

# SECURITIES AND EXCHANGE COMMISSION

## FORM F-1/A

Registration statement for securities of certain foreign private issuers [amend]

Filing Date: **2008-08-29**  
SEC Accession No. **0001193125-08-187833**

([HTML Version](#) on [secdatabase.com](#))

### FILER

#### **GCL Silicon Technology Holdings Inc.**

CIK: **1439969** | IRS No.: **000000000**

Type: **F-1/A** | Act: **33** | File No.: **333-152425** | Film No.: **081049701**

SIC: **3674** Semiconductors & related devices

#### Mailing Address

*SUITE 3601, TWO EXCHANGE  
SQUARE  
CENTRAL K3 00000*

#### Business Address

*SUITE 3601, TWO EXCHANGE  
SQUARE  
CENTRAL K3 00000  
852-2526-8368*

---

# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

---

---

## Amendment No. 2 to FORM F-1 REGISTRATION STATEMENT *UNDER* *THE SECURITIES ACT OF 1933*

---

### GCL Silicon Technology Holdings Inc.

(Exact Name of Registrant as Specified in Its Charter)

Not Applicable

(Translation of Registrant's Name into English)

---

Cayman Islands  
(State or other jurisdiction of  
incorporation or organization)

3674  
(Primary Standard Industrial  
Classification Code Number)

Not Applicable  
(IRS Employer  
Identification Number)

Suite 3601, Two Exchange Square  
Central, Hong Kong  
(852) 2526 8368  
(Address telephone number of Registrant's principal executive offices)

---

CT Corporation System  
111 Eighth Avenue, 13<sup>th</sup> Floor  
New York, New York 10011  
(212) 894-8641  
(Name, address and telephone number of agent for service)

---

#### *Copies to:*

Douglas A Tanner, Esq.  
Milbank, Tweed, Hadley & McCloy LLP  
1 Chase Manhattan Plaza  
New York, New York 10005  
Tel: (212) 530-5000  
Fax: (212) 822-5219

Chris Lin, Esq.  
Simpson Thacher & Bartlett LLP  
35<sup>th</sup> Floor, ICBC Tower  
3 Garden Road  
Central, Hong Kong  
Tel: (852) 2514-7600

**Approximate date of commencement of proposed sale to the public:** As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, please check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

#### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be registered	Proposed maximum offering price per ordinary share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Ordinary Shares, par value \$0.00001 per share <sup>(1)(2)</sup>	(2)(3)	\$ (3)	\$ 862,500,000 (3)	\$ 33,896.25 (4)

- (1) American depositary shares issuable upon deposit of the ordinary shares registered hereby will be registered under a separate registration statement on Form F-6. Each American depositary share represents four ordinary shares.
- (2) Includes (i) ordinary shares initially offered and sold outside the United States that may be resold from time to time in the United States either as part of their distribution or within 40 days after the later of the effective date of this Registration Statement and the date the shares are first bona fide offered to the public, and (ii) ordinary shares that may be purchased by the underwriters pursuant to an option to purchase additional ordinary shares represented by American depositary shares. These ordinary shares are not being registered for the purpose of sales outside the United States.
- (3) Estimated solely for the purpose of determining the amount of registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended.
- (4) Previously paid.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

[Table of Contents](#)

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and we are not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

*PROSPECTUS (Subject to Completion)*  
*Issued August 29, 2008*

*American Depositary Shares*



*GCL Silicon Technology Holdings Inc.*

*REPRESENTING                      ORDINARY SHARES*

*GCL Silicon Technology Holdings Inc. is offering                      American depositary shares, or ADSs, each representing four ordinary shares. This is our initial public offering and no public market currently exists for our ADSs or ordinary shares. We anticipate that the initial public offering price of the ADSs will be between \$                      and \$                      per ADS.*

*Our ADSs have been approved for listing on the New York Stock Exchange under the symbol “GCL”.*

*Investing in our ADSs involves risks. See “[Risk Factors](#)” beginning on page 15.*

	<i>PRICE \$</i>	<i>PER ADS</i>		
			<i><u>Price to Public</u></i>	<i><u>Underwriting Discounts and Commissions</u></i>
				<i><u>Proceeds to Company</u></i>
<i>Per ADS</i>			\$	\$
<i>Total</i>			\$	\$

*The selling shareholders have granted the underwriters the right to purchase up to an additional                      ADSs to cover over-allotments.*

*The Securities and Exchange Commission and state securities regulators have not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.*

*The underwriters expect to deliver the ADSs on                      , 2008.*

---

*MORGAN STANLEY*

*CREDIT SUISSE*

*HSBC*

*PIPER JAFFRAY*

*COWEN AND COMPANY*

*, 2008*







**Bringing Green Power to Life**





## [Table of Contents](#)

### TABLE OF CONTENTS

	Page		Page
<a href="#">Prospectus Summary</a>	1	<a href="#">Business</a>	86
<a href="#">Risk Factors</a>	15	<a href="#">PRC Government Regulation</a>	107
<a href="#">Forward-Looking Statements</a>	46	<a href="#">Management</a>	111
<a href="#">Use of Proceeds</a>	48	<a href="#">Principal and Selling Shareholders</a>	119
<a href="#">Dividend Policy</a>	49	<a href="#">Related Party Transactions</a>	123
<a href="#">Capitalization</a>	50	<a href="#">Description of Share Capital</a>	127
<a href="#">Dilution</a>	51	<a href="#">Description of American Depositary Shares</a>	139
<a href="#">Exchange Rate Information</a>	53	<a href="#">Shares Eligible for Future Sale</a>	146
<a href="#">Enforceability of Civil Liabilities</a>	54	<a href="#">Taxation</a>	148
<a href="#">Selected Consolidated Financial Data</a>	55	<a href="#">Underwriting</a>	154
<a href="#">Management's Discussion and Analysis of Financial Condition and Results of Operations</a>	58	<a href="#">Legal Matters</a>	163
<a href="#">Unaudited Pro Forma Condensed Consolidated Financial Information</a>	79	<a href="#">Experts</a>	163
		<a href="#">Where You Can Find More Information</a>	163

**You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with information which is different from that contained in this prospectus. We are offering to sell, and seeking offers to buy, these ADSs only in jurisdictions where offers to buy and sell are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or time of any sale of our ADSs.**

[Index to Consolidated Financial Statements](#)

F-1

**We have not taken any action to permit a public offering of the ADSs outside the United States or to permit the possession or distribution of this prospectus outside the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about and observe any restrictions relating to this offering of the ADSs and the distribution of the prospectus outside the United States.**

**Until                   , 2008 (25 days after the date of this prospectus), all dealers that buy, sell or trade ADSs, whether or not participating in this offering, may be required to deliver a prospectus. This requirement is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.**

## PROSPECTUS SUMMARY

*The following summary is qualified in its entirety by the more detailed information and financial statements and notes thereto appearing elsewhere in this prospectus. In addition to this summary, we urge you to read the entire prospectus carefully, especially the risks of investing in our ADSs discussed under "Risk Factors" before deciding whether to buy our ADSs.*

