

Terms of trade

1. APPLICATION OF TERMS

Except as may be expressly stated otherwise, including, in a 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 sale of goods or services (Products) by Somfy to any Customer. Somfy may accept or decline all or any part of a Customer's request to purchase Products in its absolute discretion.

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 Products 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 Products within 30 days of the date on which the Customer communicates an offer to purchase Products to Somfy. Prices quoted for delivery of Products 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 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 AND INSTALLATION

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, 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 Delivery is completed in relation to each instalment of an order when Somfy hands over all of the Products in the instalment to a carrier for transmission to the Customer; or completes loading all of the Products in the instalment at the nominated delivery location for transmission to the Customer; or places all of the Products in the instalment at the Customer's disposal at the delivery location. Such delivery shall be deemed to be acceptance of Products by the Customer, regardless of whether the Customer is present at the time of delivery to inspect the Products and sign a receipt therefor.

4.5 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 Products 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 Products; 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 if the site is not available in the specified condition.

5. PAYMENT

5.1 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. The Customer indemnifies Somfy for any loss suffered by Somfy if a charge to a bank or other account is not honoured.

5.2 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, within thirty (30) days of the date of the invoice.

5.3 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 because 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 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. RISK AND TITLE

- 6.1 The risk of loss of, or damage to, the Products will pass to the Customer on delivery to the Customer or its nominated agent.
- 6.2 Title to any Products delivered to the Customer will not pass to the Customer, and the Customer must keep the Products separately stored and marked as the property of Somfy, until the Customer has paid all amounts that it owes to Somfy in full (including the purchase price for the Products).
- 6.3 Somfy only consents to the Customer selling or otherwise disposing of the Products in the ordinary course of the Customer's business to bona fide customers and unrelated third parties on arm's length terms, while no default is subsisting.
- 6.4 The Customer must not do any of the following in relation to any of the Products except where expressly permitted by these Terms:
- (a) create or allow any interest in, or dispose or part with possession of, the Products;
 - (b) allow the Products to be taken outside the country where the Products were originally received by the Customer;
 - (c) allow the Products to become an accession to or commingled with any other property; or
 - (d) grant any security interest in respect of accounts owed to it in relation to the Products, without Somfy's prior written consent.
- 6.5 If the Customer sells or disposes of any Products, or uses the Products in the creation or delivery of other goods or services, the Customer will hold the proceeds of sale or disposal, or such part of the price of the Products used in the creation or delivery of other goods or services, on trust for Somfy to secure payment of any amounts the Customer owes Somfy for the Products. The Customer must pay all monetary proceeds, up to the amount owed, into a separate account until they are paid over to Somfy and must not mix them with any other amount or use them to pay a debt.
- 6.6 The Customer grants Somfy and its representatives an irrevocable licence to enter any land or premises for the purpose of inspecting, seizing or otherwise enforcing Somfy's rights in respect of Products under these Terms, and indemnifies Somfy for any claims for damage to property or personal injury as a result of exercising those rights. If Somfy seizes or retakes possession of any Products, it may deal with them as it thinks fit.
- 6.7 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. PPSA

- 7.1 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.

- 7.2 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.
- 7.3 To the extent permitted by law, the parties contract out of and the Customer waives its rights under sections 95 (to the extent that it requires Somfy to give a notice to the Customer), 96, 121(4), 125, 130 (to the extent that it requires the Supplier to give a notice to the Customer), 132(3)(d), 132(4), 142 and 143 of the PPSA.
- 7.4 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.
- 7.5 The Customer acknowledges that it has also granted Somfy a security interest in commercial property, being all the Customer's present and after acquired property as security for all money owed by the Customer to Somfy pursuant to these Terms and all other obligations including future advances and costs.
- 7.6 The Customer consents to Somfy perfecting any security interest arising in connection with these Terms by registering a financing statement 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 reasonably asks to ensure that the security interest is enforceable, perfected, and otherwise effective; and has priority over all other security interests.
- 7.7 The Customer agrees to pay or reimburse Somfy for any fees or charges for the PPSR or other registrations contemplated by these Terms.
- 7.8 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.
- 7.9 The Customer must notify Somfy at least 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.
- 7.10 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.

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 Products 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 Products made to the Customer's specifications unless defective.

9. RETURN FOR CREDIT

The Customer must notify Somfy, in writing, within 14 days of the date of the invoice of a claim for credit for damaged Products or for Products 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. Products returned for credit are to be clearly consigned to Somfy and must, if the claim for credit is not based on the Products being damaged, be in the original packaging and in a saleable and undamaged condition. If the claim for credit and return is due to the Products being 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. 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 sale by Somfy to the Customer. Except as otherwise required by law, the liability of Somfy in respect of the Products will be limited, at the election of Somfy, to the repair or replacement of the Products, or the supply of equivalent Products; or to payment of the cost of the repair or replacement of the Products or supply of equivalent Products.
- 10.2 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 time, inconvenience, commercial loss, or incidental or consequential damages.
- 10.3 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.
- 10.4 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 sale 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.

11. MISCELLANEOUS

- 11.1 An agreement between the parties may not be varied without the prior written consent of Somfy.
- 11.2 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.
- 11.3 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.
- 11.4 Insofar as they apply to the ordering, purchase, fulfilment and delivery of Products from Somfy, these Terms are governed by and must be construed according to the law of the State of New South Wales, Australia and the parties submit to the jurisdiction of the courts in that State.
- 11.5 No Somfy employee or agent has the authority to vary these Terms governing any sale.

Effective: New Customers – 1 December 2020
Existing Customers – 1 January 2021