

# HANWHA Q CELLS GMBH GENERAL TERMS AND CONDITIONS FOR THE COMMERCIAL SALE OF PHOTOVOLTAIC MODULES AND OTHER GOODS

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## 1. SCOPE OF APPLICATION

The following provisions govern the contractual relationship with respect to the sale of photovoltaic modules and other goods (collectively hereinafter referred to as "Goods") between HANWHA Q CELLS GMBH (hereinafter referred to as "Q CELLS") and contractors, i.e. natural or legal persons or partnerships with legal capacity with whom / which Q CELLS enters into business relationships and who / which act in the exercise of commercial or self-employed activity (hereinafter referred to as "Buyer"). Any other conditions of the Buyer are hereby declared non-applicable. Exceptions may be made upon written confirmation of Q CELLS. Upon conclusion of the contract, the Buyer shall accept these terms and conditions. These terms and conditions shall only apply towards entrepreneurs within the meaning of § 310 paragraph 1 of the BGB [German Civil Code].

## 2. CONCLUSION OF THE CONTRACTS

- a) Offers of contract of Q CELLS are non-binding. On placing an order, the Buyer makes a binding offer. The contract does not come into existence until the order is confirmed or the Goods are delivered by Q CELLS. Q CELLS' order confirmation shall be exclusively decisive for the extent of the services to be provided.
- b) Unless otherwise expressly agreed upon in writing, e.g. in the technical product description or data sheets, information regarding the properties and characteristics of the Goods are for illustrative purposes and not binding. Likewise, public statements, recommendations or advertisements do not constitute a contractual statement of the nature of the Goods. Minor deviations from details regarding dimensions, weight, nature or quality shall remain reserved.
- c) Q CELLS reserves any property and intellectual property rights pertaining to its figures, drawings, calculations and other documents, also in electronic form. This provision shall apply in particular for those documents classified as "confidential". Prior to forwarding them to third parties, the Buyer must obtain the express written confirmation of Q CELLS.
- d) Q CELLS reserves the right to make changes even after sending the order confirmation, provided that these changes do not contradict the order confirmation or the specifications of the Buyer. The Buyer shall accept any further changes suggested by Q CELLS as far as these can be reasonably expected of him.

### **3. PRICES AND TERMS OF PAYMENT**

- a) Unless otherwise expressly agreed with Q CELLS in writing: Prices are ex-works and exclusive of statutory sales tax at the applicable rate as well as the relevant costs of carriage. The Buyer must pay 100% of the agreed purchase price, including all additional costs, cash in advance. Whereas the Buyer has performed a payment in time only in case that the amount to be paid has been duly credited to the account of Q CELLS before the end of the payment term. If the Buyer defaults in payment, Q CELLS shall be entitled to charge default interest at the statutory rate. If Q CELLS can demonstrate that the level of damage caused by default is higher, it shall be entitled to assert this higher claim.
- b) In case of contracts with agreed delivery periods of more than three months, Q CELLS reserves the right to adjust prices in line with any cost increases occurred after conclusion of the contract due to additional labour costs, transportation and storage costs, the introduction or change of taxes or material price increases. However, such an increase in price is only permissible if the agreed price is not increased by more than 5%.
- c) If payment by instalments is agreed, the entire residual debt – regardless of the maturity of any bills of exchange – shall become due for payment immediately, if the Buyer falls into arrears, partly or completely, with the payment of at least two consecutive instalments and if the amount with which the Buyer is in default is at least a tenth of the agreed purchase price.
- d) The Buyer is only entitled to set-off rights and rights of retention if his counterclaims have been established as final and absolute, are undisputed or have been acknowledged by Q CELLS.

