



TERMS & CONDITIONS OF SUPPLY

• 1. DEFINITIONS

In these terms and conditions the following words shall have the following meanings:-

“Company”	means Somfy Limited
“Contract”	means an agreement between the Company and the Customer for the supply of Goods and Services of which these terms and conditions, any quotation provided by the Company (or written variation thereto), and the Specification shall form part
“Customer”	means the individual firm partnership company or other body howsoever constituted acting as the buyer of Goods and Services to be supplied either directly or indirectly by the Company
“Goods”	means raw materials, finished or semi-finished materials or articles and any goods supplied in substitution for or in replacement of or in addition thereto
“Practical Completion”	means as set out in clause 5(xi)
“Services”	means the services either in relation to the Goods to be supplied by the Company to the Customer as set out in the Specification or in relation to separately agreed installation and commissioning
“Specification”	means the specification for the Goods and Services, including any relevant plans and drawings, that is agreed in writing between the Company and the Customer.

• 2. CONTRACT

- (i) Any order made by the Customer whether or not a quotation has been given is subject to acceptance by the Company and a Contract will only be formed when the Company has accepted the Customer's offer to buy in writing.
- (ii) All quotations are made and all orders are accepted subject to this Contract which excludes any other terms and conditions inconsistent therewith which a Customer might seek to impose.
- (iii) The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement representation or other warranty or assurance made or given on or behalf of the Company which is not set out in the Contract.
- (iv) These terms and conditions shall apply to the supply of both Goods and Services except where specified to apply to one or the other.

• 3. PRICES

- (i) Unless otherwise stated all prices quoted are exclusive of amounts in respect of value added tax chargeable from time to time and based on current material costs and operating costs (including wages) at the date of quotation but the Company reserves the right at any time prior to the delivery of the Goods and/or Practical Completion (as the case may be) to adjust the price to take account of any increase in the cost of raw materials labour services or any currency fluctuations affecting the cost of imported materials.
- (ii) There shall be added to the price for the Goods and Services the cost of delivery and any value added tax and any other tax or duty relating to the manufacture transportation export import sale or delivery of the Goods and Services (whether initially charged on or payable by the Company or the Customer).

• 4. TERMS OF PAYMENT

- (i) The Company shall invoice the Customer upon despatch of the Goods (or part thereof) and/or (in the case of Services) at such intervals as are appropriate and notified by the Company to the Customer in writing. Unless

otherwise agreed in writing all sums become due and payable in accordance with the Contract under the Contract not later than 30 days from the date of invoice. In the event of any default by the Customer in making payment by the due date all other sums of money payable by the Customer to the Company under all other contracts (whether or not then due for payment) shall immediately become due for payment.

- (ii) The Company reserves the right to charge interest at 2% per month over Barclays Bank PLC base rate (applying at the time) on all overdue accounts such as interest being deemed to accrue on a day to day basis from the due date for payment.
- (iii) The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any order.
- (iv) The Customer may not withhold payment of any invoice or other amount due to the Company by reason of any set-off or counterclaim which the Customer may have or allege to have or for any reason whatever.
- (v) In the event of any default by the Customer in making payment within 60 days from the date of invoice the Customer shall also be liable to pay on a solicitor and own client basis all legal costs and disbursements incurred from such date by the Company in seeking to recover overdue accounts or any part thereof such costs either to be added to the Customers running account balance or to be paid within 30 days of notification by the Company.

