



General Terms and Conditions

1. **RHEWUM** means RHEWUM America Incorporated, or a RHEWUM corporate affiliate identified in the Proposal. "Proposal" means the RHEWUM proposal, quotation, estimate or other RHEWUM supplied documents and all addenda thereto, including drawings and specifications, that describe a scope of supply. The provisions of this RHEWUM Sales Terms and Conditions document are a part of the Proposal, except to the extent specifically provided elsewhere in the Proposal. "Agreement" means the Proposal and any other terms, conditions, or documents if and to the extent agreed to in writing by RHEWUM. "Product(s)" means the RHEWUM supplied equipment and related parts, software, services or documentation as described in the Proposal.

2. **Buyer's acceptance** of the proposal is expressly limited to and conditioned upon acceptance all of the provisions thereof, including these sales terms and conditions. If a RHEWUM proposal is construed as an acceptance of buyer's offer or as a confirmation of an existing contract, such acceptance or confirmation is expressly conditioned on the buyer's assent to any additional or different terms contained herein.

3. Price and Payment:

(A) Prices and payments are in U.S. Dollars and do not include any sales, use, or excise taxes, customs duties or similar charges or fees. If not otherwise set forth in the Proposal, Prices do not include the services of any representative of RHEWUM including, but not limited to the assistance in the installation, inspection, or startup of the Products. Pro rata payment is due for partial shipments. If shipment is delayed by Buyer, the date the shipment is ready shall be deemed to be the shipment date for payment purposes. If Buyer fails to pay by the due date, RHEWUM shall be entitled to interest at a rate of 1.5 % per month not to exceed the legal maximum. The Proposal is subject to credit approval and RHEWUM's right to require an irrevocable letter of credit established in acceptable form with a prime U.S. bank.

(B) If not otherwise set forth in the Proposal: For sales under \$50,000 payment shall be net cash 30 days after shipment. For sales between \$50,000 and \$150,000, payment shall be 30 % down payment due at time of Buyer purchase order placement with remaining 70 % net cash prior to shipment. For sales over \$150,000, payment shall be progress milestones as described elsewhere in the Proposal.

(C) RHEWUM shall have the right to suspend its performance of the Agreement if Buyer fails to pay on any due date.

(D) All payments to be made by Buyer pursuant to this Agreement shall be made by Buyer from an account owned by Buyer held at an internationally recognized bank or equivalent financial institution. Should Buyer wish to use any other account or means of payment, such change must be approved by RHEWUM prior to payment being issued.

4. Delivery and Title:

Delivery shall be EXW unless otherwise defined by a different applicable Incoterm and agreed by both parties, transfer of responsibility shall be per agreed Incoterm. All delivery dates are approximate unless expressly written otherwise. Partial deliveries and transshipments are permitted when practical and agreed in writing by both parties. Title shall transfer upon receipt of all monies outstanding against capital

equipment and any associated packing and transportation costs. If shipment delayed by Buyer, RHEWUM may ship and/or store the Products at Buyer's risk and expense and issue the final invoice with payment due in 30 days.

5. Rejection:

Any rejection of Products must be made by the Buyer in writing within a reasonable time after delivery but in no event later than thirty (30) business days after delivery. Failure to make such claim within the stated period shall constitute an irrevocable acceptance of the Products.

6. Limited Warranty:

RHEWUM warrants that Product(s) are free of defects in workmanship and material. Except for warranty of title, **there are no other warranties, representations, guarantees, or the like with regard to the products, including any implied warranties of merchantability, fitness for a particular purpose, or infringement, whether arising by law, course of dealing or performance, usage of trade or otherwise.**

7. Exclusions to Warranty:

RHEWUM makes no warranties as to performance or production, nor as to wear parts or consumables, nor as to any separately listed item of the product(s) which is not manufactured by RHEWUM and covered by the manufacturer's warranty. RHEWUM and its suppliers shall have no obligation under the limited warranty as to any Product which has been improperly stored or handled, or which has not been installed, operated or maintained according to RHEWUM or supplier furnished manuals or other instructions or is operated during the warranty remedy period with other than genuine RHEWUM parts.

