



# Terms and Conditions of Sale

## I-GENERAL

When used herein, the term "SOMFY" refers to Somfy Systems, Inc., having an address of 121 Herrod Boulevard, Dayton, New Jersey 08810. When used herein, the term "Buyer" refers to any person purchasing or offering to purchase products from SOMFY.

All products sold by SOMFY are subject to the SOMFY Terms & Conditions of Sale.

## II-ACCEPTANCE OF ORDERS

All Buyer's orders must either be written on Buyer's purchase order or SOMFY's order form and signed by Buyer. SOMFY is not bound by any terms listed on Buyer's order form or other documents which add to or conflict with these Terms and Conditions of Sale. Upon receiving SOMFY's order acknowledgment, Buyer is considered to have accepted these Terms and Conditions of Sale. No order, quotation or acknowledgments and no provisions of these Terms and Conditions of Sale shall be subject to change in any respect, except as may be expressly agreed to in writing by an authorized representative of SOMFY. Failure of SOMFY to object to provisions contained in any purchase order or other communication from a Buyer (including, without limitation, penalty clauses or labor charges), shall not be construed as a waiver of these Terms and Conditions of Sale, nor an acceptance of any such provisions. These Terms and Conditions of Sale, any reseller agreement by and between Buyer and SOMFY (the "Reseller Agreement"), and any additional writings signed by a duly authorized representative of SOMFY, constitute the entire agreement between SOMFY and Buyer. No other representations, warranties or terms shall be binding against SOMFY. In the event of any conflict between the terms of these Terms and Conditions of Sale and the Reseller Agreement, the terms of the Reseller Agreement shall control. **IN NO EVENT SHALL SOMFY BE RESPONSIBLE OR LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF ITS AGREEMENT WITH BUYER.** These Terms and Conditions of Sale do not establish a franchise or agency relationship and do not grant rights to any of SOMFY's (or any of its affiliates') trademarks or other intellectual property or create any other expressed or implied licenses.

## III-PRICES

Prices and specifications contained in any of SOMFY's catalogues, advertisements, folders, circulars, price lists or other materials furnished to Buyer by SOMFY are subject to change without notice. Written quotations expire thirty (30) days from the date of the quotation, unless otherwise specified in writing. In the event that Buyer wants to postpone the delivery date of a previously accepted order, SOMFY, on its sole discretion, reserves the right to approve such postponement. If SOMFY agrees in writing to a postponed delivery date, then the price that will apply to that order shall be the price in effect on the postponed shipping date.

Buyer shall pay all transportation charges. Any freight, insurance, packing or other transportation charges paid by SOMFY shall be in addition to quoted prices, and Buyer shall reimburse SOMFY for the same whether or not such amounts are separately stated on the invoice. Advertised or quoted prices do not include any federal, state or local sales, use, value-added or excise taxes, customs duties, imports or other assessments of any kind, which may arise from the manufacture, sale or shipment of products to Buyer, and Buyer shall be responsible for any and all such taxes, duties or other assessments. If SOMFY has the legal obligation to collect any such taxes, duties or other assessments, the appropriate amount shall be added to SOMFY's invoice to Buyer and paid by Buyer, unless Buyer provides SOMFY with a valid exemption certificate authorized by the appropriate governmental authority. If, for whatever reason, SOMFY fails to collect any such amount from Buyer and SOMFY becomes liable to pay any such taxes, duties or other assessments or any penalties related thereto, Buyer shall immediately pay such amounts directly to the appropriate governmental authority or, if SOMFY is required to pay or has paid such amounts, Buyer shall immediately pay such amounts to SOMFY.

## IV-TERMS OF PAYMENT

Terms of payment are as specified on SOMFY's order acknowledgment and on SOMFY's invoice, regardless of terms indicated in Buyer's order form or other documents. Any outstanding balances unpaid on the due dates shall be subject to payment of an interest charge until paid at the maximum legally permissible rate of interest allowed by the state or other governmental authority having jurisdiction of the transaction.