### Overview

We supply polysilicon and wafers to companies operating in the solar industry. Polysilicon is the primary raw material for wafers used in the solar and electronics industries. We manufacture polysilicon at our production facility in Xuzhou, Jiangsu Province, China and intend to commence wafer manufacturing in the third quarter of 2009. Our business was founded in March 2006 and we intend to ramp up our production capacity to 13,500 metric tonnes, or MT, per year by February 2010. We currently plan to build 2.7 gigawatts, or GW, of wafer production capacity by the end of 2011. We commenced construction of our first polysilicon production facility, our Phase I production facility, which produces solar grade polysilicon, in July 2006 and produced our first batch of polysilicon in September 2007. In the six months ended June 30, 2008, we produced 661 MT of polysilicon. For the month of July 2008, we produced 175 MT of polysilicon. We began selling wafers produced for us through tolling arrangements with third party manufacturers in the second quarter of 2008 and expect wafer sales to contribute a significant majority of our revenues after 2009.

We ramped up our Phase I production facility to its designed annual capacity of 1,500 MT in March 2008. We commenced commercial production of our Phase II production facility in July 2008 and expect it to achieve its fully ramped up capacity by December 2008. In December 2007, we commenced preparation for construction of our Phase III production facilities, which are expected to have an aggregate annual production capacity of 10,500 MT. We have already commenced equipment installation and expect our Phase III production facilities to commence commercial production in December 2008. We intend to fully ramp up our Phase III production facilities by February 2010 and to further expand our total annual polysilicon production capacity to 24,000 MT by the end of 2010. We have determined a preliminary location in China for our polysilicon production expansion beyond Phase III, and we intend to apply for necessary permits and commence equipment orders shortly after the completion of this offering. We have implemented proven technologies in our polysilicon production facilities. We utilize a modified Siemens process to produce polysilicon and starting from Phase II onwards, our production facilities are designed to produce both solar and electronic grade polysilicon.

We use industrial trichlorosilane, or TCS, to produce polysilicon. TCS is one of the main and most costly production inputs and to date, we have relied on third party suppliers for substantially all of our TCS requirements. To reduce our reliance on TCS from third party suppliers, we are increasingly incorporating TCS production into our production process. We integrated the hydrochlorination process for our Phase I production facility in February 2008 and expect to integrate the hydrochlorination process in our Phase II production facility in September 2008. Our Taixing joint venture has constructed a TCS production facility with an initial annual capacity of 20,000 MT in Taizhou, Jiangsu Province, China, which commenced pilot production in August 2008. We intend to increase the Taixing joint venture annual TCS production capacity to up to 60,000 MT by 2010. We commenced construction of a hydrogenation facility and a TCS production facility in Xuzhou in August 2008 which we expect to have combined capacity to produce up to 90,000 MT of TCS per year by the third quarter of 2009. Upon ramp up of these facilities, we expect to substantially reduce our reliance on third parties for our TCS requirements.

We intend to begin construction of our first multicrystalline and monocrystalline wafer production facility in Xuzhou by the end of 2008 and expect to commence pilot production by the third quarter of 2009. We intend to

ramp up these facilities to a combined 0.8 GW production capacity by the end of 2009 and to further expand our production capacity to 1.9 GW by the end of 2010 and to 2.7 GW by the end of 2011. We have entered into equipment supply contracts to purchase over half of the wire saws and squarers for our expansion to 1.9 GW with the first deliveries expected to commence in early 2009. We also intend to explore opportunities to further expand our wafer production capacity through strategic acquisitions and partnerships. Until we have sufficient in-house wafer production capacity, we will continue to rely on medium- to short-term wafer tolling arrangements to support our wafer sales. We are currently in preliminary discussions with our wafer tolling producer, Changzhou Huasheng Hengneng Optoelectronics Co., Ltd., or Huasheng, with respect to a potential acquisition of such producer to increase our in-house wafer production capacity.

We have entered into polysilicon and wafer supply agreements with cell and module manufacturers that provide for aggregate sales of approximately 15.1 GW of wafers and approximately 40,356 MT of polysilicon for aggregate total contracts prices of \$21.3 billion (RMB146.2 billion). The majority of these contracts extend to 2015. We have contracted to sell approximately 90% of our anticipated production from now to the end of 2015 under our current supply agreements after giving effect to our current polysilicon and wafer expansion plans. Our existing contracts generally require customers to make advance payments or provide financial guarantees or support, have pre-set prices which decline significantly over the length of the contract and have pre-set volumes that increase significantly in the early years of the contract. We agreed to supply approximately 8.4 GW of wafers and approximately 3,510 MT of polysilicon to JA Solar at a total contract price of \$9.4 billion (RMB64.8 billion) through 2015, approximately 2.2 GW of wafers and approximately 16,926 MT of polysilicon to Trina Solar at a total contract price of \$4.0 billion (RMB27.2 billion) through 2015, approximately 1.8 GW of wafers and approximately 510 MT of polysilicon to Canadian Solar at a total contract price of \$2.2 billion (RMB15.2 billion) through 2015, approximately 1.1 GW of wafers and approximately 9,420 MT of polysilicon to Suntech at a total contract price of \$2.6 billion (RMB17.8 billion) through 2012, approximately 0.9 GW of wafers to AIDE at a total contract price of \$1.1 billion (RMB7.3 billion) through 2015, approximately 0.7 GW of wafers to Solarcell at a total contract price of \$0.9 billion (RMB6.3 billion) through 2015 and 9,990 MT of polysilicon to Solarfun at a total contract price of \$1.1 billion (RMB7.6 billion) through 2015. See “Business—Customers and Markets”. Prior to our entry into these supply contracts, we sold all of our polysilicon on the spot market to major Chinese solar manufacturers.

For the year ended December 31, 2007, we sold 153 MT of polysilicon, all in the three months ended December 31, 2007. For the six months ended June 30, 2008, we sold 551 MT of polysilicon and 10.1 MW of wafers. Our revenues for the year ended December 31, 2007 and the six months ended June 30, 2008 were \$40.8 million and \$173.6 million, respectively. Net loss attributable to holders of ordinary shares was \$2.9 million in the year ended December 31, 2007 and net profit attributable to holders of ordinary shares was \$66.4 million in the six months ended June 30, 2008.

Our business in China is conducted through our subsidiary, Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd., or JZPTD. For all periods for which financial statements are presented in this prospectus, we or our predecessor owned 64% of JZPTD. Prior to this offering, Sun Wave Group Ltd., or Sun Wave, and Greatest Joy International Limited, or Greatest Joy, acquired 20% and 16% equity interest of JZPTD, respectively, from the remaining minority shareholders. These two companies are jointly owned by entities affiliated with Mr. Zhu Gongshan, our chairman, and Moonchu Foundation for Culture & Education, or Moonchu, a charitable entity established by Mr. Zhang Songyi, one of our directors, and his family. We intend to acquire Sun Wave and Greatest Joy concurrently with the closing of this offering so that we will own 100% of JZPTD. See “— Corporate Structure – Corporate Structure Immediately After the Acquisition and the Offering” and “Related Party Transactions – Acquisition of 36% JZPTD Onshore Equity Interests”.