8. Limited Warranty Remedy:

- (A) If, within twelve (12) months from date of delivery, but not more than eighteen (18) months from date that Buyer is advised that Products are ready for shipment, Buyer discovers that a Product was not as warranted and promptly notifies RHEWUM in writing thereof, RHEWUM shall cause the repair or replacement the defective Product or part thereof. Buyer shall assume all responsibility and expense for removal, re-installation, and freight in connection with replacement parts furnished by RHEWUM. Buyer's entitlement to warranty remedies is contingent upon Buyer's cooperation in permitting RHEWUM to investigate the defect and in returning replaced parts to RHEWUM, if requested, at RHEWUM's expense. The warranty period shall not be extended by the repair or replacement, nor shall there be a separate remedy period for any replacement Product or part. The warranty remedy period for RHEWUM spare parts (not replacement parts furnished under warranty) is six (6) months from date of delivery.
- (B) If, after a reasonable number of repeated efforts, RHEWUM determines that it is unable to repair or replace a defective Product or part, Buyer shall, at RHEWUM's option, return the Product (or part thereof, if such does not materially impair the value of the remaining Product) to RHEWUM at Buyer's expense and RHEWUM shall return the applicable purchase price as Buyer's entire and exclusive remedy .
- (C) **The remedies expressly provided herein are buyer's exclusive remedy against RHEWUM and its suppliers under the agreement, whether in contract or in tort or under any other legal theory, and whether arising out of warranties, representations, instructions, installations, or defects from any cause.**

(D) If the foregoing disclaimer of additional warranties is not given full force and effect, any resulting additional warranty shall be limited in duration to the above warranty remedy periods and be otherwise subject to and limited by these sales terms and conditions.

9. Relief:

If RHEWUM is hindered or suffers delay in performance due to any cause beyond its reasonable control, including war or other hostilities or civil unrest, act or failure to act of government, lack or loss of services or access (such as utilities or roads), act of God, including fire, flood, earthquake, landslide, or extreme

weather event, strike or other labor trouble, or any sabotage, the time of performance shall be extended a period of time equal to the period of the resulting nonperformance and its consequences. In no event shall RHEWUM have liability to Buyer arising out of any such delays. If the delay arising under this section is more than 180 days, either party has the right to terminate the Agreement and the parties' respective obligations shall be equitably adjusted. RHEWUM shall be reimbursed for any additional costs it reasonably incurs as a direct result of Buyer's delay or inability or failure to perform.

10. Intellectual Property:

(A) RHEWUM shall pay costs and damages finally awarded to the extent based upon a finding by a U.S. court that the design or construction of a Product as furnished infringes a U.S. patent or copyright (except infringement occurring as a result of incorporating a design or modification at Buyer's request or Buyer's use of the Products in a manner contrary to the Agreement or RHEWUM's manuals or instructions), provided that Buyer promptly notifies RHEWUM in writing of any claim of such infringement, and RHEWUM is given the right at its expense to settle and defend and control the defense of any such claim. **This section sets forth RHEWUM's exclusive liability with respect to infringement of intellectual property.**

(B) All drawings, specifications, data, software, firmware, manuals, instructions, documentation or other works of authorship furnished by RHEWUM are copyrighted property of RHEWUM or its suppliers, and are to be used by Buyer only for the purpose of installing, operating, maintaining and repairing the Products. Such works and data may not be otherwise used or reproduced or disclosed.

(C) RHEWUM or its suppliers retain all right, title and interest in and to its and their inventions, discoveries, concepts, ideas or other intellectual property embodied in or related to its Products.

