

Terms of Trade

1. APPLICATION OF TERMS

1.1 Except as may be expressly stated otherwise, including in any written quotation or proposal submitted by Somfy Pty Limited ABN 77 003 917 244 (**Somfy**) to the Customer, or a written contract of sale signed by Somfy, these Terms of Trade (**Terms**) apply to every supply of goods or services (**Products**) by Somfy to any Customer as from 1 January 2022. Somfy may accept or decline all or any part of the Customer's request to purchase Products in its absolute discretion.

1.2 These Terms, in conjunction with Somfy's Account and Credit Application (or predecessor document of this type) signed by the Customer, constitute the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by Somfy and the Customer in writing. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of these Terms are merged in these Terms and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of these Terms or constitutes any collateral agreement, warranty or understanding.

1.3 Somfy does not represent or warrant that the content, which may be modified at any time, in websites, catalogues, brochures and leaflets published by Somfy is accurate, dependable, suitable, or complete. Somfy fulfills its obligation to provide information about the Products in the datasheets, configuration manuals and Product packaging published by Somfy from time to time. The Customer bears the responsibility to inform its own customers about the conditions of installation (including configuration), conditions of use of the Products and the safety measures to be taken, by adapting and completing the information provided by Somfy, to the Customer's Product. Somfy reserves the right at any time to modify the Product as well as the related technical and commercial information and documentation. The Customer shall ensure that on resale, each Product is accompanied by leaflets, instructions or any other documentation or information required by the applicable regulations.

1.4 Unless otherwise agreed in writing between the parties, the Customer may not cancel an order (or any part of an order) unless the Customer pays to Somfy (in Somfy's sole discretion) all costs incurred by Somfy in relation to the cancelled order (or cancelled part of an order) up until and including the

date of cancellation.

1.5 The Customer acknowledges that orders for non-stock, custom-made, and special goods (**Special Orders**) may have to be purchased in minimum quantities and that the Customer will be notified if this applies in respect of the Customer's order. Notwithstanding anything herein to the contrary, and subject to any rights the Customer might have under Australian Consumer Law or any relevant State or Federal Legislation, the Customer acknowledges and agrees that Special Orders are non-refundable and cannot be returned to Somfy, unless otherwise agreed in writing by Somfy. Somfy shall not be responsible for errors in the Customer's specifications.

1.6 The importation and resale of the Products by the Customer are conducted under its sole liability and shall not in any way constitute a violation of the laws and regulations in force in the country of importation of the Products.

2. PRICES

2.1 All prices published, and Products offered for supply by Somfy are subject to change without notice and exclude the cost of carriage. The Customer should check the price of Products and the costs of carriage before placing an order. Prices quoted are, unless otherwise stated, exclusive of goods and services tax (**GST**) and are valid for delivery of Products within 30 days of the date on which the Customer communicates an offer to purchase Products to Somfy.

3. GST

3.1 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 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 Customer is payable on demand by Somfy, whether such demand is made by an invoice raised by Somfy or otherwise.

4. DELIVERY

4.1 The Customer acknowledges that:

(a) certain Products may not be available to Customers located outside supplier prescribed

territories; and

(b) the delivery and transportation of certain Products may be subject to prescribed safety restrictions or limitations.

4.2 Any date given to the Customer by Somfy for delivery of Products 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 Products 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 at any time, or at the Customer's option if Somfy has been unable to deliver the Products within six (6) months of the date of the purchase order or the contract for sale, whichever is the later; 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 The Products are delivered FCA ("Free Carrier" Incoterms® 2010) at Somfy's premises, unless otherwise specified in writing between Somfy and the Customer. Whether Somfy arranges carriage, at the Customer's cost, using a carrier nominated by Somfy or the Customer arranges its own carrier, the Products are always shipped at the risk of the Customer.

4.5 The Customer is responsible for inspecting the Products upon delivery. It is the Customer's responsibility to inform the carrier and Somfy in writing, within three (3) days of delivery of any shortage, damage, loss, theft, of or any other defect in the Products. No complaint or return of Products shall be taken into consideration, after three (3) days following delivery, except with the written agreement of Somfy.