In the event of substantial changes in the financial situation of Buyer, including but not limited to bankruptcy or change in the credit rating of Buyer's shareholders, members or partners, SOMFY reserves the right to cancel the purchase order without any liability for damages to Buyer.

If an order involves partial shipments, failure to pay for a partial shipment entitles SOMFY to hold subsequent deliveries until payment of past due shipments is made.

## V-DELIVERY

All shipments are F.O.B. point of shipment, freight collect, unless otherwise specified by SOMFY. SOMFY shall select the routing and method of transportation if not specified on Buyer's purchase order. SOMFY does not guarantee the availability of any product from any particular point of shipment. Claims for loss or damaged shipments shall be reported immediately to the carrier, and annotations shall be placed on all delivery receipts signed by Buyer. Buyer shall inspect the product upon delivery and in the event defects or damages are identified after delivery, the Buyer shall immediately contact the carrier by telephone and, if carrier fails to send an inspector within five (5) days, Buyer shall submit a written request to the carrier, confirming the telephone request for an inspection.

Should Buyer, in the first instance, fail to file a claim with the carrier properly substantiated in accordance with the carrier's rules and within the allowable time-limit, the Buyer shall have waived its right to make a claim for defect against SOMFY and such claim is barred.

## VI-SHIPPING DELAYS

Unless otherwise specified by SOMFY, shipping dates provided by SOMFY at the request of Buyer are only estimates. Deviation from estimated shipping dates shall not expose SOMFY to liability for any penalties or damages, nor shall such deviation be an acceptable reason for cancellation of an order. SOMFY shall not be responsible for any losses or damages to Buyer (or any third party) occasioned by the non-performance of any of SOMFY's obligations under its agreement with Buyer when due to any cause beyond SOMFY's reasonable control, including without limitation, an act of God, an act of omission or commission of Buyer, an embargo or other governmental act, governmental regulation or request, fire, theft, accident, strike, slow-down, war, riot, delays in transportation, inability to obtain necessary labor, material or manufacturing facilities.

## VII-LIMITED WARRANTY AND LIMITED LIABILITY

SOMFY warrants that its motors will be free from defects in material and workmanship under normal and proper use for a period of five (5) years starting from the date stamped on the motor. Mechanical, electrical and electronic accessories (excluding batteries) and other products (collectively, the "Mechanical Accessory Products") are warranted to be free from defects in material and workmanship under normal and proper use for a period of five (5) years from date of manufacture.

SOMFY's only obligation shall be to repair or replace defective product which does not conform to the warranty. **SOMFY SHALL NOT BE LIABLE FOR ANY INJURY, LOSS OR DAMAGE, SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL, ARISING OUT OF, OR THE INABILITY TO USE, THE PRODUCTS. BEFORE USING, BUYER AND/OR THE ULTIMATE USER OF SAID PRODUCTS SHALL DETERMINE THE SUITABILITY OF THE PRODUCT FOR ITS INTENDED USE, AND THE ULTIMATE USER OF SAID PRODUCT ASSUMES ALL RISKS AND LIABILITY IN CONNECTION THEREWITH. THE FOREGOING MAY NOT BE CHANGED EXCEPT IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SOMFY.**

Any product replaced pursuant to this limited warranty shall be retained by SOMFY, and Buyer is responsible for any freight costs relating to repair or replacement, as outlined in section eight (VIII), below.

**THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY, WHETHER WRITTEN, ORAL OR IMPLIED (INCLUDING ANY OTHER WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE).**

The following are exclusions from warranty:

- If usage, adaptation or installation are not in accordance with SOMFY's installation and operating instructions.
- If the product has been opened, dismantled or returned with clear evidence of abuse or other damage.
- If SOMFY's written specifications are not properly followed, implemented or applied by Buyer when selecting the product.
- If SOMFY's written instructions for installation and wiring of the electrical connections have not been followed.
- If SOMFY's product has been used to perform functions other than the functions it was designed to handle, namely (A) for motors and accompanying accessories, motorizing window and door enclosures, e.g., shades, rolling shutters, awnings and projection screens which subject the SOMFY product to conditions which exceed its rated capacity and (B) for control boxes, implementation of the Somfy TaHoma® system. Please consult SOMFY about warranty for any uses other than the above.
- If SOMFY products are used with electrical accessories (switches, relays, etc.) that have not been previously approved in writing by the SOMFY Engineering Department.

- If electrical accessories and other components have been used in disregard of the basic wiring diagram for which they were designed. All costs related to installation and reinstallation of the SOMFY products covered by this warranty are not the responsibility of SOMFY. SOMFY will not be responsible for any labor costs related in any way to the warranty or replacement process. SOMFY will not be responsible for any special, incidental, indirect or consequential damages that arise as a result of the installation or re-installation of said products.

If any SOMFY products are sold by Buyer to another buyer or end user, ("Third Party Buyer"). Buyer shall: (1) conspicuously disclose all Somfy warranty terms to such Third Party Buyer prior to the Third Party Buyer taking possession of the Somfy product; (2) expressly include all Somfy warranty terms as part of its agreement with such Third Party Buyer and (3) indemnify and hold SOMFY harmless for any liability, damages, or costs directly arising from any failure of Buyer to comply with the requirements of (1) or (2). SOMFY's responsibility to any such Third Party Buyer shall be no greater than SOMFY's responsibility under the warranty to the Buyer.

Only if a product is a consumer product and SOMFY is extending a warranty to a consumer (as the terms "consumer product" and "consumer" are defined in 15 U.S.C. § 2301, as same may be amended from time to time), then the following provisions shall apply and shall take precedence over any contradictory provisions set forth in these Terms and Conditions of Sale.

- **IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY IMPOSED ON THE SALE OF ANY PRODUCT, IS LIMITED TO (1) IN THE CASE OF ANY MOTOR, FIVE (5) YEARS FROM THE DATE STAMPED ON THE MOTOR, AND (2) IN THE CASE OF MECHANICAL ACCESSORY PRODUCTS (EXCLUDING BATTERIES), FIVE (5) YEARS FROM THE DATE OF MANUFACTURE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.**

- Some states do not allow the exclusion or limitation of incidental or consequential damages, so any such limitation contained herein may not apply to you.

- The warranties set forth herein give you specific legal rights, and you may also have other legal rights which vary from state to state.

## VIII-RETURNS

Below please find SOMFY's return policy for Motors, Controls and Mechanical Accessory Products. Returns may be classified under one of two categories: "Return for Credit" (as herein defined) and "Warranty Claims" (as herein defined).

Returns may only be made by holders of active SOMFY Accounts and must be accompanied by a Return Authorization Number (RA#), issued by SOMFY, as detailed below. The RA# for the return must be clearly marked on the outside of the box. Failure to include the RA# will result in the refusal of the return.

It is the responsibility of the Buyer to ensure that all products returned to SOMFY are packaged in a manner that prevents damage to the product during shipment. Under no circumstances will SOMFY be responsible for products damaged due to poor packaging or shipping methods. All return shipments to SOMFY shall be prepaid by Buyer. SOMFY shall pay the cost of shipment back to Buyer, as applicable, at the same level of shipment service at which the product was returned by the Buyer to SOMFY.

All parts sold as kits must be returned as kits. Failure to include any item in a multi-component kit will be considered an unauthorized return and therefore be refused.

### RETURN FOR CREDIT

Any product returned to SOMFY for credit will be subject to the following terms and conditions.