## **Our Competitive Strengths**

We believe that the following competitive strengths of our company enable us to compete effectively and to capitalize on the rapid growth in the market for polysilicon and wafers:

proven capability in constructing and ramping up polysilicon production capacity;

contracted customer revenues;

cost effective production process, facilities and operations; and

experienced management team.

## **Our Strategies**

Our goal is to become a leading global supplier of wafers for the solar industry. We intend to achieve this goal by pursuing the following strategies:

significantly expanding polysilicon production capacity;

establishing in-house wafer production capacity;

reducing our production costs; and

selectively pursuing strategic acquisitions and alliances to expand our business.

## **Our Challenges**

We believe that the following are some of the major risks and uncertainties that may materially affect our business, results of operations and financial condition:

our limited operating history may not serve as an adequate measure of our future prospects and results of operations;

if we are unable to manage our growth effectively, our business and financial results may be adversely affected;

we did not achieve profitability until the three months ended December 31, 2007 and we may not maintain profitability;

we may not be successful in producing polysilicon cost-effectively;

we do not yet have National Development and Reform Commission of the PRC, or NDRC, approval for the remaining 4,500 MT of our Phase III production facilities and failure to get such approval could adversely affect our growth and profitability;

we have no experience in wafer production and may not be able to establish in-house production;

we do not have the land use rights on the land on which we are building our Phase III production facilities and we have not obtained the required construction permits for our Phase III production facilities. Without such rights and permits we may be forced to terminate the construction of our Phase III production facilities;

our Taixing joint venture has not obtained land use rights and related planning and construction permits for the buildings it is constructing and the approval for its pilot production from the bureau of environmental protection and may be required to stop operations, further expansion and cure deficiencies and could be subject to fines;

we operate in a highly competitive market and we may not be able to compete successfully with competitors who have greater resources than us;

our future success depends substantially on our ability to significantly expand both our polysilicon production capacity and output, which exposes us to a number of risks and uncertainties. Our announced intention to increase polysilicon production capacity to 24,000 MT per year is preliminary and may not be implemented;

any failure by us to control the use or to adequately restrict the discharge of hazardous substances or to obtain work safety and professional health approvals could subject us to potentially significant monetary damages and fines or suspensions in our business operations;

assertions that we or our affiliates have participated in misappropriation of trade secrets could result in severe monetary damages or injunctive relief;

if we are unable to remedy the material weakness and significant deficiencies in our internal control over financial reporting, we may be unable to timely and accurately record, process and report financial data or comply with disclosure controls and procedures, internal control over financial reporting and other obligations;

if we were required to obtain the prior approval of the MOFCOM, for or in connection with our restructuring, or of the CSRC, for or in connection with this offering and the listing and trading of our ADSs on the New York Stock Exchange, our failure to do so could have a material adverse effect on our business, operating results, reputation and trading price of our ADSs, and may also create uncertainties for this offering; and

uncertainties with respect to the Chinese legal system could have a material adverse effect on us.

See “Risk Factors” and other information included in this prospectus for a more detailed discussion of these and other risks, uncertainties and challenges that we face.

## **Corporate Information**



Our principal executive offices are located at Suite 3601, Two Exchange Square, Central, Hong Kong and our telephone number at that location is (852) 2526 8368. Our registered office in the Cayman Islands is located at Offshore Incorporations (Cayman) Limited, Scotia Centre, 4<sup>th</sup> Floor, P.O. Box 2804, George Town, Grand Cayman KY1-1112, Cayman Islands. Our agent for service of process in the United States is CT Corporation System at 111 Eighth Avenue, 13<sup>th</sup> Floor, New York, New York 10011.

Our website address is <http://www.gcl-silicon.com>. Information contained on our website does not constitute a part of this prospectus.

### **Conventions Which Apply to This Prospectus**

Except where the context otherwise requires and for purposes of this prospectus only:

“we,” “us,” “our company,” “our” and “GCL” refer to GCL Silicon Technology Holdings Inc., a Cayman Islands company, and its subsidiaries;

“ADSs” refers to our American depositary shares, each of which represents four ordinary shares, and “ADRs” refers to the American depositary receipts that evidence our ADSs;

## [Table of Contents](#)

“China” or “PRC” refers to the People’s Republic of China, excluding, for the purpose of this prospectus only, Taiwan, Hong Kong and Macau;

“GCL HK” refers to GCL Silicon Technology Holdings Limited, a Hong Kong company, wholly-owned by our company;

“Happy Genius” means Happy Genius Holdings Limited, our principal shareholder which is indirectly owned and controlled by Mr. Zhu Gongshan, our chairman;

“JZPTD” refers to Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd., our operating company in China;

“Taixing JV” or “Taixing joint venture” refers to Taixing Zhongneng Far East Polysilicon Technology Development Co., Ltd.;

“shares” or “ordinary shares” refers to our ordinary shares, par value \$0.00001 per share;

“convertible redeemable preferred shares” or “Series A Shares” refers to our Series A Convertible Redeemable Preferred Shares;

“floating rate bonds” refers to our Tranche A Floating Rate Secured Redeemable Bonds due 2009 and our Tranche B Floating Rate Secured Convertible Bonds due 2009;

“Golden Concord Group” refers to the group of companies controlled by Mr. Zhu Gongshan, our chairman;

“2008 Convertible Bonds” refers to the convertible bonds we intend to issue in connection with the acquisition of 36% of the equity interests of JZPTD from entities affiliated with Mr. Zhu Gongshan, our chairman, and Moonchu, concurrently with this offering, which will be transferred to the holders of exchangeable bonds issued by Happy Genius;

“watts” or “W” refer to the measurement of total electrical power, where “kilowatts” or “KW” means one thousand watts, “megawatts” or “MW” means one million watts and “gigawatts” or “GW” means one billion watts, GW when used to calculate the amount of wafers sold pursuant to our wafer contracts assume a cell output of 2.4 W manufactured from each 125 mm x 125 mm monocrystalline wafer and 3.7 W manufactured from each 156 mm x 156 mm multicrystalline wafer; and

all references to “RMB” or “Renminbi” refer to the legal currency of China; all references to “\$,” “dollars” and “U.S. dollars” refer to the legal currency of the United States.

