The Seller's liability shall be limited to the repair or replacement of materials and components manufactured by the Seller. No goods are guaranteed by the Seller for any specific length of time but are warranted to be free from defect in workmanship and materials at time of delivery. No liability can be accepted in respect of products that have become defective due to contact with corrosive liquids such as strong bleaching solutions and fluids, photographic developing liquids, immersion type silver cleaning fluids and the like that are injurious to stainless steel.
  - (vii) Where goods and components supplied by the Seller are not of the Seller's design and manufacture, the Seller's liability shall be limited to the guarantee provided by the manufacturer of such goods and components.
  - (viii) The Seller shall not be under any duty arising from Section 11 of these Conditions of Sale if the Buyer is in breach of any provision of the Contract with the Seller until the Buyer has remedied the breach.
13. **Indemnity**  
The Buyer shall indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may be liable if any work done in accordance with the Buyer's specification infringes any third party property right.
14. **Information**
  - (i) All warning data sheets, diagrams and other information as to the construction, assembly use, storage or disposal of the goods made available to the Buyer before, at the time of, or after the time of supply of the goods to the Buyer shall be supplied by the Buyer to any person to whom the Buyer supplies the goods or any product in which the goods are incorporated and the Buyer shall impose a similar requirement on such person. The Buyer shall indemnify the Seller in full against all liabilities costs claims demands and expenses resulting from any failure by any person other than the Seller to make such warnings data sheets, diagrams and other information available to any other person.
  - (ii) Where an indication as to time limits for the use of the goods has been supplied to the Buyer shall procure that all persons into whose hands the goods may come are aware of such time limits and shall not supply the goods after such time limits have been exceeded.
  - (iii) The Buyer will notify the Seller of any intended application of the goods other than that contemplated in the information referred to in sub-section (i) above so as to enable the Seller to verify that the goods will be safe for use in such application.
15. **Termination**  
If the Buyer commits any breach of these conditions, or if in the opinion of the Seller, the financial standing of the Buyer becomes unsatisfactory, the Seller may, without prejudice to its other rights and remedies, terminate this contract and any other contract with the Buyer. The Seller shall also be entitled to require immediate payments for all goods delivered. In the event of termination under the provisions of this clause the Seller shall be relieved of all liability under this contract and any other contract so terminated.
16. **Force Majeure**  
In the event of war, invasion, act of foreign enemy, hostility (whether war has been declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, the Seller shall be relieved of liabilities incurred under the contract whatsoever and to the extent to which fulfilment of such obligations is prevented, frustrated or impeded as a consequence of any such events or by status, rules, regulations, order or requisition issued by any Government Department, Council, or duly constituted authority, or from strikes, lock-outs, breakdown of plant or any other causes (whether or not like nature) beyond the Seller's control.

- 17 Law and Arbitration
- (i) All contracts entered into by the Seller shall be subject to English Law.
  - (ii) In the event of any dispute between the parties the same shall be submitted to an appropriate arbitrator selected by the Seller.
- 18 General
- (i) Any notice to be given under these conditions may be delivered by hand, or sent by first class post, addressed to the party to be served at its registered office for the time being or (if not a company) the address for the party giving the notice. Notices served by post shall (except where expressly provided otherwise) be deemed served on the second business day after the date of posting, 'business day' shall mean a day other than a Saturday or Sunday or an English Bank or Statutory Public Holiday,
  - (ii) No failure or delay by the Seller in exercising any of its rights under this contract shall operate as a waiver thereof.
  - (iii) In the event that any of these conditions shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any of the other conditions hereof all of which shall remain in full force and effect.
  - (iv) Clause headings are for ease of reference only and do not affect construction.