• 5. DELIVERY

- (i) The delivery or completion date specified in the Contract is approximate only and unless otherwise expressly stated time is not of the essence for delivery of the Goods and/or Services or Practical Completion (as the case may be). The time for despatch, delivery or completion shall be extended by a reasonable period if delay in despatch, delivery or completion is caused by instructions or lack of instructions from the Customer.
- (ii) The Company will use all reasonable endeavours to deliver the Goods and Services by the date or dates agreed between the parties but the Customer shall not be entitled to refuse delivery on account of any delays.
- (iii) The Company shall not be liable for any loss or damage on delivered orders unless informed in writing within 5 working days of the date of delivery.
- (iv) The Company shall be under no liability if it is prevented from carrying out any provision of the Contract for any reason beyond its control including (but without limitation) Act of God, legislation, war, fire, drought, failure of power supply, lock out, strike or any other action taken by employees in contemplation or furtherance of a trade dispute or owing to any inability to procure materials or labour required for the performance of the Contract.
- (v) Each delivery shall be accompanied by a delivery note showing the Company reference number, type and quantity of the Goods (and if the order is being delivered in instalments, the outstanding balance of the Goods awaiting delivery) ("Delivery Note"). The Company shall repair or replace free of charge Goods damaged in transit or not delivered in accordance with their Delivery Notes provided that the Company is given written notification of such damage or delivery within such times as will enable the Company to comply with the carriers conditions of carriage as affecting loss or damage in transit or, where delivery is made by the Company's own transport within a reasonable time after receipt of the Delivery Note.
- (vi) Should the Customer postpone delivery of the Goods or the Services or if delivery instructions are delayed then the Company may arrange storage of the Goods and the Customer shall be liable to the Company for the reasonable costs (including insurance) of such storage.
- (vii) If the Customer wishes to return any Goods, it must obtain the prior consent of the Company and must undertake delivery of the Goods to be returned, which must arrive undamaged, unused, in their original packaging and in saleable quality within 30 days of the date of despatch. The Company reserves the right not to accept such returns, or to make a charge of 15 per cent of the price of the Goods returned.
- (viii) If the Company's performance of any of the Services is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligations (including without limitation failure by the Customer to comply with its obligations set out in these terms and conditions) ("Customer Default"):
 - a. The Company shall without limiting its other rights and remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent that the Customer Default prevents or delays the Company's performance of any of its obligations;

- b. The Company shall not be liable for any costs or losses sustained or incurred by the Customer arising from the Company's failure to provide the Services.
 - c. The Customer shall reimburse the Company on written demand for any increase in the price of the Services and/or for costs or losses sustained or incurred by the Company, in each case arising directly or indirectly from the Customer's Default.
- (ix) If the Customer cancels the Services, the Company reserves its rights to make a charge for any costs and/or losses incurred by it as a direct or indirect result of such cancellation.
 - (x) The Company shall use reasonable endeavours to observe all health and safety rules and requirements and other reasonable security requirements that apply at the premises where the Services are performed, that have been communicated to it provided that it shall not be liable under this Contract if as a result of such observation it is in breach of any of its obligations under this Contract.
 - (xi) The Company will, where practicable, use reasonable endeavours to submit the Goods and Services to its commissioning procedures ("Tests") to ensure that the Goods are in working order and/or operate in accordance with their related Specification (as the case may be). "Practical Completion" will occur when the Goods and/or Services pass the Tests, and the Company will issue a commissioning statement to the Customer. A representative appointed by the Customer may attend the Tests in which event the Company shall give the Customer reasonable notice of the Tests which shall proceed on the notified date whether or not the Customer's representative is present. If the representative is present, the Company will issue a witness statement for the representative to sign in acceptance of Practical Completion and if the representative fails to attend, the Customer shall be deemed to have accepted Practical Completion.

• 6. RISK AND TITLE TO GOODS

- (i) Risk in the Goods shall pass to the Customer when the Goods are delivered to or deemed to be delivered to the Customer or its agent and so long as legal ownership of the Goods remains with the Company the Customer shall insure the Goods to the full price against all risks with a reputable insurance company and whenever requested by the Company produce a copy of the policy of insurance.
- (ii) Notwithstanding sub-paragraph (i) above legal ownership of the goods shall remain with the Company which reserves the right to dispose of them until payment has been received in full or the Goods have been resold by way of bona fide sale for full market value provided that any such resale shall not be as agent for the Company and in the meantime the Customer holds them as bailee and in a fiduciary capacity. The Goods shall be stored in such a way as to be identifiable as being the property of the Company.
- (iii) Even when payment for the Goods and Services has been received in full by the Company in respect of the Goods and Services delivered under the contract ownership of the Goods shall remain with the Company as aforesaid until payment has been received in full respect of all other sums due from the customer to the company on any account and in the meantime the fiduciary relationship shall subsist.
- (iv) As long as title to the Goods remains with the Company the Customer may not encumber them or purport to transfer title to them for security purposes, nor shall the customer alter or deface any identification mark placed on the Goods. The Customer shall immediately notify the Company by registered or recorded delivery letter if a third party attempts to seize or exercise any lien over the Goods. The Customer shall bear the cost of any action resulting from such attempt seizure or lien.
- (v) At any time when the company has title to the Goods it may by notice request delivery up of the Goods. If the Customer fails to do so the Company or its agents may enter upon any premises owned, occupied or controlled by the Customer where the Goods are sited and repossess the Goods.

