

TERMS AND CONDITIONS OF SALE (T&C's)

**SOMFY SOUTH AFRICA (PTY) LTD WITH REGISTRATION NUMBER:
2008/005979/07**

(“SOMFY”)

(Effective 1 January 2016)

1. PURPOSE AND INTERPRETATION

- 1.1. The Terms and Conditions of Sale (“SOMFY T&Cs” or “T&C's”) contained in this document shall replace any previous versions thereof and /or any document(s) regulating the terms and conditions of sale of all goods (“PRODUCT(S)”) by SOMFY SOUTH AFRICA (PTY) LTD with registration number: 2008/005979/07 (“SOMFY”) to CUSTOMERS in the Republic of South Africa (“CUSTOMER(S)”).
- 1.2. SOMFY and the CUSTOMER as set out herein shall henceforth jointly be referred to as the “PARTIES”.
- 1.3. These T&C's shall be effective from 1 January 2016 (“EFFECTIVE DATE”).
- 1.4. The T&Cs contained in this document shall prevail over any conflicts with or item(s) contained in the CUSTOMER's terms of purchase, any similar or related documents that contain or state anything to the contrary, whether directly or indirectly from the EFFECTIVE DATE. Unless an agreement is entered into in writing and signed by both PARTIES expressly to the contrary and that such term(s) indeed prevail over these T&C's.
- 1.5. The acceptance of any order by SOMFY is conditional thereupon that the CUSTOMER accepts these T&C's fully and unconditionally. The CUSTOMER hereby accepts these T&C's by either: signing a credit application or in case of cash on delivery by placing an order, otherwise sign and delivers or cause to be delivered to SOMFY the duly signed T&C's as its complete and unconditional acceptance thereof.
- 1.6. “**Confidentiality**” shall mean any disclosures of confidential information (including personal information kept on computer or other media) made unlawfully outside the proper course of business and with the necessary consent.
- 1.7. The headings of the clauses are intended for convenience only and must not be used as an aid to, nor do they affect, the interpretation of the T&C's and:
 - 1.7.1. words in the singular include the plural and vice versa;
 - 1.7.2. words importing any one gender include the other two genders;
 - 1.7.3. a reference to a natural person includes a legal persona; and
 - 1.7.4. the meaning of words so indicated with “ “ or with the use of capital letters shall be so interpreted as indicated herein, except in a context indicating that some other meaning is intended.

2. ORDERS

- 2.1. All orders shall be placed in writing.
- 2.2. SOMFY reserves the right to discard without any notice and / or to reject without any notice any order which does not comply, in whole or in part, with these T&C's.
- 2.3. An agreement of sale between SOMFY and the CUSTOMER is legally binding once SOMFY accepts the order in writing (“ORDER ACKNOWLEDGEMENT”) and the CUSTOMER accepts

or has already accepted the T & C's completely and unconditionally in writing, as set out in clause 1.5 of the T&C's.

3. DELIVERY DATES / TIME

- 3.1. Actual DELIVERY times shall be confirmed once SOMFY's PRODUCT stock becomes available for DELIVERY.
- 3.2. DELIVERY of the PRODUCT is affected or deemed to be affected to the CUSTOMER once the CUSTOMER acknowledges receipt of the PRODUCT by collecting the PRODUCT from SOMFY, or when the CUSTOMER takes possession of the PRODUCT, or when the CUSTOMER's transportation ("SHIPPING") service collects the PRODUCT from SOMFY - whichever occurs first ("DELIVERY").
- 3.3. SOMFY will not be liable for any damages or losses incurred and is hereby indemnified by the CUSTOMER against any claim as a result of orders delayed or cancelled due to any legal consequence that occurs by the act of the law itself (or ipso jure), or if the CUSTOMER is in default of the payment terms, or as a result of an act of God (or *force majeure*) or incidents such as, without limitation: lockouts, strikes, epidemics, war, terrorist attacks, commandeering of property, fire, flood or any other similar event or anything not caused by SOMFY's actions, SOMFY's negligence or is outside SOMFY's control but which results in a delay or cancellation of the SHIPPING of the PRODUCT or in a total or partial shutdown of SOMFY or its suppliers.