Unless otherwise mentioned, all numbers of our shares and ADSs set forth in this prospectus assume: (1) no exercise by the underwriters of their option to purchase up to additional ADSs from the selling shareholders to cover over-allotments; (2) conversion of all outstanding convertible redeemable preferred shares into 16,667,000 ordinary shares upon completion of this offering; (3) conversion of our outstanding Tranche B Floating Rate Secured Convertible Bonds due 2009 into 27,183,400 ordinary shares, (4) the issuance of 268,537,970 shares to entities affiliated with Mr. Zhu Gongshan and Moonchu in connection with the acquisition of the 36% of JZPTD concurrently with the closing of this offering assuming that the ADSs are sold at \$ per ADS (the midpoint of the estimated range of the initial public offering price). If the initial public offering price is less than \$ per ADS, the number of shares issued will be lower, as discussed under “Related Party Transactions–Acquisition of 36% of JZPTD Onshore Equity Interests”; (5) exclusion of 50,000,000 ordinary shares issuable upon exercise of options issued under the 2007 Share Incentive Plan and 15,000,000 ordinary shares available for grant under our 2008 Restricted Share Compensation Plan; and (6) exclusion of ordinary shares, issuable in the form of ADSs upon conversion of the 2008 Convertible Bonds being issued at the closing of this offering in connection with our purchase of the remaining 36% of JZPTD, assuming that the ADSs are sold at \$ per ADS, the midpoint of the estimated range of the initial public offering price. Assuming the initial public offering price is \$1.00 less than \$ per ADS, the number of shares issued upon conversion would increase by shares.

---

[Table of Contents](#)

This prospectus contains translations of certain Renminbi amounts into U.S. dollars at the rate of RMB6.8591 to \$1.00, the noon buying rate in effect on June 30, 2008 in New York City for cable transfers of Renminbi as certified for customs purposes by the Federal Reserve Bank of New York. We make no representation that the Renminbi or U.S. dollar amounts referred to in this prospectus could have been or could be converted into U.S. dollars or Renminbi, as the case may be, at any particular rate or at all. On August 28, 2008, the noon buying rate was RMB6.8405 to \$1.00.

## CORPORATE STRUCTURE

### Ownership of Our Business

In March 2006, our operating subsidiary in China, JZPTD, was formed, as a limited liability company, by Guotai Energy Investments Ltd., or Guotai, Suyuan Group Ltd., or Suyuan, Beijing Zhongneng Renewable Energy Investments Ltd., or Beijing Zhongneng, Xuzhou Suyuan Group Ltd., or Xuzhou Suyuan, Nanjing Linyang Power Investment, or Nanjing Linyang and Hebei Jinglong Group Ltd., or Hebei Jinglong. At JZPTD's inception, Guotai, Suyuan, Beijing Zhongneng, Xuzhou Suyuan, Nanjing Linyang and Hebei Jinglong held 55%, 15%, 10%, 10%, 5% and 5%, respectively, of JZPTD. Guotai and Beijing Zhongneng were originally owned by Mr. Zhu Gongshan. In September 2007, Mr. Zhu Gongshan became our chairman as a result of the transactions described below.

In November 2006, GCL Silicon Technology Holdings Limited, or GCL HK, was formed as a limited liability company in Hong Kong. Mr. Zhang Songyi owned a controlling interest in GCL HK through Happy Genius. GCL HK agreed to purchase 64% of JZPTD from Guotai and Beijing Zhongneng on November 29, 2006 and completed the purchase on December 13, 2006. In May 2007, our company was formed in the Cayman Islands and owned by Mr. Zhang Songyi through Happy Genius.

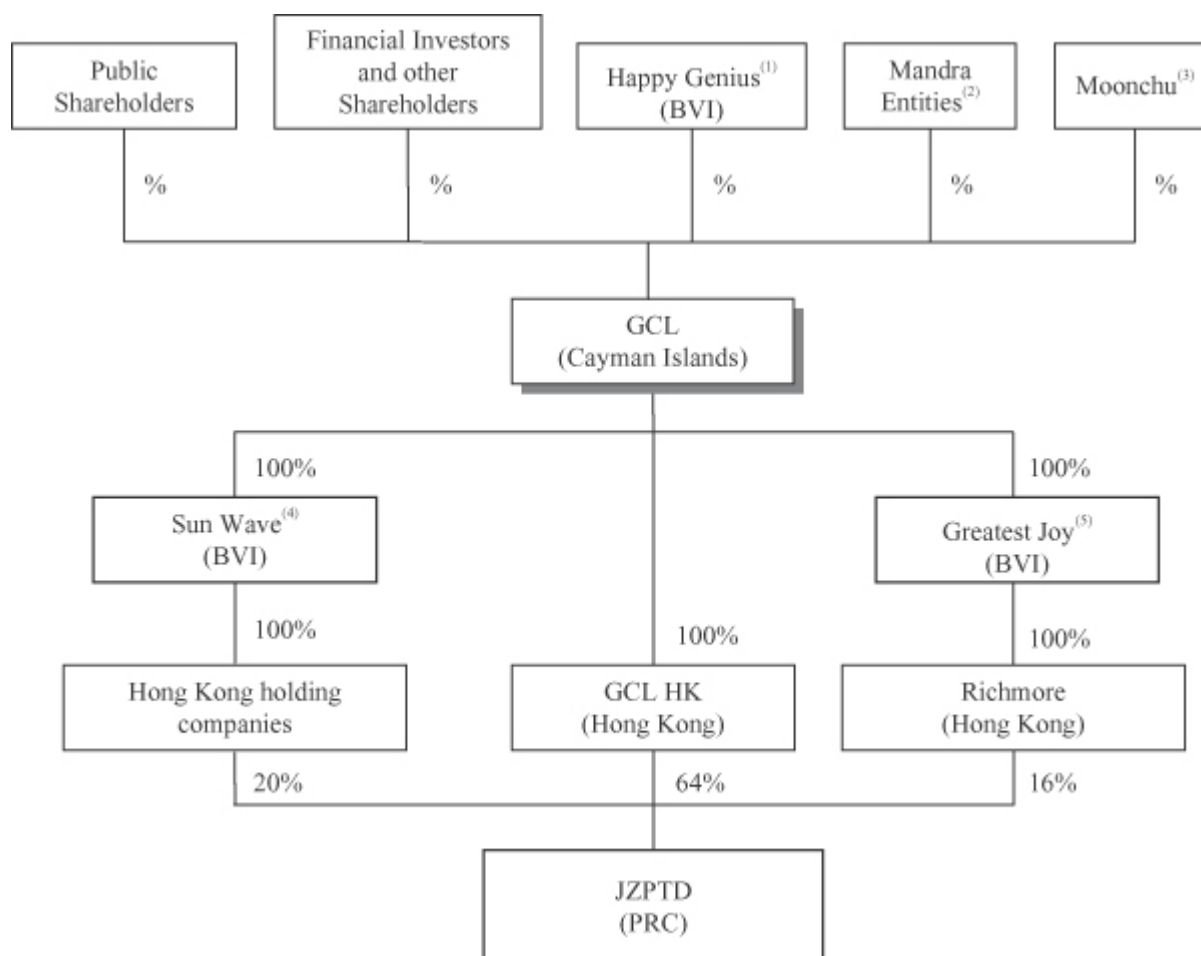
From December 2006 to April 2007, Mr. Zhang Songyi sold shares of Happy Genius to various individuals and institutional investors aggregating approximately 10% of the ownership of Happy Genius, a substantial majority of the proceeds of which were downstreamed through Happy Genius and GCL HK to JZPTD to finance the construction of our Phase I production facility and provide working capital. On August 10, 2007, Mr. Zhang Songyi agreed to sell the remaining shares of Happy Genius held by him, after completion of the reorganization discussed below, to Boulina Investments Limited, or Boulina, a company owned by Mr. Zhu Gongshan. On August 21, 2007, as part of the reorganization, the shareholders of Happy Genius exchanged approximately 25% of the ownership interest of Happy Genius for approximately 25% of our ordinary shares. Also, Happy Genius exchanged all of its ownership interest in GCL HK for approximately 75% of our shares. In September 2007, the previously agreed transfer of ownership of Happy Genius was completed from Mr. Zhang Songyi to Boulina. As a result of these transactions, Mr. Zhu Gongshan became the indirect owner of all the outstanding shares of Happy Genius, which owned approximately 75% of our ordinary shares, Mr. Zhang Songyi became the indirect owner of approximately 15% of our ordinary shares and other shareholders became the owners of an aggregate of approximately 10% of our shares. We became the indirect owner of 64% of the equity interest in JZPTD indirectly through GCL HK.