11. Limitation of Liability:

(A) **Neither RHEWUM nor its suppliers shall be liable, whether in contract (including breach of representation or warranty) or in tort (including negligence or strict liability), or for infringement or under any other legal theory, for loss of use, production, revenue, profit; or for cost of capital, increased costs of operation or maintenance; or for incidental, indirect, special, consequential, punitive, or exemplary damages, whether or not any of the foregoing damages are foreseeable.** In Agreements where RHEWUM does not have responsibility for installation and erection of the equipment, all costs related to the disassembly, assembly, reinstallation, and erection shall be deemed to be excluded herein.

(B) **In any event, RHEWUM's total liability under this agreement shall not exceed an amount equal to 100% of the purchase price to the extent paid by buyer or any such other liability cap as may be provided elsewhere in the agreement, whichever is less.**

- (C) The limitations of liability contained in this section 11 shall be effective without regard to (i) RHEWUM's performance or failure or delay of performance under any other term or condition of this Agreement, including any warranty or remedy or (ii) the invalidity or unenforceability of any other limitation, disclaimer or exclusion of any warranty, remedy or other right.

12. Security Interest and Insurance:

RHEWUM retains and Buyer grants to RHEWUM a security interest in the Product(s) and proceeds and any replacement regardless of mode of attachment to realty or other property to secure payment of all amounts due to RHEWUM. In the event of breach of Buyer's payment obligations, Buyer consents to the entry of an ex parte writ of seizure permitting RHEWUM to take possession of the Product(s) for which payment has not been made. Buyer agrees to do all acts necessary to perfect and maintain said security interest, and to protect RHEWUM's interest by adequately insuring the Product against loss or damage from any external cause with RHEWUM named as insured or additionally insured.

13. Changes and Substitutions:

- (A) RHEWUM reserves the right to make, at no cost to Buyer, such changes in materials or designs that are, in RHEWUM's judgment, reasonable and necessary for the proper operation and life of the Products. RHEWUM further reserves the right to make improvements to subsequently supplied Products without imposing an obligation on itself to modify its previously supplied products.
- (B) Whenever a material, piece of equipment or other item is identified by brand name, manufacturer's or vendor's name, trademark, catalog number, etc. ("Brand"), it is intended merely to establish a general quality standard and not to require the use of the Branded item. RHEWUM shall have the option to provide items that otherwise conforms to the applicable standard, although the Buyer shall have the option to pay any increased cost of the Brand item.

14. Termination for Convenience:

Buyer acknowledges that it does not have a right to terminate or suspend performance of an Agreement for its convenience without RHEWUM's written consent, which consent may be withheld or delayed in RHEWUM's sole discretion. In the event that RHEWUM provides such consent, Buyer will pay RHEWUM: (i) the price of any Products delivered (including services performed); (ii) all costs committed or incurred by RHEWUM in performance of the Agreement; (iii) a reasonable profit on those costs; (iv) costs reasonably incurred to protect and preserve the Products in RHEWUM's possession or under its control; and (v) any supplier or subcontractor charges.

15. Assignment:

The Proposal and any Agreement and any rights and obligations thereunder may not be assigned or delegated by either party, except with written consent of the parties, in a party's sole discretion, and except that RHEWUM may so assign or delegate to a corporate affiliate owned or controlled by RHEWUM GmbH, a German corporation.

16. Sanctions and Export Control Laws:

- (A) Buyer and RHEWUM undertake as follows:

(1) To comply with any and all laws and regulations applicable to Buyer or RHEWUM with respect to the Agreement and any action taken pursuant to either prohibiting or otherwise restricting trade with any indi-

vidual, entity or jurisdiction, or imposing licensing requirements on the same, including without limitation sanctions, embargoes and export controls such as those imposed by the US Treasury Department Office of Foreign Assets Control (OFAC), the US Department of State, the US Commerce Department, the European Commission or any member state of the European Union (together “Sanctions and Export Control Laws”).