4.6 Disposal of all shipping pallets, containers, and packaging becomes the responsibility of the Customer upon delivery.

5. INSTALLATION AND OTHER SERVICES

5.1 If the Customer has contracted Somfy to install Products or other goods or provide other services (**Works**) at the Customer's premises, or at the premises of a customer of the Customer, (**Premises**)

the Customer shall, at its expense, ensure that:

(a) the Premises are safely accessible to Somfy's service technicians (**Technicians**), and adequate and safe power and lighting is available, on the date agreed for the supply of the Works;

(b) the Technicians are provided with such induction/site training as is appropriate and which Somfy and the Customer deem necessary having regard to the nature of the Works;

(c) the Technicians will not be exposed to any danger or threat to their health or safety, or to their equipment, in connection with the supply of the Works;

(d) the consent of the owner and or authorised occupier of the Premises, or of any neighbouring property which may be impacted by the supply of the Works, has been obtained regarding the supply of the Works;

(e) the supply of the Works will not detrimentally impact any property proximate to the Premises or the environment generally; and

(f) the completed Works will not likely be at risk of damage or failure to correctly operate as a consequence of the shortcomings of the condition of the Premises.

5.2 The Customer acknowledges that the Technicians may refuse, in their absolute discretion, to undertake the Works if the Premises are not in the condition prescribed in clause 5.1 or for any other environmental, health or safety issue. 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 the supply or non-supply of the Works regardless of the reason.

6. PAYMENT

6.1 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.

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

The Customer acknowledges and agrees that credit provided by Somfy will be applied by the Customer wholly or predominately for business/commercial purposes.

- 6.3 The Customer must check all invoices and advise Somfy of any errors or omissions within seven (7) days of receipt. Failing advice from the Customer that the invoice contains any errors or omissions, the invoice may be deemed accepted by Somfy.
- 6.4 At Somfy's sole discretion, a deposit may be required, prior to Somfy accepting the Customer's request to purchase Products, and shall immediately become due and payable as stipulated by Somfy.
- 6.5 All payments required to be made by the Customer under these Terms will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by Somfy and the Customer in writing or as required by law.
- 6.6 Any amount due to Somfy from time to time may be deducted from any monies which may be or may become payable to the Customer by Somfy.
- 6.7 Should the Customer not pay for the Products supplied by Somfy in accordance with these Terms, or as agreed in writing by Somfy and Customer from time to time, after issuing a written demand to the Customer demanding payment within fourteen (14) days, Somfy will be entitled to charge an administration fee of ten (10) percent of the amount of the invoice payable.
- 6.8 The Customer acknowledges that Somfy shall be at liberty to charge a surcharge for credit card transactions equal to the merchant fees incurred by Somfy.
- 6.9 If the Customer becomes insolvent, or defaults under these Terms or fails to make a payment to Somfy by the due date, 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.
- 6.10 If the Customer becomes insolvent, to the extent permitted by law, the Customer remains liable under these Terms for payment of all liabilities incurred hereunder, even if the Supplier receives a dividend or payment consequent to the Customer being insolvent.
- 6.11 The Customer will pay Somfy's costs and

disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis.

7. RISK AND TITLE

- 7.1 Risk of damage to or loss of the Products passes to the Customer on delivery and the Customer must insure the Products on or before delivery. If any of the Products are damaged or destroyed following delivery but prior to ownership passing to the Customer, Somfy is entitled to receive all insurance proceeds payable for the Products to the extent of the indebtedness of the Customer to Somfy. The production of these Terms by Somfy is sufficient evidence of Somfy's rights to receive the insurance proceeds without the need for any person dealing with Somfy to make further enquiries.
- 7.2 Until such time as the Customer has made payment in full for the Products and until such time as the Customer has made payment in full of all other money owing by the Customer to Somfy (whether in respect of money payable under a specific contract or on any other account whatsoever):
 - (a) title in the Products does not pass to the Customer;
 - (b) the Customer agrees that property and title in the Products will not pass to the Customer and Somfy retains the legal and equitable title in those Products supplied and not yet sold;
 - (c) the Customer will hold the Products in a fiduciary capacity for Somfy and agrees to store the Products in such a manner that they can be identified as the property of Somfy, and will not mix the Products with other similar goods; and
 - (d) the Customer will be entitled to sell the Products in the ordinary course of its business but will sell as agent and bailee for Somfy and the proceeds of sale of the Products will be held by the Customer on trust for Somfy absolutely.
- 7.3 The Customer's indebtedness to Somfy, whether in full or in part, will not be discharged by the operation of clause 7.2(d) hereof unless and until the funds held on trust are remitted to Somfy.
- 7.4 The Customer agrees that whilst property and title in the Products remains with Somfy, Somfy has the right, with prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator,