In December 2007, Sun Wave and Greatest Joy, companies owned by entities affiliated with Mr. Zhu Gongshan and Moonchu, agreed to acquire 20% and 16% of JZPTD, respectively, from the remaining minority shareholders for an aggregate purchase price of \$430.5 million. These purchases were completed in early May and early June 2008. Concurrently with the closing of this offering, we will acquire Sun Wave and Greatest Joy, which hold the remaining 36% of JZPTD. As a result, JZPTD will become our wholly-owned indirect subsidiary.

As consideration for our acquisition of Sun Wave and Greatest Joy, we intend to: (1) pay \$240.6 million to entities affiliated with Mr. Zhu Gongshan and Moonchu, in cash using a portion of the proceeds from the offering, which will be used partially to redeem the exchangeable bonds issued by Happy Genius; (2) issue the 2008 Convertible Bonds to entities affiliated with Mr. Zhu Gongshan and Moonchu in the aggregate principal amount of \$446.9 million which will be exchanged for the remaining portion of the exchangeable bonds issued by Happy Genius; and (3) issue 268,537,970 of our shares to entities affiliated with Mr. Zhu Gongshan and Moonchu. The purchase price and the form of consideration were established through negotiations involving the sellers, our shareholders and holders of the exchangeable bonds issued by Happy Genius and were approved by our shareholders in July 2008. See "Related Party Transactions – Acquisition of 36% JZPTD Onshore Equity Interests".

## Corporate Structure Immediately After the Acquisition and the Offering

The following chart summarizes our corporate structure immediately after the offering, assuming that the underwriters do not exercise their option to purchase additional ADSs:



### Notes:

- (1) Includes entities owned and controlled by Mr. Zhu Gongshan.
- (2) Includes Mandra Esop Ltd., or Mandra Esop, and Mandra Materials Ltd., or Mandra Materials, Mandra Esop and Mandra Materials are entities owned and controlled by Mr. Zhang Songyi.
- (3) Moonchu wholly owns Woo Foong Hong Ltd., or Woo Foong Hong. Woo Foong Hong wholly owns Mandra Silicon, which is the direct holder of shares of Sun Wave and Greatest Joy. See Notes (4) and (5) below.
- (4) Immediately prior to the offering, Sun Wave was 82% owned by Happy Genius and 18% owned by Mandra Silicon, an entity indirectly owned by Moonchu.
- (5) Immediately prior to the offering, Greatest Joy was 82% owned by Happy Genius and 18% owned by Mandra Silicon, an entity indirectly owned by Moonchu.

## [Table of Contents](#)

THE OFFERING	
Offering price	\$ per ADS.
ADSs offered by us	ADSs.
ADSs outstanding immediately after this offering	ADSs.
Ordinary shares outstanding immediately after this offering	ordinary shares, par value \$0.00001 per share.
Ordinary shares	Each ordinary share is entitled to one vote on all matters subject to shareholders' vote.
The ADSs	<p>Each ADS represents four of our ordinary shares, par value \$0.00001 per share. The ADSs will be evidenced by ADRs.</p> <p>The depositary will hold the shares underlying your ADSs. You will have rights as provided in the deposit agreement.</p> <p>If, however, we declare dividends on our ordinary shares, the depositary will pay you the cash dividends and other distributions it receives on our ordinary shares, after deducting its fees and expenses.</p> <p>You may turn in your ADSs to the depositary in exchange for ordinary shares. The depositary will charge you fees for any exchange.</p> <p>We may amend or terminate the deposit agreement without your consent. If you continue to hold your ADSs, you agree to be bound by the deposit agreement as amended.</p> <p>To better understand the terms of the ADSs, you should carefully read the "Description of American Depositary Shares" section of this prospectus. You should also read the deposit agreement, which is filed as an exhibit to the registration statement that includes this prospectus.</p>
Over-allotment option	The selling shareholders have granted to the underwriters an option, which is exercisable within 30 days from the date of this prospectus, to purchase up to additional ADSs at the offering price less underwriting discounts and commissions.
Use of Proceeds	We intend to use our net proceeds from this offering for the following purposes:

approximately \$400 million for contribution to JZPTD;

\$20.0 million to redeem the Tranche A Floating Rate Secured Redeemable Bonds due 2009 issued by us in September 2007;



\$240.6 million to acquire Sun Wave and Greatest Joy in connection with our acquisition of 36% of JZPTD from our affiliates;

approximately \$15.3 million to repay the principal of and fees relating to a promissory note issued by us to Happy Genius, our controlling shareholder in June 2008; and

the remaining amount for general corporate purposes, including potential acquisitions or investments such as wafer operations. We are currently in preliminary discussions with one of our tolling wafer producers, Huasheng, with respect to a potential acquisition of such producer.

Proceeds in the amount of approximately \$400 million contributed to JZPTD will be used to fund the capital expenditures related to our Phase III production facilities expansion and our in-house wafer production facilities.

The \$240.6 million to be used as part of the consideration to acquire the remaining 36% of JZPTD, which will be payable to entities affiliated with Mr. Zhu Gongshan and Moonchu, will be used to partially redeem the exchangeable bonds issued by Happy Genius.

See “Use of Proceeds” for additional information.

We will not receive any of the proceeds from the sale of ADSs by the selling shareholders.