A "Return for Credit" must be authorized, in writing by SOMFY through issuance of an RA#, prior to shipment of the product back to SOMFY. For returns with a value of less than \$1,000, Buyer may contact Somfy Customer Service for authorization. For returns in excess of \$1,000, Buyer must contact Buyer's Somfy Sales Manager to obtain authorization. The use of the SOMFY Return for Credit

Authorization Form is preferred when requesting authorization; however, authorization may be obtained via phone, fax or email simply by providing the Somfy Sales Order, Buyer Purchase Order or Somfy Invoice Number of the original purchase together with the reason for the return, the part numbers and the specific quantities of the products being returned. All unauthorized Returns for Credit will be refused.

Return for Credit will only be authorized for new, unused product within three (3) months of invoice date. SOMFY will not approve Return for Credit requests for Special Order product (ordered with a non cancelable purchase order), product not included in the current SOMFY Base Price Book or product that required custom fabrication. Credits will not be issued if the product returned for credit appears to have been used, tampered with or arrives without its original packing. In such circumstances, Buyer will be notified and product will be returned to Buyer.

All Returns for Credit will be subject to a fee of the greater of \$20 or 20% of the invoice value of the returned product. Original shipping fees will not be credited. Under no circumstances shall Buyer deduct the value of any returned product from any remittance due. All Returns for Credit must be shipped to the nearest SOMFY distribution facility.

### RETURN FOR WARRANTY CLAIM

Any product returned to SOMFY due to a claimed defect will be handled as a "Warranty Claim". SOMFY requires that all Warranty Claim Returns be accompanied by an RA#. An RA# may be obtained through the Somfy Customer Service Department. Use of the SOMFY Warranty Claim Form is preferred to document the Warranty Claim Request. A description of the problem should be provided for each product, at the time of return request, and should be clearly marked on each returned product.

Should Buyer wish to track individual products on a return, numerical or alpha-numerical codes may be given to each product by the Buyer. The code must be clearly marked on each product and, if so marked, will be referenced by SOMFY in Return Documents to the Buyer.

All Warranty Claims for products sold by Somfy must be shipped to: Somfy Systems, Inc., Attn. Returns Dept., 121 Herrod Boulevard, Dayton, New Jersey 08810. SOMFY will analyze each product returned for Warranty Claim. Upon analysis, SOMFY will repair or replace the defective product and provide to Buyer a written summary of the findings. If no defect is found with the product, if the product is out of Warranty or if the product is clearly damaged by abuse or misuse, Buyer will be notified and the product will be returned to Buyer.

### CUSTOM PRODUCT REMAKE POLICY

Custom Somfy Products, such as fabricated Glyde™ tracks or Tube Kits, are not eligible to be returned for credit; however, Somfy realizes that custom products may occasionally be subject to discrepancies of various natures and makes the following provisions for such occurrences.

Should your custom product not match the specifications you submitted to Somfy, Somfy will take the best means to adjust or remake the product for you. If a remake is necessary, it will be given priority status and Somfy will pay for the ground shipping of the remake.

Should your custom product match the specifications you submitted to Somfy, but not meet your job site requirements, Somfy will extend a one time "Oops! Discount" of 25% on the remake Sales Order. Motors, Controls or other accessories are not included in this discount. Somfy will allow only two "Oops! Discounts" per customer per year. Standard freight will apply.

## IX-INTELLECTUAL PROPERTY RIGHTS

Buyer acknowledges that all right, title and ownership of all intellectual property associated with SOMFY products, including all rights to the product design and trademarks (including, without limitation, the Somfy®, Somfy Drive Control®, Powered by Somfy®, Radio Technology Somfy®, Somfy HPRO®, Somfy TaHoma®, Home Motion®, Simu® and SimuSlate® trademarks) used in connection therewith, shall be and remain the exclusive property of SOMFY and its affiliates (collectively, the "Somfy Affiliates"). Except as expressly authorized by SOMFY, Buyer shall not in any manner, whether in connection with the products or otherwise, use or permit others to use any trademarks which are similar to trademarks used by the SOMFY Affiliates. SOMFY reserves all rights to approve or reject any and all advertising and promotional materials of Buyer using product images and trademarks of the SOMFY Affiliates, provided that SOMFY agrees not to unreasonably withhold such approval. Buyer shall not register or file for registration in any country (A) any trademark owned or used by the SOMFY Affiliates, (B) any similar trademark or (C) any domain name that incorporates or is confusingly similar to any trademark owned or used by the SOMFY Affiliates, and shall transfer and assign to the SOMFY Affiliates, without charge, any and all rights in and to all such trademarks and domain names heretofore or hereafter acquired by Buyer anywhere in the world.