• 7. SUPPLY OF SERVICES

- (i) The Company shall supply the Services to the Customer in accordance with the Specification in all material respects.
- (ii) The Company shall have the right to make any changes to the Services and/or the Specification which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.

• **8. DEFECTS AND LIABILITY**

- (i) The Company will make good by repair or at the Company's option by the supply of replacement Goods, defects which under proper use appear in the Goods within a period of 5 years (or 3 years in the case of gate motors and automated units or 1 year in the case of 'PDT' branded Goods) after the date of their manufacture and arise solely from faulty design (other than a design made, furnished or specified by the Customer and/or comprised in the Specification) materials or workmanship; provided always that the defective parts have been returned to the Company if so required.
- (ii) The Company will, for a period of 1 year after Practical Completion, attend the premises where the Services were provided to remedy any defects solely and directly connected with the provision of the Services.
- (iii) The Company's liability to the Customer whether for any breach of contract or otherwise shall not in any event exceed the price of the Goods and Services under the Contract and the Company shall be under no liability to the Customer whether in contract, tort (including negligence), breach of statutory duty or otherwise for any loss of profit, consequential or indirect loss and/or expense suffered by the Customer or to third parties incurred by the Customer.
- (iv) All warranties and conditions including but not limited to conditions of satisfactory quality and fitness for intended purpose and the buyers right of partial rejection whether implied by statute or otherwise are excluded from this Contract provided that nothing in this Contract shall restrict or exclude liability for death or personal injury caused by the negligence of the Company nor affect the statutory right of a buyer dealing as a customer.

• **9. THIRD PARTY ASSISTED RESOLUTION**

- (i) Should the Customer encounter any difficulty, dispute or contractual problem arising under any contract between the Company and the Customer whether covered by these terms and conditions of sale or otherwise then the Customer must notify the Company in writing of the Customer's intention to resolve the dispute by Third Party Assisted Resolution.
- (ii) On receipt of notice in writing the Company will convene a meeting at its premises on a date mutually convenient to the Company and its Customer. The meeting shall be scheduled for either one half day or one full day depending on the nature of the dispute.
- (iii) Following receipt of notice in writing the Company will within 7 days provide to the Customer three convenient times and dates for the meeting. The Customer will within 7 days of receipt either accept one of the three dates proposed by the Company or within 7 days suggest three further mutually convenient dates to the Company.
- (v) The chairman of the meeting will be third party nominated by the Company trained in a professional capacity in arbitration mediation and/or conciliation of disputes.
- (vi) The cost of the arbitrator will be £200.00 per half day and £350.00 per full day. A half day is a term not exceeding 3 ½ hours and a full day is a term not exceeding 6 hours. Should the Customer elect to proceed by way of a Third Party Assisted Resolution then the Customer agrees to pay 50% of the arbitrators fee within 7 days from the date of the meeting.
- (vii) In the event that this clause is invoked both the Company and the Customer agree to be bound by the decision of the arbitrator and to comply with any directions given by the arbitrator within the meeting.