We, each of the selling shareholders, our directors and executive officers and % of our other existing holders and beneficial owners of our ordinary shares, except for persons subject to the restrictions in the following sentence, have agreed with the underwriters, subject to certain exceptions, not to sell, transfer or dispose of, directly or indirectly, any of our ADSs or ordinary shares or securities convertible into or exercisable or exchangeable for our ADSs or ordinary shares for a period of 180 days following the date of this prospectus. In addition, holders and owners of economic and beneficial interests of the 2008 Convertible Bonds that will be issued concurrently with the closing of this offering in exchange for exchangeable bonds issued by Happy Genius have agreed with the underwriters, subject to certain exceptions, not to sell, transfer or dispose of, directly or indirectly, any of the 2008 Convertible Bonds or enter into certain hedging transactions with respect to the 2008 Convertible Bonds for a period of 130 days following the date of this prospectus. See “Underwriting” for more information.

Lock-up

Listing

Our ADSs have been approved for listing on the New York Stock Exchange under the symbol “GCL.” Our ADSs and ordinary shares will not be listed on any other stock exchange or traded on any automated quotation system.

---

## [Table of Contents](#)

Risk Factors	See “Risk Factors” and other information included in this prospectus for a discussion of risks you should carefully consider before investing in our ADSs.
Depository	The Bank of New York Mellon.
Reserved ADSs	At our request, the underwriters have reserved for sale, at the initial public offering price, up to an aggregate of                      ADSs, to certain of our directors, officers, employees or their friends and families, business associates and other persons associated with us through a directed share program.

## **SUMMARY CONSOLIDATED FINANCIAL AND OPERATING DATA**

The following tables present the summary consolidated financial information of us and our predecessor, JZPTD. You should read the following information in conjunction with our consolidated financial statements and related notes and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included elsewhere in this prospectus. The historic results are not necessarily indicative of results to be expected in any future period.

The following summary consolidated statement of operations data and consolidated statement of cash flow data for the period from March 7, 2006 to December 13, 2006 (predecessor), the period from November 13, 2006 to December 31, 2006 (successor) and the year ended December 31, 2007 (successor) and the consolidated balance sheet data as of December 31, 2006 and December 31, 2007 have been derived from our audited consolidated financial statements, which are included elsewhere in this prospectus. Our consolidated financial statements are prepared and presented in accordance with accounting principles generally accepted in the United States, or U.S. GAAP. JZPTD is considered our predecessor because we acquired 64% of the equity interest in JZPTD on December 13, 2006 and our own operations prior to the succession were insignificant relative to the operations assumed or acquired.

The following summary consolidated statement of operations data and consolidated statement of cash flow data for the six months ended June 30, 2007 and 2008 and the summary consolidated balance sheet data as of June 30, 2007 and 2008 have been derived from the unaudited condensed consolidated financial statements included elsewhere in this prospectus. The unaudited pro forma balance sheet information as of June 30, 2008, which is derived from information included in our unaudited condensed consolidated financial statements included elsewhere in this prospectus, assumes the conversion upon completion of this offering of our convertible redeemable preferred shares and the convertible portion of our floating rate bonds, cash payment of \$240.6 million to entities affiliated with Mr. Zhu Gongshan and Moonchu and the issuance of the 2008 Convertible Bonds in the principal amount of \$446.9 million. We have prepared the unaudited condensed consolidated financial statements on the same basis as the audited consolidated financial statements. The unaudited financial information includes all adjustments, consisting only of normal and recurring adjustments, that we consider necessary for a fair presentation of our financial position and operating results for the periods presented. The unaudited results for the six months ended June 30, 2008 may not be indicative of our results for the full year ending December 31, 2008.

[Table of Contents](#)

	March 7, 2006 to December 13, 2006 (Predecessor)	November 13, 2006 to December 31, 2006 (Successor)	Year Ended December 31, 2007 (Successor)	Six Months Ended June 30,	
				2007 (Successor)	2008 (Successor)
(in thousands, except per share and per ADS data)					
<b>Consolidated Statements of Operations Data</b>					
Revenues	\$ –	\$–	\$40,848	\$–	\$173,607
Gross profit	–	–	29,852	–	124,877
Operating income (loss)	(2,776 )	(239 )	12,016	(8,978 )	118,237
(Loss) income before income tax and minority interest	(3,449 )	(330 )	6,867	(9,784 )	111,262
Net (loss) income	(3,449 )	(212 )	(1,796 )	(8,446 )	68,073
Deemed distribution on convertible redeemable preferred shares-accretion of redemption premium	–	–	(1,111 )	–	(1,667 )
Net (loss) income attributable to holders of ordinary shares	\$ (3,449 )	\$(212 )	\$(2,907 )	\$(8,446 )	\$66,406
Weighted average shares used in (loss) earnings per share calculation					
Basic-ordinary share		1,000,000	994,292	1,000,000	979,844
Basic-convertible redeemable preferred share		–	–	–	16,667
Diluted-ordinary share		1,000,000	994,292	1,000,000	981,436

(Loss) earnings per ordinary share and ADS				
Basic—ordinary share	(0.0002 )	(0.0029 )	(0.0084 )	0.0666
Basic—convertible redeemable preferred share	—	—	—	0.1667
Diluted—ordinary share	(0.0002 )	(0.0029 )	(0.0084 )	0.0665
Basic—ADS	(0.0008 )	(0.0116 )	(0.0336 )	0.2664
Diluted—ADS	(0.0008 )	(0.0116 )	(0.0336 )	0.2660
Weighted average shares used in proforma earnings per ordinary share				
Basic				[ ]
Diluted				[ ]
Proforma earnings per ordinary share and ADS				
Basic—ordinary share				[ ]
Diluted—ordinary share				[ ]
Basic—ADS				
Diluted—ADS				

[Table of Contents](#)

	March 7, 2006 to December 13, 2006 (Predecessor)	November 13, 2006 to December 31, 2006 (Successor)	Year Ended December 31, 2007 (Successor)	Six Months Ended June 30,	
				2007 (Successor)	2008 (Successor)
			(in thousands)		
Consolidated Statements of Cash Flow Data					
Net cash (used in) provided by operating activities	\$ (2,782 )	\$ (842 )	\$ 15,515	\$(5,681 )	\$277,935
Net cash (used in) provided by investing activities	(60,857 )	1,865	(96,716 )	(19,327 )	(284,378)
Net cash provided by financing activities	87,670	4,010	116,120	42,923	115,675
Capital expenditures <sup>(1)</sup>	(40,928 )	(6,562 )	(96,025 )	(49,202 )	(249,901)
Note:					
(1) Capital expenditures consists of payments for purchase of property, plant and equipment and deposits for purchase of plant and equipment.					
	December 31, 2006 (Successor)	December 31, 2007 (Successor)	June 30, 2008 (Successor)	June 30, 2008 Pro Forma (Successor)	
(in thousands)					
Consolidated Balance Sheet Data					
Cash and cash equivalents	\$ 5,033	\$ 40,067	\$ 151,661	\$ 132,439	
Total current assets	21,840	63,724	221,538	201,538	
Property, plant and equipment, net	18,909	141,731	306,975		