liquidator, or trustee in bankruptcy of the Customer) to inspect the Products of Somfy and to repossess the Products which may be in the Customer's possession, custody, or control when payment is overdue.

- 7.5 The Customer will be responsible for Somfy's reasonable costs and expenses in exercising its rights under clause 7.4 where the Customer is otherwise in default of these Terms. Where Somfy exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against Somfy, its employees, servants, or agents.
- 7.6. The Customer agrees that where the Products have been retaken into the possession of Somfy, Somfy has the absolute right to sell or deal with the Products.
- 7.7 If Products include or are supplied with software, the Customer is granted only a limited license to use the software with the Products, and ownership of and title to the software shall not pass to Customer.
- 7.8 The Customer agrees to indemnify Somfy and keep Somfy indemnified against any claim that arises out of the Products (including the Works) supplied, or not supplied, under these Terms to the extent that such a claim is a consequence of a default by the Customer under these Terms. This indemnity includes any legal fees and expenses Somfy incurs to enforce its rights, on an indemnity basis.

8. SECURITY

- 8.1 The Customer waives its right to receive any notice (including notice of a verification statement) that is required by the Personal Property Securities Act 2009 (Cth) (**PPSA**) unless the notice is required by the PPSA and cannot be excluded.
- 8.2 The Customer agrees not to exercise its rights to make any request of Somfy under section 275 of the PPSA. However, this does not limit the Customer's rights to request information other than under section 275 of the PPSA. Neither the Customer nor Somfy will disclose any information of the kind mentioned in section 275(1) of the PPSA unless section 275(7) of the PPSA applies.
- 8.3 Until ownership of the goods passes, the Customer waives the rights it would otherwise have under the PPSA (unless otherwise agreed to in writing by Somfy and the Customer) under sections 95 to receive notice of intention to remove an accession; 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law; 121(4) to receive a notice of enforcement action against liquid

assets; 129 to receive a notice of disposal of goods by the Supplier purchasing the goods; 130 to receive a notice to dispose of goods; 132(1) to receive a statement of account following disposal of goods; 132(4) to receive a statement of account if no disposal of goods for each six (6) month period; 135 to receive notice of any proposal of the Supplier to retain goods; 137(2) to object to any proposal of the Supplier to retain or dispose of goods; section 142 to redeem the goods; 143 to reinstate the security agreement; and section 157(1) and 157(3) to receive a notice of any verification statement.

- 8.4 These Terms, alone or in conjunction with Somfy's Account and Credit Application, are a security agreement for the purposes of the PPSA. The Customer acknowledges that it has granted Somfy a security interest in the Products and their proceeds which is a purchase money security interest to the extent that it secures payment of all or part of the purchase price for Products.
- 8.5 The Customer charges in favour of Somfy all its estate and interest in any real property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- 8.6 The Customer charges in favour of Somfy all its estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- 8.7 The Customer consents to Somfy perfecting any security interest arising in connection with these Terms by registering a financing statement or otherwise recording the details of these Terms on the Personal Property Securities Register (**PPSR**) and any other applicable security registers in any manner it considers appropriate. The Customer agrees to do anything Somfy asks to ensure that the security interest is enforceable, perfected, and otherwise effective; and has priority over all other security interests.
- 8.8 The Customer agrees to pay or reimburse Somfy for any fees or charges for the PPSR or other registrations contemplated by these Terms.
- 8.9 Somfy may allocate any payment received from the Customer in any manner it determines, including in any manner to preserve any security interest it has in relation to any Products, and may do so at the time of receipt or at any time

afterwards, but in default will apply same first to payment of any unsecured amount owing to Somfy, next as to any reasonable enforcement expenses and then as to any secured balance owing to Somfy. On default by the Customer, Somfy may re-allocate any payments previously received and allocated.