## X-TITLE

Risk of loss on all products shall pass to Buyer F.O.B. point of shipment. Buyer hereby grants to SOMFY a security interest in such products until fully paid and Buyer agrees to perform all acts which may be necessary to perfect and maintain the security interest of SOMFY in such products. In the event that SOMFY wishes to perfect a security interest in such products pursuant to the Uniform Commercial Code, Buyer authorizes SOMFY to prepare, sign and record applicable documentation to evidence such perfection, including filing a financing statement on behalf of Buyer without Buyer's signature.

## XI-DEFAULT

In the event of Buyer's default in payment for the products purchased hereunder upon the terms and conditions agreed upon with SOMFY, to the extent permissible under applicable law, Buyer shall be responsible for the reimbursement of all reasonable costs and expenses incurred by SOMFY in collecting any sums owed by Buyer, and SOMFY shall not be obligated to make any further deliveries of products to Buyer.

## XII-SUBSTITUTES

SOMFY may furnish substitutes for products not obtainable because of limitations or regulations established by governmental authorities or because of non availability of materials from suppliers, provided such substitutes will not affect the technical soundness of the product or its performance.

## XIII-ERRORS

Typographical or clerical errors in quotations, orders or acknowledgments are subject to corrections by SOMFY in its sole discretion.

## XIV-DIMENSIONS

The dimensions and measurements in SOMFY's printed documents are approximate at the date of publication and may be superseded thereafter. Buyer should consult and re-verify such information with SOMFY before utilizing such information.

## XV-AWAIVER

The failure of SOMFY to seek redress for violation of, or to insist upon the strict performance of any covenant, term or condition of these Terms and Conditions of Sale shall not be deemed a waiver or otherwise restrict SOMFY from enforcing its rights without restriction as to past or future violations thereof. The receipt by SOMFY of any payment with knowledge of the breach of any covenant, term or condition shall not be deemed a waiver of such breach and no provision of such terms shall be deemed to have been waived by SOMFY unless such waiver shall be in writing signed by SOMFY.

## XVI-DISPUTES

These Terms and Conditions of Sale and, unless specifically excepted, any agreements into which said Terms and Conditions of Sale are incorporated, and any controversy or claims arising therefrom, or the negotiation of breach thereof, shall be governed and enforced in accordance with the law of the state of New Jersey without regard to conflict of laws. Buyer hereby agrees to the jurisdiction of any United States District Court and any State Circuit Court located in New Jersey to the exclusion of any other court that might otherwise have jurisdiction over an action arising out of a dispute over these Terms and Conditions of Sale, the agreements into which they are incorporated or SOMFY's products. In the event of a dispute arising under these Terms and Conditions of Sale, the agreements into which they are incorporated or SOMFY's products, whether or not a lawsuit or other proceeding is ultimately filed, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs, including attorney's fees and costs incurred in litigating, determining, or quantifying the amount of attorney's fees and costs payable to the prevailing party. The costs to which the prevailing party is entitled shall include costs that are taxable under any applicable statute, rule, or guideline, as well as non-taxable costs, including, but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.

SOMFY SYSTEMS Standard terms and Conditions of Sale apply to all prices. Prices and design modifications are subject to change without notice. All prices are shown in U.S. Dollars and with F.O.B. Dayton, New Jersey, F.O.B. Boynton Beach, Florida, and F.O.B. Irvine, California. The prices listed herein are for SOMFY components and do not include the cost of installation.