### **4. DELIVERY**

- a) Delivery dates and periods shall be agreed in writing between the Buyer and Q CELLS for each order. The delivery periods shall start upon conclusion of the contract, unless otherwise agreed with Q CELLS. If changes to the contract are agreed in writing subsequently, it may also be necessary to agree upon a new delivery date or period.
- b) Compliance with the agreed delivery periods requires the timely and proper fulfilment of obligations on the part of the Buyer.
- c) In case that the Buyer is in delay with any payment obligation or in case that he violates any other essential contractual obligation, Q CELLS reserves the right to terminate the respective delivery or deliveries.
- d) If Q CELLS is in default of delivery of Goods, liability shall be limited to 0.5% of the invoice amount (excluding VAT) of the deliveries affected by the default for every full week of delay, however, to a maximum amount of 5% of the invoice value of the deliveries affected by the default. This penalty is the only legal remedy of the Buyer with respect to this default.
- e) Deliveries must be accepted if they show only negligible defects.
- f) Partial deliveries are permissible as far as these can be reasonably expected of the Buyer.
- g) Should the Buyer get into default of acceptance, Q CELLS shall be entitled to claim compensation for the loss incurred; upon the occurrence of default of acceptance, the risk of accidental loss or accidental deterioration of the Goods shall pass to the Buyer.

## **5. TRANSFER OF RISK**

- a) The risk passes to the Buyer when the Goods are dispatched or collected.
- b) The Buyer is obliged to accept the Goods delivered by Q CELLS at the moment of handover.
- c) The delivery shall be EXW (Incoterms 2010), unless something different has been agreed explicitly.
- d) Q CELLS is not liable for any delays of delivery caused by the transport of the Goods.

## **6. RETENTION OF TITLE**

- a) The Goods shall remain property of Q CELLS until all claims (including all current account balance claims) to which Q CELLS is entitled now or in future for whichever legal reason are fulfilled. Processing or modification shall always be undertaken on behalf of Q CELLS as the manufacturer, however, without any obligations for Q CELLS. In the event that Q CELLS loses property rights through combining, it is agreed that the Buyer must transfer to Q CELLS the property rights of the coherent article according to the value percentage (invoice value). The Buyer shall store the (co)property of Q CELLS at no cost. Goods to which Q CELLS is entitled as (co)owner will hereinafter be referred to as reserved Goods.
- b) The Buyer is entitled to process and sell the reserved Goods in the regular course of business provided that he is not in default. Pledging or assignment as security is not admissible. The Buyer hereby assigns to Q CELLS by way of security any and all future claims (including all current account balance claims) resulting from the resale and / or from any other legal basis thereof with respect to the reserved Goods. Q CELLS hereby revocable entitles the Buyer to collect the claims assigned to Q CELLS for account of Q CELLS in its own name.
- c) In the event of third-party access to the reserved Goods, the Buyer has to advise the third party of Q CELLS' property rights and has to notify Q CELLS immediately. The Buyer shall bear any costs and damages.
- d) In the event of behavior contrary to the contract on the part of the Buyer, in particular in the event of delayed payment, Q CELLS is entitled to terminate or to withdraw from the contract and to demand the return of the Goods. After taking back the Goods, Q CELLS shall be entitled to sell them and the proceeds of such sale shall be set off against the Buyer's liabilities with deduction of reasonable sales costs.
- e) Q CELLS undertakes to release, at Q CELLS' option, the securities due to it at the Buyer's request to the extent that the value of the securities exceeds the claims secured by more than 10%.

## **7. CONTRACTUAL RIGHT OF LIEN**

Based on the claim arising from the contractual relationship with the Buyer, Q CELLS is entitled to a contractual right of lien on the objects which came into Q CELLS' possession by virtue of the contractual relationship. The contractual right of lien may also be exercised for any claims arising from works carried out previously, replacement deliveries and other services as far as they are related to the subject of the contract. For other claims against the Buyer, the contractual right of lien shall only apply as far as these claims are undisputed or established as final by a court.

