



## TERMS OF TRADE

### **1. APPLICATION OF TERMS**

Except as may be expressly stated otherwise in a written quotation or proposal submitted by Somfy Pty Limited ABN 77 003 917 244 or its related bodies corporate, including Somfy Automation Services Pty Limited ABN 18 143 918 227 trading as Somfy Electrical Services, (Somfy) to the Customer or a written contract of sale signed by Somfy these Terms of Trade apply to every sale of goods or services (Product) by Somfy to any Customer.

### **2. PRICES**

All prices published and Products offered for supply by Somfy are subject to change without notice. The Customer should check the price of a Product before placing an order for it. Prices quoted are, unless otherwise stated, exclusive of goods and services tax (GST) and are valid for delivery of Product within 60 days of the date on which the Customer communicates an offer to purchase Products to Somfy. Prices quoted for delivery of Product are EXW ("Ex Works" Incoterms® 2010).

### **3. GST**

If GST is imposed on any supply made by Somfy, the Customer must pay to Somfy, in addition to any consideration payable or to be provided by the Customer for this supply, an additional amount for the supply calculated by multiplying the prevailing GST rate by the consideration for the relevant supply payable or to be provided (without any deduction or set off). Any amount payable by the Customer is payable on demand by Somfy, whether such demand is made by an invoice raise by Somfy or otherwise.

### **4. DELIVERY AND INSTALLATION**

- 4.1 The Customer acknowledges that the delivery/transportation of certain Products may be subject to prescribed safety restrictions/limitations.
- 4.2 Any date given to the Customer by Somfy for delivery of Product shall be an estimate only, and, although Somfy shall use commercially reasonable endeavours to meet such delivery date, Somfy shall not be subject to or incur any penalty or liability for any claim, loss, damage or obligation, direct or indirect, consequential or otherwise, arising out of any delay in delivery or non-delivery regardless of the reason.
- 4.3 If for any reason Somfy is unable to deliver Product either within a reasonable time or at all, the applicable purchase order and/or contract of sale shall be cancellable, in full or only as to certain Products, at Somfy's option, and neither Somfy nor the Customer shall be subject to or incur any penalty or liability for any claim, loss, damage or obligation, direct or indirect, consequential or otherwise, arising out of such cancellation.
- 4.4 Disposal of all shipping pallets, containers and packaging becomes the responsibility of the Customer upon delivery.
- 4.5 If the Customer has contracted Somfy to install Product at the Customer's premises, the Customer shall, at its expense, ensure that the installation site is ready, and has been prepared in accordance with agreed specifications, on the date agreed for installation of the Product; and that adequate and safe power and lighting is available at the installation site which is readily and safely accessible to Somfy's technicians. The Customer will be responsible to provide Somfy's technicians with such induction/site training as is appropriate and which the Customer deems reasonably necessary having regard to the nature of the services to be provided by the technicians. The Customer will indemnify Somfy for any additional costs incurred in connection with the installation as a consequence of the site not being available in the condition specified above.

### **5A. PAYMENT – CASH CUSTOMER**

If the Customer has not been granted a line of credit with Somfy, the Customer must pay to Somfy the invoiced amount for the Products, including any associated delivery and administration charges, plus GST, at the time the Customer places the order, selecting one of the payment options available. The Customer indemnifies Somfy for any loss suffered by Somfy as a consequence of a charge to a credit card or bank or other account not being honoured. The Customer will pay Somfy any surcharge levied with respect to payments made using certain credit cards.

### **5B. PAYMENT – TRADE CUSTOMER**

If the Customer has been granted a line of credit with Somfy, the Customer must pay to Somfy the invoiced amount for the Products, including any associated delivery and administration charges, plus GST, within thirty (30) days of the date upon which the Products were invoiced.