4. TRANSPORTATION / SHIPPING / DELIVERY

- 4.1. The CUSTOMER shall take DELIVERY in terms of 0 at its own cost and shall assume all the associated risk for and related to the PRODUCT(S) on the date and at the time that the PRODUCT(S) are DELIVERED to them.
- 4.2. All DELIVERIES shall be considered as one inclusive and indivisible DELIVERY transaction.
- 4.3. In case of PRODUCTS that are DELIVERED to the CUSTOMER or a Third Party, the risk of accidental loss or accidental damage of the PRODUCTS passes onto the CUSTOMER once the PRODUCTS have left SOMFY's possession, irrespective of the agreed place of performance or who is liable for the DELIVERY costs.
- 4.4. The CUSTOMER shall inspect the PRODUCT immediately upon taking DELIVERY thereof. In the event of damage, loss, or theft record that in sufficient detail and immediately inform SOMFY thereof in writing.
- 4.5. Any notes and / or observations as set out in 4 shall be communicated to SOMFY in writing together with a copy of the DELIVERY / consignment note of the SHIPPING carrier (if applicable) by email or facsimile within 5 (FIVE) business days of DELIVERY of the PRODUCT(S).

5. PRODUCT PRICING

- 5.1. The price on the ORDER ACKNOWLEDGEMENT provided to the CUSTOMER by SOMFY is the confirmed and agreed purchase price of the PRODUCTS for payment of which the CUSTOMER shall be invoiced.
- 5.2. Purchase prices are all exclusive of VAT, any other tax(es) or charge(s) payable by the CUSTOMER in connection with the sale, DELIVERY and installation of the PRODUCTS.

6. PRODUCT INFORMATION

- 6.1. SOMFY discharges its duty to notify the CUSTOMER in full of the PRODUCT specifications, technical details and use by supplying the technical documents related to the PRODUCT as included with the PRODUCT packaging at DELIVERY thereof to the CUSTOMER.

- 6.2. These technical documents are written for the CUSTOMER who may sell, advise CUSTOMERS and install the PRODUCT for its CUSTOMERS. It is the CUSTOMER's sole responsibility to read, properly interpret and strictly adhere to the contents of these technical documents.
- 6.3. It is the CUSTOMER's responsibility to adequately inform its own CUSTOMERS of the conditions of use of the PRODUCTS and to follow the full contents of the technical documents, without limitation the safety and installation instructions, accurately.
- 6.4. SOMFY reserves the right to make, at any time, changes to the PRODUCTS and the technical and any information related thereto. It is the CUSTOMER's sole responsibility to remain informed of any changes and additions to the technical documents on a continual basis.
- 6.5. The assembly drawings, usage tables and limitations of use stated in the technical documents included in the PRODUCT packaging are based on set parameters and cannot apply to all of the possible installation situations and conditions. It is the CUSTOMER's sole responsibility to contact SOMFY for any additional information if so required.
- 6.6. The CUSTOMER indemnifies SOMFY against any damages or losses occasioned by CUSTOMER or its CUSTOMERS not following the contents of the technical documents including but not limited to the safety, installation instructions and use.

7. RESERVATION OF OWNERSHIP

- 7.1. SOMFY retains ownership of all PRODUCTS sold to CUSTOMERS until receipt of full payment of the purchase price.
- 7.2. All risk(s) associated with the PRODUCTS shall transfer to the CUSTOMER on DELIVERY thereof.
- 7.3. The CUSTOMER is authorised to sell the PRODUCTS delivered to them before SOMFY has been paid in full as part of the CUSTOMER's normal business operations subject thereto that the CUSTOMER is not party to any imminent, pending or final insolvency proceedings.
- 7.4. The CUSTOMER shall not be authorized to pledge, mortgage, grant a lien over, lease or assign the PRODUCTS by any other way of security.

8. LIABILITY

Except as provided for herein, SOMFY shall only be liable in the event of SOMFY's wilful misconduct or gross negligence and any further liability whatsoever is hereby expressly excluded.

9. USE OF THE SOMFY TRADEMARK

The use of SOMFY's trademark or of any other trademark belonging to SOMFY is strictly subject to the prior written consent which complies with SOMFY's graphics charter.

10. CONFIDENTIALITY / RESTRICTIONS ON DISCLOSURE AND USE OF PERSONAL INFORMATION

- 10.1. The CUSTOMER shall keep any knowledge and information of a technical or economical nature it has received from SOMFY in connection with the business relationship ("Confidential Information") strictly confidential towards third PARTIES at any time, even after the end of the business relationship, unless the CUSTOMER proves that the Confidential Information is:
 - 10.1.1. already known to the CUSTOMER or in the public domain at the time of disclosure or subsequently become public knowledge other than through a fault of the CUSTOMER;
 - 10.1.2. subsequently developed by the CUSTOMER completely independent from the Confidential Information; or
 - 10.1.3. received by the CUSTOMER from a third Party without breach of a confidentiality obligation.