## **8. WARRANTY**

- a) The warranty shall be valid for a period of two years starting at the date of delivery of the Goods. In the event of a defective delivery, Q CELLS shall be obliged, at its own discretion, to either repair the damage or to deliver non-defective Goods. In the event that the defective Goods are not repaired or replaced, the Buyer shall be entitled to assert his legal warranty rights (reduction of the purchase price or withdrawal from the contract with regard to the defective Goods). The Buyer shall be obliged to return the defective Goods to Q CELLS, unless otherwise expressly instructed by Q CELLS. Q CELLS shall bear the necessary costs for such a delivery return shipping, provided that this is stipulated according to applicable mandatory laws. The returns become the property of Q CELLS, unless the parties have not agreed different or an applicable mandatory law stipulates different. Before returning any of the Goods, the Buyer shall obtain written confirmation from Q CELLS.
- b) Only those properties that are listed in the technical product description or data sheets shall be considered to be agreed as nature of the Goods. Public statements, recommendations or advertisements do not include a binding description of the agreed nature of the Goods.
- c) In this section, neither a “guarantee of quality” within the meaning of § 443 of the BGB nor an “assumption of a guarantee” within the meaning of § 276 of the BGB shall be given with regard to the Goods.
- d) Asserting claims for defects presupposes that the Buyer has properly met his obligations in respect to inspection and defect notification pursuant to § 377 of the HGB [German Commercial Code].
- e) Any further claims of the Buyer are excluded, in particular on account of consequential damage as a result of the defects, provided this does not result from the absence of guaranteed attributes.

## **9. FURTHER LIABILITY**

- a) Furthermore, any claims for damages of the Buyer, irrespective of legal basis, are excluded. This shall not apply in cases that are based on intent, gross negligence or the breach of a material contractual obligation. In case of breach of a material contractual obligation, compensation for damages shall be limited to the foreseeable, typically occurring damage. No change of burden of proof to the disadvantage of the Buyer is connected with the preceding provisions.
- b) Should the Buyer sell, modify or combine the Goods delivered with other Goods, the Buyer shall, internally, exempt Q CELLS from any product liability claims of third parties, unless Q CELLS is responsible for the defect causing the liability.
- c) Any changes on the Goods and any marking which could be regarded as mark of origin of the Buyer or a third party are inadmissible.

## 10. LIMITATIONS OF LIABILITY

The exemptions and limitations of liability listed in these terms and conditions shall not apply for

- i damages arising from injury to life, physical injury or damage to health which are based on a intentional or negligent breach of duty of Q CELLS or an intentional or negligent breach of duty of its legal agents or its vicarious agents,
- ii any other damages which are based on an intentional or grossly negligent breach of duty of Q CELLS or an intentional or grossly negligent breach of duty of its legal agents or its vicarious agents,
- iii damage included in the liability according to the Product Liability Act or in cases for which guarantee has been given.

## 11. RIGHT OF WITHDRAWAL AND TERMINATION

- a) Q CELLS shall be entitled to terminate or withdraw from the contract partially or completely if:
  - i) an application has been made to open insolvency proceedings against the Buyer's assets,
  - ii) it becomes known that the Buyer has been considered as unworthy of credit at the time of conclusion of the contract,
  - iii) the Buyer ceases to exist, or
  - iv) in case there is any other important reason that justifies a termination or a withdrawal. Such reason would be, for example, a breach of essential contractual obligations.
- b) In case of permanent supply contracts, the right of withdrawal shall be replaced by the right of extraordinary termination without notice.

## 12. SEVERABILITY CLAUSE, PLACE OF PERFORMANCE, PLACE OF JURISDICTION, WRITTEN FORM

- a) If parts of these terms and conditions are invalid or contradict applicable law, this shall not affect the validity of the remaining provisions.
- b) Bitterfeld-Wolfen shall be the place of performance and jurisdiction for Hanwha Q CELLS GmbH. These terms and conditions are governed by German law. The application of the UN Convention on Contracts for the International Sale of goods shall be excluded.