Total assets	94,291	232,970	671,792	650,295
Distribution payable	–	–	–	240,625
Total current liabilities	49,258	60,948	187,411	428,036
Floating rate bonds	–	62,099	65,789	–
Convertible bonds	–	–	–	446,875
Total liabilities	82,680	181,697	507,115	1,128,826
Minority interest	9,823	34,935	81,150	81,150
Series A convertible redeemable preferred shares	–	21,111	22,778	–
Total shareholders' equity (deficit)	1,788	(4,773 )	60,749	(559,681 )

	March 7, 2006 to December 13, 2006 (Predecessor)	November 13, 2006 to December 31, 2006 (Successor)	Year Ended December 31, 2007 (Successor)	Six Months Ended June 30, 2008 (Successor)
<b>Selected Operating Data</b>				
Polysilicon produced (in MT)	–	–	154	661
Polysilicon sold (in MT)	–	–	153	551
Wafers sold (in MW)	–	–	–	10.1
Average polysilicon selling price (net of VAT) (per kg)	\$ –	\$ –	\$ 267	\$ 293
Average wafer selling price (net of VAT) (per W)	\$ –	\$ –	\$ –	\$ 1.20





## RISK FACTORS

*An investment in our ADSs involves significant risks. You should carefully consider all of the information in this prospectus, including the risks and uncertainties described below, before making an investment in our ADSs. Any of the following risks could have a material adverse effect on our business, financial condition and results of operations if it actually occurs. In any such case, the market price of our ADSs could decline, and you may lose all or part of your investment.*

### Risks Relating to Our Business

***Our limited operating history may not serve as an adequate measure of our future prospects and results of operations.***

We have only limited historical operating data and financial information available on our company upon which you can base your evaluation of our business and prospects. Our business was founded in March 2006 and we only began manufacturing polysilicon in September 2007. We only began commercial shipment of polysilicon in October 2007. As a result, we sold only a limited amount of polysilicon and we have never manufactured wafers in-house. In the second quarter of 2008, we began selling wafers produced for us through tolling arrangements with third party wafer manufacturers. Several members of our senior management and key employees have worked together at our company for a relatively short period of time. Our chief executive officer and director, Mr. Hunter Jiang, joined us in September 2007. Our chief financial officer, Mr. Jason Li, joined us in August 2008. Our three independent directors will join us only upon our listing on the New York Stock Exchange. As a result, we may not have sufficient experience to address the risks frequently encountered by companies with limited operating history, including our potential failure to:

increase our polysilicon manufacturing capacity significantly beyond current levels;

successfully manufacture wafers;

maintain profitability;

acquire and retain customers;

attract, train, motivate and retain qualified personnel;

keep up with evolving industry standards and market developments;

manage our expanding operations and product offerings, including the integration of any future acquisitions;

anticipate and adapt to any changes in government regulation, mergers and acquisitions involving our competitors, technological developments and other significant competitive and market dynamics;

maintain adequate control over our costs and expenses; or

manage risks relating to intellectual property rights, including the documentation and protection of our proprietary technologies.

If we fail to address any of these risks, our business and financial results would be materially and adversely affected. Accordingly, you should consider our business and prospects in light of the risks, expenses and challenges that we will face as a company with limited operating history seeking to produce polysilicon and wafers in a rapidly growing market.

***If we are unable to manage our growth effectively, our business and financial results may be adversely affected.***

We have experienced a period of rapid growth and expansion that has placed, and continues to place, significant strain on our management and resources. To accommodate our growth, we anticipate that we will

## [Table of Contents](#)

need to implement a variety of new and upgraded operational and financial systems, procedures and controls, including the improvement of our accounting and other internal management systems, all of which require substantial management efforts. We also will need to continue to expand, train, manage and motivate our workforce and manage our customer relationships. All of these endeavors will require substantial management effort and skill and require significant additional expenditures. We cannot assure you that we will be able to manage our growth effectively, and any failure to do so may have a material adverse effect on our business and financial results.

### ***We did not achieve profitability until the three months ended December 31, 2007 and we may not maintain profitability.***

We incurred net losses attributable to holders of ordinary shares of \$3.4 million, \$0.2 million and \$2.9 million in the period from March 7, 2006 to December 13, 2006, the period from November 13, 2006 to December 31, 2006 and the year ended December 31, 2007, respectively, and achieved a net income attributable to holders of ordinary shares of \$66.4 million in the six months ended June 30, 2008. As of December 31, 2007 and June 30, 2008, we had accumulated a deficit of \$23.1 million and retained earnings of \$43.3 million, respectively. Our initial losses resulted principally from general and administrative expenses and interest expenses. In addition, we will have start-up expenses for our expansion facilities, increased compensation expenses from our option issuances, depreciation of our expanded facilities, amortization of intangible assets acquired in our purchase of the 36% JZPTD we will own upon the completion of the offering and increased interest expenses related to additional borrowings to support our growth. Further, while we achieved a net income attributable to holders of ordinary shares of \$66.4 million for the six months ended June 30, 2008, our profitability may decline in future periods. Net income attributable to holders of ordinary shares decreased 8.6% from \$34.7 million in the three months ended March 31, 2008 to \$31.7 million in the three months ended June 30, 2008. The decline in profitability from the three months ended March 31, 2008 to the three months ended June 30, 2008 was primarily due to the fact that all of our sales volumes in the prior period were derived from spot market sales, while approximately 60% of our sales volumes in the latter period were derived from spot market sales. Under most of our current supply contracts, we recognize revenues on a weighted average basis, and the resulting per unit selling price for polysilicon or wafers is significantly lower than our historical spot market sales prices and lower than the initial set prices in the early years of our supply contracts. We expect that for the three months ending September 30, 2008 and the three months ended December 31, 2008, approximately 25% and less than 10% of our sales volumes will be derived from spot market sales, respectively. Historical losses have had an adverse effect on our working capital, total assets and stockholders' equity. Due to the numerous risks and uncertainties associated with growing our business, we may not be able to achieve long-term profitability. If we fail to maintain profitability in the future, the market price of our ADSs could decline.

### ***We currently rely on one wafer tolling producer to manufacture wafers for all of our wafer sales. Any event that prevents our current third party manufacturer from producing wafers for us, or our failure to successfully manage our relationships with this manufacturer or our future manufacturers could damage our relationships with our customers, cause us to default on our wafer supply agreements, decrease our sales and limit our growth.***

Currently, we do not own or operate any wafer production facility. Instead we rely on a wafer tolling arrangement with Huasheng, a third party, to manufacture our wafers. Although we intend to commence pilot production of wafers in-house by the third quarter of 2009, and we are currently in preliminary discussions with Huasheng with respect to a potential acquisition, we do not expect our in-house wafer production to entirely replace our reliance on wafer tolling arrangements. Presently, Huasheng manufactures all of our wafers. As a result, if this company experiences any catastrophic or other event that causes it to be unable to conduct manufacturing operations, or otherwise chooses to discontinue manufacturing wafers, our ability to sell wafers would be adversely impacted. Even if other manufacturers were willing to produce wafers for us, they may be unable to provide us with the same pricing, committed capacity, or be able to manufacture our wafers with the same yield rate or quality, as we currently have with Huasheng. Most of the wafers produced for us by Huasheng

---

## [Table of Contents](#)

are committed to customers under our wafer supply agreements. Failure of Huasheng to meet its obligations under the tolling agreement could result in our default under such wafer supply contracts. As a result, we are highly dependent on our relationship with our wafer manufacturer and its continued ability to manufacture our wafers, to maintain our revenues and customer relationships.