• **10. CUSTOMER'S OBLIGATIONS**

- (i) The Customer shall:
 - a. co-operate with the Company in all matters relating to the Services;
 - b. provide the Company, its employees, agents, consultants and subcontractors, with uninterrupted access to such premises and other facilities as reasonably required by the Company to provide the Services and indemnify the Company against the consequences of any defect or unsuitability in the premises or equipment to which access is provided (including without limitation against all liabilities for damage costs and expenses arising out of the death or injury resulting to any person or property);
 - c. provide the Company in a timely fashion with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects.;

- d. prepare the Customer's premises (or such other premises as may be required) and equipment (including without limitation any hardware/software interfaces required) for the supply of the Services;
- e. obtain and maintain all necessary licences, permissions and consents which may be required for the use of the Goods by or on behalf of the Customer and for the Services before the date on which the Services are to start;
- f. keep and maintain all materials, equipment, documents and other property of the Company at the Customer's premises (or the premises where installation is to take place or other place of Customer storage as the case may be) in safe custody at its own risk, maintain such materials in good condition until returned to the Company, and not dispose of or use the such materials other than in accordance with the Company's written instructions or authorisation; and
- g. ensure that the Customer complies with any agreed timetable such that the Company has adequate time in which to perform its Services (or alternatively extend the timetable for a reasonable period and assist the Company to make recovery of extra costs incurred, in accordance with clause 5(viii)).

For the avoidance of doubt, The Company accepts no responsibility for the premises, any interfacing or support required for the Goods (except where supplied by the Company).

- (ii) The Customer shall ensure that the Specification and all drawings, designs, descriptions and other information supplied by the Customer to the Company whether written or verbal are in all respects complete and accurate and in accordance with the Customer's requirements. Provided that the Goods and Services supplied are in accordance with the Specification, the Company shall not be responsible for the suitability of the Goods and Services for the purposes of the Customer.

• 11. INTELLECTUAL PROPERTY

- (i) No right or license is granted under this Contract to the Customer under any patent, trade mark, copyright, registered design or other intellectual property right except the right to use the Goods and any copyright or other intellectual property rights in the Specification and any design or other technical information supplied to the Customer arising out of or in connection with the provision of Goods and Services under the Contract is and shall remain the property of the Company.
- (ii) The Company shall not in any circumstance have any liability for any claim by a third party for any actual or alleged infringement of its intellectual property rights caused or contributed to by the use of the Goods in combination with software not supplied or approved in writing by the Company or otherwise forming part of the Specification. The Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses suffered or incurred by the Company arising out of or in connection with any such claim.

• 12. TERMINATION

- (i) Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party in the event of any of the following ("Event"):
 - a. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
 - b. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party or an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - c. the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver or a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party or a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - d. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above in this clause 12 or the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

- (ii) The Company reserves the right by notice in writing and with immediate effect to revise the payment terms or credit arrangements previously agreed with the Customer if any Event occurs.
- (iii) Without affecting any other right or remedy available to it, the Company may terminate this agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment.
- (iv) Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

- **13 SUB-CONTRACTING**

The Company shall be entitled to assign or sub-contract the Contract or any part thereof without the Customer's consent.

- **14. WAIVER**

No waiver or forbearance by the Company (whether express or implied) in enforcing any of its rights under the Contract shall prejudice its right to do so in the future.

- **15. VARIATION AND CHANGE CONTROL**

Where the Customer or the Company wishes at any time to change the Contract, the Customer may request, and the Company may recommend, such change ("Change"). Where a written request for an amendment is to be made by either party, such party shall submit two copies of a change control note signed by it to the other party within 1 week of the date of the request. The party in receipt of the change control notice shall give its response to it to the other party within 2 weeks of receipt.

Each change control note shall contain full details of the Change, including without limitation the reason for it, any specifications, the timetable, the price, the impact of the Change and the date of expiry of validity of the change control note. For each change control note submitted the receiving party shall, within the period of its validity either request further information, arrange for it to be signed on its behalf or notify the other party of the rejection of the change control note.

A change control note signed by the Customer and by the Company shall constitute an amendment to the Contract. Except as set out in this clause 15, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed on behalf of the Company.

- **16. THIRD PARTY RIGHTS**

A person who is not a party to the Contract shall not have any right to enforce its terms.

- **17. NOTICES**

Any notice required to be served pursuant to the Contract shall be in writing and served by first class post or by hand on the Customer or the Company at the registered office of either party or its principal place of business.

- **18. JURISDICTION**

The validity construction and performance of the Contract shall be governed by the laws of England and Wales and the Customer and the Company submit to the exclusive jurisdiction of the English Courts.