

## CONDITIONS OF SALE

### 1. CONTRACT

- 1.1. If Energy Renaissance Pty Ltd ("**Supplier**") submits any quote, proposal or offer ("**Offer**") to supply any goods ("**Products**") and/or provide any services ("**Services**") to the entity specified in the Offer ("**Purchaser**"), which includes or attaches these conditions of sale, the Purchaser is deemed to have accepted the offer if it signs the Offer, issues an order or a letter of acceptance or the like in any form whatsoever, or if it acts in any other manner consistent with acceptance of the Offer.
- 1.2. On acceptance of the Offer by the Purchaser, the Contract is formed on the terms contained in the Offer (including any specification for the Products or the Services referred to in the Offer) and these conditions of sale.
- 1.3. The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all previous communications, whether oral or written, relating to the subject matter of the Contract. For the avoidance of doubt, any terms or conditions contained in, issued with or printed on any order, letter of acceptance or the like issued by the Purchaser do not form part of the Contract and are of no effect whatsoever.

### 2. GENERAL OBLIGATIONS

- 2.1. The Supplier must supply the Products and/or provide any Services in accordance with the requirements of the Contract and any Technical Specifications included in the Contract.
- 2.2. The Purchaser must pay the price specified in the Offer in respect the Products and/or Services ("**Price**") and in accordance with payment terms specified in the Offer, which may include the requirement for a deposit payment. Unless specified otherwise in the Offer, the Purchaser must pay the Price or the relevant portion of the Price specified in the Supplier's invoice within 7 days of acceptance of the Offer by the Purchaser ("**Payment Due Date**") by way of electronic funds transfer. The Purchaser is liable to pay interest on any outstanding amount not paid by the Payment Due Date calculated on the basis of the Commonwealth Bank of Australia Business Indicator Rate (or any rate superseding it) as published from time to time plus 2%. Interest will accrue daily from the Payment Due Date until the outstanding amount is paid in full.
- 2.3. The Price is FCA at the Supplier's manufacturing facility unless otherwise stated on the Offer and exclusive of GST. The Purchaser must reimburse the Supplier for the amount of any GST payable in respect of any supply made under or in connection with the Contract.

### 3. DELIVERY, TESTING AND INSTALLATION

- 3.1. The Supplier shall deliver the Products to the location specified in the Offer and shall be entitled to provide and invoice partial deliveries and services and modify the materials of the products without the consent of the customer, provided that this does not alter the properties or functionality of the products or service provided. All risks of loss of or damage to the Products shall transfer to the Purchaser on such delivery in line with Incoterms® 2020.
- 3.2. The Supplier shall use best endeavours to deliver the Products or provide the Services by the date(s) specified in the Contract. Such date(s) shall be extended by the duration of any delay caused by any event beyond the reasonable control of the Supplier (including any transport delays, delay by the Purchaser or other contractors and breakdown of equipment not in control of the Supplier). Additionally deliveries can only be observed if all provisions, documents, permits and releases to be supplied by the Customer are received in due time and if the agreed payment terms, including advance payments and all other obligations required for the delivery are fulfilled. Otherwise, the delivery deadline will be extended by a reasonable period of time.

- 3.3. If the Purchaser does not take delivery of Products at the nominated address or otherwise at the time for delivery as provided in the Contract, the Supplier shall be entitled on behalf of the Purchaser to put the Products into storage at the Purchaser's expense and the Supplier shall be deemed to have delivered such Products to the Purchaser on placing them into such storage.
- 3.4. The Supplier shall at its own expense carry out any tests on the Products required by the Contract, or in the absence of such requirements, the Supplier may carry out its standard tests on the Products. Any additional tests required by the Purchaser shall be at the Purchaser's expense and risk.
- 3.5. If the Services involve installation of the Products, the Purchaser shall, at its cost:
- (a) give the Supplier access to the site where the Products are to be installed in a timely manner and shall take all reasonable measures to avoid interference with the work of the Supplier;
  - (b) provide all necessary facilities, including adequate crange, lifting tackle and scaffolding, proper fencing, lighting and guarding of the Products from the time of delivery until the time of completion of installation; and
  - (c) provide any electricity, water and gas supplies necessary for the installation of the Products.

#### **4. PRODUCT WARRANTY AND PERFORMANCE GUARANTEE**

- 4.1. The Supplier warrants that, they will meet all obligations as detailed in the Supplier's product warranty document titled [Renaissance superStorage Standard Warranty](#). ("Product Warranty") which forms part of these Conditions of Sale.