## **5C. PAYMENT – GENERALLY**

If the Customer commits any act of insolvency, all money owing by the Customer to Somfy, whether by way of credit or otherwise, will become due and payable immediately. Somfy reserves the right to suspend, with or without notice, any deliveries of Products if any payment due by the Customer to Somfy is overdue. A late payment fee of 8% per annum, calculated daily, (being a genuine pre-estimate of the loss suffered by Somfy as a consequence of the Customer's failure to make timely payment) may be charged on overdue amounts. The Customer will reimburse Somfy, on a full indemnity basis, all costs incurred by Somfy as a consequence of a charge to a credit card or bank or other account or a cheque not being honoured, and to its collection agents and/or lawyers in relation to the collection of any moneys owed to Somfy that are not paid when due.

## **6. PASSING OF RISK – TRANSFER OF TITLE**

- 6.1 Delivery of Product to the Customer shall occur, and all risk of loss or damage to Product shall pass to Customer, immediately upon such Product being turned over to either the Customer or a nominated carrier for transportation to the Customer or a nominated place or site. Such delivery shall be deemed to be acceptance of Product by the Customer, whether or not the Customer is present at the time of delivery to inspect such Product and sign a receipt therefor.
- 6.2 Notwithstanding anything to the contrary, ownership of and title to Product shall not pass to the Customer until full payment therefor has been received by Somfy or sale or mixing of the Product by the Customer.
- 6.3 If a Product includes or is supplied with software, the Customer is granted only a limited license to use such software with that Product, and ownership of and title to such software shall not pass to the Customer.
- 6.4 If the Customer does not pay for any Product in accordance with these Terms of Trade, Somfy is hereby irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer if the goods are stored at premises) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer whatsoever.

## **7. PPS LAW**

- 7.1 The Customer agrees that this document (Terms of Trade), alone or in conjunction with Somfy's Credit Application completed by the Customer or a Quotation provided by Somfy to the Customer, constitutes a security agreement in writing for the purpose of the Personal Property Securities Act 2009 (Cth) (PPS Law). This clause applies to the extent PPS Law (or part of it) applies to this agreement and any security interest arising under it.
- 7.2 The security interest granted to Somfy is a 'purchase money security interest' (PMSI) to the extent that it can be under section 14 of the PPS Law.
- 7.3 The Customer agrees that all collateral which is at any time subject to Somfy's security interest secures its own purchase price.
- 7.4 The Customer agrees, in addition, to the extent possible under PPS Law, that all collateral which is at any time subject to Somfy's security interest secures as a PMSI the purchase price of all collateral supplied to the Customer.
- 7.5 This clause does not limit what other amounts are secured under these Terms of Trade.
- 7.6 The parties agree that payments will be applied in the following order:
  - (a) to obligations that are not secured, in the order in which those obligations were incurred;
  - (b) to obligations that are secured, but not by PMSIs, in the order in which those obligations were incurred;
  - (c) to obligations that are secured by PMSIs, in the order in which those obligations were incurred.
- 7.7 Somfy may register its security interest as a PMSI. The Customer must do anything (such as obtaining consents and signing documents) which Somfy requires for the purposes of:
  - (a) ensuring that Somfy's security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - (b) enabling Somfy to gain first priority (or any other priority agreed to by Somfy in writing) for its security interest; and
  - (c) enabling Somfy to exercise rights in connection with the security interest,and to assure performance of its obligations, the Customer hereby gives Somfy an irrevocable power of attorney to do anything Somfy considers the Customer should do under these Terms of Trade.
- 7.8 The rights of Somfy under these Terms of Trade are in addition to and not in substitution for Somfy's rights under other law (including the PPS Law) and Somfy may choose whether to exercise rights under these Terms of Trade, and/or under such other law, as it sees fit.
- 7.9 The following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of these Terms of Trade in respect of goods that are not used predominantly for personal, domestic or household purposes:

- (a) sections 95 (notice of removal of accession to the extent it requires Somfy to give a notice to the Customer), 96 (retention of accession), 125 (obligations to dispose of or retain collateral);
- (b) section 130 (notice of disposal to the extent it requires Somfy to give a notice to the Customer);
- (c) section 132(3)(d) (contents of statement of account after disposal);
- (d) section 132(4) (statement of account if no disposal);
- (e) section 135 (notice of retention);
- (f) section 142 (redemption of collateral); and
- (g) section 143 (re-instatement of security agreement)