- 8.10 The Customer irrevocably grants to Somfy the right to enter upon the Customer's property or premises, with notice, and without being in any way liable to the Customer or to any third party, if Somfy has cause to exercise any of its rights under sections 123 and/or 128 of the PPSA, and the Customer shall reasonably indemnify Somfy from any claims made by any third party as a result of such exercise.
- 8.11 The Customer must notify Somfy at least fourteen (14) days before it changes its name; changes its place of registration or incorporation; or changes or applies for an Australian Company Number, Australian Business Number, Australian Registered Body Number, or Australian Registered Scheme Number under which an interest in any of the Products is or will be held. The Customer must notify Somfy if anything mentioned in above occurs immediately upon becoming aware of it.
- 8.12 Words and phrases used in this clause that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context indicates otherwise.

9. RETURNS

- 9.1 The Customer must inspect the Products immediately upon delivery and must within fourteen (14) days after the date of inspection give written notice to Somfy with particulars of any claim that the Products are not in accordance with these Terms. Further, the Customer must, upon request from Somfy, allow Somfy to enter upon any premises occupied by the Customer to inspect the Products that are subject of the claim. If the Customer fails to give notice or refuses to allow Somfy to inspect the Products, then to the extent permitted by law, the Products must be treated as having been accepted by the Customer and the Customer must pay for the goods in accordance with these Terms.
- 9.2 If Somfy, in its sole discretion, determines it is appropriate to accept the return of any Products, Somfy will issue the Customer with a Return Materials Authorisation (**RMA**).
- 9.3 The Customer cannot return Products to Somfy without the written agreement of Somfy and a clearly identified RMA on the shipping documentation.

- 9.4 The Customer acknowledges and agrees that any return, other than a return due to a default by Somfy under these Terms or as otherwise permitted by law, may incur a handling and administration charge for restocking.
- 9.5 Unless otherwise agreed in writing between the parties, the Customer must pay all costs associated with the return of any Products (either to Somfy or from Somfy to the Customer or any third party) including freight, insurance, handling, and other charges. Products to be returned to Somfy must be packed and wrapped appropriately and must include all original packaging and documentation. Somfy accepts no liability for any damage that occurs to any Products in return transit, unless claims for such damaged goods are from freight contractors approved by Somfy.
- 9.6 The Customer acknowledges and understands that Somfy:
- (a) shall be under no obligation to accept the return of any goods in circumstances where the defects or damage to the Products is caused as a result (whether in whole or in part) by misuse, abuse, improper application, repair, or alteration (other than by Somfy) or accident; and
 - (b) shall not be liable for any installation, removal or other costs incurred by the Customer to effect the return of defective or faulty goods to Somfy.

10. LIABILITY

- 10.1 The Products come with certain guarantees under Australian Consumer Law. Somfy warrants the Products to be free from defects in materials and workmanship at the time of delivery by Somfy to the Customer.
- 10.2 In relation to the supply of goods, to the extent permitted by law, Somfy's liability is limited, at Somfy's election, to replacing the goods or supplying similar goods; repairing the goods; providing for the cost for replacing the goods or for acquiring equivalent goods; and providing for the cost for having the goods repaired.
- 10.3 In relation to the supply of services, to the extent permitted by law, Somfy's liability is limited, at Somfy's election, to supplying the service again; or providing for the cost of having the services supplied again.
- 10.4 To the fullest extent permitted by law all terms, conditions, warranties, and representations with respect to the Products are hereby disclaimed and

excluded and in no event shall Somfy be liable for any claims or damages relating to the combination of the Products with any other goods, or for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer in connection with the Products supplied under these Terms.

10.5 The Customer acknowledges that the Products may be used in a variety of applications and that there will be no sale of Products by sample. The Customer relies on its own knowledge and expertise, and not the advice or assistance of Somfy, to satisfy itself as to the Products' fitness for the purpose or intended use by the Customer.