#### **5. LIMITATION OF LIABILITY**

- 5.1 The liability of the Supplier to the Purchaser, whether arising under or in connection with the Contract or the performance or non-performance thereof or anything incidental thereto, and whether for breach or repudiation of contract, by way of indemnity, by statute (to the extent that it is possible to exclude and limit such liability), in tort (arising in respect of negligence, bailment or otherwise), or on any other basis in law or equity is hereby limited and excluded as follows:
- (a) the Supplier shall have no liability whatsoever to the Purchaser for loss of use, production, profit, revenue, business, data, contract or anticipated benefit or saving, or for any delay or for any financing costs or increase in operating costs or any economic loss or financial loss or cost (whether similar to the foregoing or not, and whether suffered by the Purchaser itself or a result of a claim by a third party) or for any special, indirect or consequential loss or damage;
  - (b) the total aggregate liability of the Supplier to the Purchaser is limited to the amount equal to the purchase price paid by the Purchaser to the Supplier for the Products giving rise to the liability
- 5.2 Regardless of any other term of this Contract, nothing in this Contract excludes or purports to exclude any statutory right or warranty that may not be excluded by law.
- 5.3 This clause 5 survives any termination of the Contract.

#### **6. TERMINATION AND INSOLVENCY**

- 6.1 Without limiting any other rights it may have, a party (the "notifying party") may give a written notice to the other party (the "defaulting party") in the event that the defaulting party:

(a) commits a material breach of the Contract (being a breach going to the root of the Contract); or

(b) does not pay any amount owed under the Contract when it is due, each a "breach").

Such notice must state (i) the alleged breach, (ii) the period in which the defaulting party is required to remedy that breach (such period shall be no less than 7 days in respect of non-payment and 30 days for any other breach).

6.2 If the defaulting party fails to remedy the breach within the required period, the notifying party may, immediately by written notice to the defaulting party, terminate the Contract and recover damages from the defaulting party.

6.3 Without prejudice to the rights in this clause 6, if the Purchaser does not pay to the Supplier any amount owed under the Contract when it is due, the Supplier may suspend, at the Purchaser's cost, its performance of the Contract until the payment is made or the Contract is terminated under clause 6.2 or 6.4 whichever is the earlier.

6.4 If either party is (or states that it is) insolvent or likely to become insolvent or is subject to an application or an order for the appointment of a liquidator or administrator, is subject to any form of external administration, enters a deed of company arrangement with its creditors or is wound up or likely to be wound up, the other party may at any time by written notice terminate the Contract immediately.

## 7. GENERAL

7.1 If any provision or part of any provision of the Contract is invalid, illegal or unenforceable, such provision or part thereof shall be severed from the Contract and the remainder shall continue in full force and effect.

7.2 Either party must not assign any of its rights or transfer any of its liabilities under the Contract to any person without the other party's prior written consent, which shall not be unreasonably withheld.

7.3 Any specific reference to or listing of items following the words "including", "for example", "such as" or similar expressions is without limitation and does not exclude application to other terms, whether or not in the same class, category or genus as any specified or listed items.

7.4 Title in the Products shall not pass to the Purchaser until the Supplier has been paid the Price for them in full and all claims arising from the business relationship have been fulfilled. Until then, the Customer shall be forbidden from pledging or transferring ownership by way of security.

7.5 By taking delivery of Products, the Purchaser agrees that a security agreement within the meaning of the Personal Property Securities Act 2009 ("PPSA") covers the Products as set out in this clause. The Purchaser must, if requested by the Supplier, effect (including by registration under the PPSA) a continuing security interest in the Seller's favour in any Products that are disposed of by the Purchaser on credit terms. The following provisions of the PPSA do not apply – section 95 (notice of removal of accession, to the extent that it otherwise requires the Supplier to give a notice to the Purchaser), section 130 (notice of disposal, to the extent that it otherwise requires the Supplier to give a notice to the Purchaser), section 132(3)(d) (statement of account), section 132(4) (statement of account if no disposal), section 135(1)(a) (notice of retention, to the extent that it otherwise requires the Supplier to give a notice to the Purchaser), and section 143 (reinstatement). The Purchaser waives its right under section 157 of the PPSA to receive a notice in relation to any registration event in connection with any collateral in the Products.

7.6 The Contract shall be governed by the law of New South Wales, Australia and the parties agree to submit to the jurisdiction of the courts of New South Wales and any courts having appellate jurisdiction from them.