- 10.2. SOMFY shall reserve all proprietary rights and copyrights of estimates, designs, drawings and other documents and these shall only be modified or made available to third PARTIES with SOMFY's express approval. Drawings and other documents provided as part of a quotation must be returned to SOMFY on request at any time when the order is not placed with SOMFY.
- 10.3. In case of SOMFY's delivery of items according to drawings, models, samples or other documents provided by the CUSTOMER, the latter shall ensure that industrial property rights of Third Parties are not infringed upon. If a Third Party, referring to proprietary rights, prohibits in particular the manufacturing and delivery of such items, SOMFY shall be entitled to suspend all relevant activities and claim damages without being obliged to analyse legal responsibilities, in addition, the CUSTOMER undertakes to indemnify SOMFY immediately from Third-Party claims related to documents made available to SOMFY.
- 10.4. The disclosure of Confidential Information does not establish any industrial property rights, rights to knowhow or copyrights of the CUSTOMER and does not constitute a prior publication or right of prior use according to the applicable patent, design and utility model laws. Any kind of licence is subject to a written agreement.
- 10.5. The CUSTOMER agrees:-
 - 10.5.1. That it shall only be entitled to use the Confidential Information of SOMFY for the specific purposes set out in the Disclosing Purpose, and it shall not utilise, employ, exploit or in any other manner use the Confidential Information of SOMFY for any purpose other than the Disclosing Purpose;
 - 10.5.2. subject to clause 10.5.3, not to disclose the Confidential Information of the SOMFY to any Third Party or publish such information in any manner, for any reason or purpose whatsoever without the prior written consent of SOMFY, which consent may be withheld in the sole discretion of the SOMFY;
 - 10.5.3. it will restrict the dissemination of the Confidential Information of SOMFY to only those of its personnel who are actively involved in the Disclosing Purpose and then only on a "need to know" basis and will take all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;
 - 10.5.4. that any unauthorised use, publication or other disclosure of the Confidential Information of SOMFY may cause irreparable loss, harm and damage to SOMFY. Accordingly, the CUSTOMER hereby indemnifies and holds SOMFY harmless against any loss, action, expense, claim, harm or damage of whatsoever nature suffered or sustained by SOMFY pursuant to:
 - (i) a breach by the CUSTOMER of the provisions of this Agreement; and
 - (ii) any unauthorised use, publication or disclosure of any Confidential Information by any of the Receiving Party's personnel.
- 10.6. The CUSTOMER shall protect the Confidential Information of SOMFY in the same manner and with the same endeavour which a reasonable man would use to protect his own Confidential Information. Should the CUSTOMER become aware of any unauthorised copying, disclosure or use of Disclosing Party's Confidential Information, it shall immediately notify SOMFY thereof in writing and, without in any way detracting from SOMFY's rights and remedies in terms of this Agreement, take such steps as may be necessary to prevent a recurrence thereof.
- 10.7. To the extent that the CUSTOMER is ordered to disclose any of SOMFY's Confidential Information pursuant to a judicial or government request, requirement or Order (hereafter called the "Forced Disclosure"), the CUSTOMER shall, unless legally prohibited to do so, promptly notify SOMFY thereof and take any and all reasonable steps to assist SOMFY in contesting such a request, requirement or Order, or otherwise take all reasonable steps to protect SOMFY's rights prior to Forced Disclosure.