(2) To not take any action, or make any omission, that could cause any party to be in breach of, or otherwise be exposed to any restriction or penalty pursuant to, or suffer any adverse consequences of any kind arising directly or indirectly from, any Sanctions and Export Control Laws, including without limitation making any Product or any item incorporating the Product available for the direct or indirect benefit of a person subject to financial sanctions, such as those named on the OFAC list of Specially Designated Nationals and Blocked Persons, the EU Consolidated List of Financial Sanctions Targets or any similar list maintained by any EU member state, or any party owned or controlled by such a person (together “Sanctions Targets”).

(B) RHEWUM shall have the right to suspend performance of its obligations and the right to terminate this Agreement immediately, without liability, if:

(1) in its reasonable judgment, circumstances exist that could result in the non-fulfilment of the undertakings herein;

(2) the Buyer becomes a Sanctions Target;

(3) any bank refuses to receive or otherwise process any payment under the Agreement.

(C) Buyer shall reimburse RHEWUM for any claims, damages, losses, costs and expenses (including attorney’s fees) suffered or incurred by RHEWUM resulting from: (i) Buyer’s breach of any of its undertakings herein; or (ii) RHEWUM’s suspension or termination of this Agreement pursuant to this section.

(D) In the event that the RHEWUM terminates this Agreement pursuant to this section, and without prejudice to RHEWUM’s other rights and obligations under this Agreement, RHEWUM shall be entitled to use any money received as a set-off against claims.

17. Applicable Law, dispute Resolution and Severability:

(A) Except as provided above in section 16, this Agreement shall be governed by, enforced and disputes resolved in accordance with the substantive laws of the State of Delaware, USA (without regard to its conflict of law rules or the United Nations Convention on Contracts for the International Sales of Goods).

(B) Any dispute, controversy, or claim (“Claim”) arising out of or in connection with the Agreement shall be submitted to the International Centre for Dispute Resolution and shall be finally settled under its International Arbitration Rules by one or more arbitrators appointed in accordance with the said Rules. The arbitration shall take place in Wilmington, Delaware, USA, in the English language. The arbitration hearings shall last no longer than two weeks and the arbitrators shall issue a reasoned written opinion. The arbitrator(s) shall have no authority to award punitive damages or other damages not permitted under this Agreement. Judgment upon such award may be entered in any court having jurisdiction. Arbitrator fees and costs shall be equally shared, but otherwise the parties are responsible for their own legal fees, costs and expenses. Notwithstanding the foregoing, either party may apply to a court of competent jurisdiction for preliminary injunctive or other interim or equitable relief to prevent disclosure of confidential information or misappropriation or other misuse of intellectual property pending final determination in arbitration.

(C) Should any provision or portion thereof be held invalid or unenforceable, the validity and enforceability of the remaining provisions of the Agreement will not be affected. Any Claim arising directly or indirectly from this Agreement must be commenced no later than three (3) years after the date the Claim has accrued. The parties waive any right to file an action arising directly or indirectly from this Agreement under any longer of statute of limitations.

18. COVID-19:

The parties are aware that the Coronavirus COVID-19 (“Outbreak”) was declared a pandemic by the World Health Organization on March 11th, 2020. This Outbreak may or may not impact the normal execution and performance of this contract. Should there be an impact to performance of this contract, the parties agree:

- (A) the affected party will notify the other in writing, outlining the effect of the Outbreak on its performance under this contract,
- (B) RHEWUM shall have no liability for damages to the Buyer, including but not limited to liquidated damages, penalties, fines or fees, whether arising out of or in connection with the Outbreak;
- (C) RHEWUM is entitled to a reasonable extension of time representing the impact of the Outbreak on its performance or delivery obligation; and
- (D) any additional cost directly attributable to the Outbreak in RHEWUM’s performance of the contract or otherwise will be borne by the Buyer;
- (E) Each party shall be entitled to terminate this contract by written notice to the other party if the nonperformance of the contract due to this Outbreak continues for more than six (6) months.