7.10 The following provisions of the PPS Law:

- (a) section 123 (seizing collateral);
- (b) section 126 (apparent possession);
- (c) section 128 (secured party may dispose of collateral);
- (d) section 129 (disposal by purchase); and
- (e) section 134(1) (retention of collateral)

confer rights on Somfy. The Customer agrees that in addition to those rights, Somfy shall, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that Somfy may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

7.11 The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

7.12 Solely for the purpose of allowing Somfy the benefit of section 275(6) of the PPS Law, Somfy and the Customer agree that neither of them must disclose information of the kind that can be requested under section 275(1) of the PPS Law.

## **8. CUSTOMER'S SPECIAL ORDER**

Somfy reserves the right to demand a deposit for special orders of non-stock items or orders for the manufacture of Product to the Customer's specifications. Somfy shall not be responsible for errors in the Customer's specifications. The Customer may not cancel special orders without the written consent of Somfy. Somfy will not accept returns of Product made to the Customer's specifications unless defective.

## **9. RETURN FOR CREDIT**

The Customer must notify Somfy, in writing, within fourteen (14) days of the date of the invoice of a claim for credit for faulty or damaged Product or for Product incorrectly supplied. Credit will not be given for notifications received by Somfy outside this period. The claim for credit should state the date and number of the invoice and the reason for return. All returns are at the discretion of Somfy and must receive a Return Materials Authorisation (RMA) in advance of shipment. Product returned for credit is to be clearly consigned to Somfy and must, if the claim for credit is not based on the Product being faulty or damaged, be in the original packaging and in a saleable and undamaged condition. If the claim for credit and return is due to the Product being faulty or damaged, or some fault of Somfy, then Somfy will bear the cost of the return freight, otherwise the cost of return freight shall be borne by the Customer.

## **10. PRODUCT WARRANTY**

10.1 Somfy warrants the Products to be free from defects in material and workmanship for the warranty periods specified in Express Warranty document(s) published by Somfy in respect of the Products from time to time. During the applicable warranty period, Somfy, as its sole obligation, will repair, replace or resupply (at its option) any product, part, component or service covered by the applicable Express Warranty which fails under normal use as a result of a defect in material or workmanship.

10.2 Subject to any rights or remedies to which the Customer may be entitled under the Australian Consumer Law or other applicable law, and without excluding, restricting or modifying any such rights or remedies, the Express Warranty inclusively describes all of the warranties given and remedies available with respect to the Products. Somfy disclaims any other warranty whether express or implied, statutory or otherwise, in relation to the Products.

## **11. ENTIRE AGREEMENT**

The Customer agrees that Somfy will only supply Products pursuant to these Terms of Trade. An agreement between the parties may not be varied without the prior written consent of Somfy.

## **12. WAIVER**

The failure, delay or indulgence on the part of Somfy in exercising any power or right conferred by these Terms of Trade does not operate as a waiver of that power or right.



### **13. GOVERNING LAW**

These Terms of Trade shall be construed in accordance with the law in force in New South Wales, Australia and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State.

### **14. SEVERANCE**

These Terms of Trade are qualified by any provision of a law which applies and which cannot be excluded. If any provision of these Terms of Trade is deemed to be unlawful or unenforceable, such provision shall be read down to the extent permitted or severed from these Terms of Trade and all other provisions hereof shall remain in force.

### **15. PRIVACY**

The Customer agrees that personal information, credit information and credit eligibility information about the Customer, and any directors, proprietors or relevant employees of the Customer, including but not limited to their name, date of birth, contact details (including address, email address, phone number or mobile telephone number), occupation, driver's licence number or financial information may be collected, held, used, disclosed and otherwise managed in accordance with Somfy' Privacy Policy and Credit Reporting Policy in compliance of the Privacy Act 1988 (Cth).

Terms of Trade – Effective 1 July 2017

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