10.6 Somfy shall incur no liability whatsoever (including liability for any consequential financial loss suffered by the Customer) for an inability to perform or a delay in performance of its obligations in respect of the supply of the Products if that inability or delay arises directly or indirectly from the happening of any event not within the reasonable control of Somfy, including war, acts of terrorism, strikes, pandemics, epidemics, infectious diseases, quarantines, or other viral outbreaks, disruption of transportation, shortage of energy, water, raw materials or disruption of Somfy's suppliers, capacity constraints, acts or omission of any government, natural disaster, accidents or any event leading preventing access to all or a part of Somfy's premises.

11. PROTECTION OF SOMFY'S INTELLECTUAL PROPERTY

11.1 Somfy grants to the Customer a non-exclusive license to use Somfy's intellectual property in the course of the promotion, sale, supply and distribution of the Products or goods and services comprising the Products.

11.2 "**intellectual property**" means all industrial and intellectual property whether protectable by statute, at common law or in equity, including all copyright, patents, designs, registered and unregistered trademarks, trade secrets and know-how in respect of which Somfy is owner or licensee and which The Customer has been permitted to use pursuant to the program.

11.3 The Customer may only make use of the intellectual property strictly in accordance with the directions of Somfy. The Customer may not use any Somfy owned or licensed, registered or unregistered, trademarks or names, including the "Somfy" name or logos, or part, facsimile or adaptation thereof, in its own corporate, business or trading name or as part of its get up.

11.4 The Customer will notify Somfy, immediately upon becoming aware of any infringement of the intellectual property. Somfy may take whatever action it deems necessary to protect the intellectual property. The Customer will act in good faith and use its reasonable endeavours to assist Somfy in the protection of the intellectual property, including in relation to the prosecution of any infringer of the intellectual property.

12. PROTECTION OF SOMFY CONFIDENTIAL INFORMATION

12.1 The Customer shall hold all confidential information of Somfy in confidence and shall not make use of it except for the purpose of performing its obligations under these Terms. The Customer may only disclose or permit or cause the confidential information of Somfy to be disclosed pursuant to a valid order by a court or governmental body (provided that the Customer provides Somfy with prior written notice of such disclosure in order to permit Somfy to seek confidential treatment of such information); or to an employee, officer or professional adviser of the Customer with a "need to know" the confidential information for the purpose of performing the obligations of the Customer under these Terms. The Customer shall procure that those of its employees, officers, and professional advisers to whom confidential information is disclosed comply with the obligations of the Customer, as the case may be, pursuant to these Terms.

12.2 "**confidential information**" means any information or material (including data provided to the Customer by third parties) disclosed by Somfy to the Customer or observed from Somfy by the Customer in accordance with these Terms relating to the Products or Somfy's business operations, intellectual property, marketing, customers, suppliers, processes, dealings, finances, reports, transactions, prices, or other affairs of Somfy.

12.3 The Customer shall take all necessary steps to prevent the confidential information from falling into the public domain or the possession of unauthorised persons and will advise Somfy in writing immediately upon becoming aware of any misappropriation or misuse by any person of such confidential information. Confidential information may not be removed from the premises of the Customer.

12.4 Except as required by law, the Customer will not disclose to any person any confidential information in any manner which may cause or is calculated to cause injury or loss to Somfy or any associate of Somfy other than in respect of any information

which has become public.

13. MISCELLANEOUS

13.1 An agreement between the parties may not be varied without the prior written consent of Somfy.

13.2 These Terms are qualified by any law which applies, and which cannot be excluded. If any provision of these Terms is deemed to be unlawful or unenforceable, such provision shall be read down to the extent permitted or severed from these Terms (unless the severance of the provision would materially affect or alter the nature or effect of the obligations of the parties under these Terms), without affecting the enforceability of the other provisions.

13.3 A failure or delay by Somfy to exercise a power or right under these Terms does not operate as a waiver of that power or right, and the exercise of a power or right by Somfy does not preclude its future ability to exercise that or any other power or right.

13.4 Insofar as they apply to the ordering, purchase, supply, fulfilment, and delivery of Products from Somfy, these Terms are governed by and must be construed according to the law of New South Wales, Australia and the parties submit to the jurisdiction of the courts in that State.