- 10.8. SOMFY may at any time request the CUSTOMER to return any material containing, pertaining to, or relating to the Confidential Information of SOMFY and may, in addition, request the CUSTOMER to furnish a written statement to the effect that upon such return, the CUSTOMER has not retained in its possession, or under its control, either directly or indirectly, any such material.
- 10.9. Alternatively to clause 10.8, the CUSTOMER shall, at the instance of SOMFY, destroy such material and furnish SOMFY with a written statement to the effect that such material has been destroyed.
- 10.10. The CUSTOMER shall comply with a request in terms of this clause 10 within 3 (three) days of receipt of such request, or such shorter period as SOMFY may demand, so long as this allows the CUSTOMER adequate time to comply.
- 10.11. Personal Information
- 10.11.1. Standard of care
- The CUSTOMER shall protect the Confidential Information of SOMFY in the same manner and with the same endeavour which a reasonable man would use to protect his own Confidential Information. Should the CUSTOMER become aware of any unauthorised copying, disclosure or use of Disclosing Party's Confidential Information, it shall immediately notify SOMFY thereof in writing and, without in any way detracting from SOMFY's rights and remedies in terms of this Agreement, take such steps as may be necessary to prevent a recurrence thereof.
- 10.11.2. Forced Disclosure
- To the extent that the CUSTOMER is ordered to disclose any of SOMFY's Confidential Information pursuant to a judicial or government request, requirement or order (hereafter called the "Forced Disclosure"), the CUSTOMER shall, unless legally prohibited to do so, promptly notify SOMFY thereof and take any and all reasonable steps to assist SOMFY in contesting such a request, requirement or order, or otherwise take all reasonable steps to protect SOMFY's rights prior to Forced Disclosure.
- 10.11.3. Return of information
- 10.11.3.1 On Request. SOMFY may at any time request the CUSTOMER to return any material containing, pertaining to, or relating to the Confidential Information of SOMFY and may, in addition, request the CUSTOMER to furnish a written statement to the effect that upon such return, the CUSTOMER has not retained in its possession, or under its control, either directly or indirectly, any such material.
- 10.11.3.2 Destruction. Alternatively to clause 10.11.3.1, the CUSTOMER shall, at the instance of SOMFY, destroy such material and furnish SOMFY with a written statement to the effect that such material has been destroyed.
- 10.11.3.3 Compliance with request. The CUSTOMER shall comply with a request in terms of this clause 10 within 3 (three) days of receipt of such request, or such shorter period as SOMFY may demand, so long as this allows the CUSTOMER adequate time to comply.

11. DISPUTES – JURISDICTION

- 11.1. The laws of the Republic of South Africa shall apply and govern the exercise and enforcement of this agreement and govern the relationship between SOMFY and the CUSTOMER.
- 11.2. The PARTIES hereby agree that the Magistrates Court having the appropriate jurisdiction in the Republic of South Africa shall have the requisite authority and jurisdiction to hear and determine any dispute arising between SOMFY and the CUSTOMER.

12. WARRANTY AND RETURNS

The CUSTOMER shall ensure that it understands and is fully aware of the contents of SOMFY's Warranty and Returns Policy available at www.somfy.co.za, as it may be updated or amended, without any prior notice, from time to time.

13. GENERAL PROVISIONS

- 13.1. The PARTIES agree that sales documents sent by email or facsimile are equivalent to originals provided they have been signed by an authorised representative.
- 13.2. The CUSTOMER hereby declares that any representative or person signing this agreement on his /her behalf is duly authorised to do so either directly or tacitly. It is hereby agreed between the PARTIES that these T&C's shall not be invalid, voidable or declared void based on the lack or apparent lack of such authority to sign it.
- 13.3. If one of the provisions of these T&C's were to be rendered null and void, the other provisions would remain valid, unless the invalid provision was an essential condition for a party to this agreement.
- 13.4. No remedy granted by this agreement excludes any other remedy available at law.
- 13.5. No PARTY shall have any claim or right of action arising from any undertaking, representation or warranty not included in this document.
- 13.6. No agreement varying, relaxing, adding to, deleting from or cancelling this agreement and no waiver of any right in terms of this agreement shall be effective unless reduced to writing and signed by both SOMFY and the CUSTOMER.
- 13.7. It is agreed that a copy of these T&C's shall suffice for purposes of enforcement of this Agreement or any of its terms.
- 13.8. The PARTIES will at all times act in good faith towards each other and will not bring any of the other PARTIES into disrepute.
- 13.9. The validity of this Agreement its interpretation, the respective rights and obligations of the PARTIES and all other matters arising in any way out of it or its expiration or earlier termination for any reason shall be determined in accordance with the laws of South Africa.
- 13.10. Subject to the provision of this Agreement, the PARTIES hereby consent and submit to the jurisdiction of the Magistrate's Court, in any dispute arising from or in connection with this Agreement.
- 13.11. The failure by any of the PARTIES to enforce any provision of this Agreement shall not affect in any way that PARTY's right to require performance of the provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.
- 13.12. The PARTIES agree that by agreeing to these T&C's, they also agree to the provisions of the WARRANTY AND RETURNS POLICY document, which is read in conjunction with this T&C's.

Full and unconditional acceptance by the CUSTOMER:

Customer signature

Print name:

Date: _____