There are additional risks associated with our reliance on wafer tolling arrangements with third parties, including:

their inability to increase production and achieve acceptable quality on a timely basis;

reduced control over delivery schedules and product quality;

limited warranties on wafers supplied to us;

shortages of materials and consumables other than polysilicon that wafer manufacturers use to manufacture wafers;

labor shortages, strikes or disputes; and

actions taken by such third-parties that breach our agreements.

### ***We may not be successful in producing polysilicon cost-effectively.***

We made our first commercial shipment of polysilicon in October 2007. We have limited operating experience and may face significant challenges relating to polysilicon production. The technology used to manufacture polysilicon is complex, requires costly equipment and is continuously being modified in an effort to improve yields and product performance. Microscopic impurities such as dust and other contaminants, difficulties in the manufacturing process, disruptions in the supply of utilities or defects in the key materials and tools used to manufacture polysilicon could interrupt manufacturing, reduce yields or cause a portion of the polysilicon to be rejected by our customers or be difficult or costly to use in wafer production, which would negatively affect our profitability. If we are unable to build our polysilicon production capability on a timely basis, or if we face technological difficulties in our production of polysilicon, we may be unable to achieve cost-effective production of polysilicon which could prevent us from competing successfully in the polysilicon and wafer markets.

Our effective capacity and ability to produce high volumes of polysilicon depend on the cycle times for each batch of polysilicon. We may encounter problems in our manufacturing process or facilities as a result of, among other things, production failures, construction delays, human error, equipment malfunction or process contamination, all of which could seriously harm our operations. We may experience production delays if any modifications we make in the manufacturing process to shorten production cycles are unsuccessful. Moreover, the failure to achieve acceptable manufacturing levels may cause our polysilicon costs not to be competitive, which could adversely affect our business, financial condition and results of operations.

We expect the price of polysilicon to decrease in the future. In order for us to maintain profitability, we need to reduce costs, in particular TCS costs. We believe the market price of TCS, which is the principal raw material used for polysilicon production, will remain

high in the near future. See “–We will need to purchase TCS in substantial quantities to operate our production facilities and if we are unable to source such TCS at a reasonable cost or at all, it could have a material adverse effect on our financial condition and results of operations.” If we are unable to reduce TCS costs, we may not be able to cost-effectively produce polysilicon, which will adversely affect our business, financial condition and results of operations.

---

## [Table of Contents](#)

***We may not be able to complete our hydrogenation process and in-house TCS production facilities within our expected timeframe, within our budget, or at all, and in-house TCS production may not be more cost-efficient than purchasing TCS from third party suppliers.***

TCS is one of the main and most costly raw materials in the production of polysilicon, the costs of which accounted for a majority of our total cost of sales for the year ended December 31, 2007 and the six months ended June 30, 2008. We intend to reduce production costs by producing TCS internally and through our affiliates. We own a 70% controlling interest in the Taixing joint venture, which commenced pilot production of TCS at an initial annual capacity of 20,000 MT in August 2008. We intend to increase the Taixing joint venture annual TCS production capacity to up to 60,000 MT by 2010. We commenced construction of a hydrogenation facility and a TCS production facility in Xuzhou in August 2008, which we expect to have combined capacity to produce up to 90,000 MT of TCS per year by the third quarter of 2009. However, the production of TCS is difficult and requires strict controls over the management of raw materials and over the production process itself. We have no previous experience in the production of TCS. Therefore, we cannot assure you that we will complete our TCS production facilities within the expected timeframe, within our budget or at all, or that our own production of TCS will be more cost-efficient than purchasing TCS from third party suppliers. Any failure to complete our TCS production facilities may have a material adverse effect on our business, prospects, financial condition and results of operations.

***We do not yet have NDRC approval for the remaining 4,500 MT of our Phase III production facilities and failure to obtain such approval could adversely affect our growth and profitability.***

We have obtained approval to produce an aggregate annual production of 6,000 MT of polysilicon at our Phase III production facilities, and intend to apply for approval from NDRC for an additional 4,500 MT annual production capacity. Such approval is required before we can increase our investment to construct the additional 4,500 MT annual production capacity and commence construction of such facilities. If we are not able to get such approval, we will not be able to achieve a production capacity of 13,500 MT per year by February 2010, which could delay our expansion and could adversely affect our growth and profitability.

***We have no experience in wafer production and may not be able to establish in-house production.***

Our strategy includes commencing our own wafer production on a pilot basis by the third quarter of 2009. We intend to use a portion of the proceeds of this offering to procure the necessary equipment, land and other facilities to construct our in-house wafer production facility. If equipment suppliers fail to deliver, or delay the delivery of, our equipment for any reason, the implementation of our expansion plan would be materially and adversely affected. In addition, there are limited sources of supply for the principal wafer manufacturing equipment we intend to use and we may not be able to replace such sources at all, at reasonable costs and on a timely basis to implement our wafer production expansion plan.

To carry out our wafer production strategy we will need to integrate the personnel we have hired to create an effective team and infrastructure to supervise construction and oversee the start-up and operation of our production facility.

We cannot assure you that we will be able to establish our own wafer production capacity on a timely basis or at all. Our ability to successfully establish wafer manufacturing capacity and to increase sales is subject to various risks and uncertainties, including:

the need to acquire the land on which to construct our wafer production facility at a reasonable cost and on a timely basis;

the need to procure wafer production equipment at reasonable costs and on a timely basis;

the need to procure supplies of consumables and other materials at reasonable costs and on a timely basis;





---

## [Table of Contents](#)

the need to raise additional funds to finance our purchase of equipment and the construction of manufacturing facilities, which we may be unable to obtain on reasonable terms or at all;

construction delays and cost overruns;

difficulties in recruitment and training of additional skilled employees, including technicians and managers at different levels;

diversion of significant management attention and other resources;

delays or denials of required permits and approvals for our land acquisition, plant construction and operations, including but not limited to environmental approvals, by relevant government authorities;

the need to achieve acceptable wafer yields, thickness and quality; and

the need to produce wafers cost-effectively.

***We will need to purchase TCS in substantial quantities to operate our production facilities and if we are unable to source such TCS at a reasonable cost or at all, it could have a material adverse effect on our financial condition and results of operations.***

Before we are able to produce TCS internally or through our affiliates, we will need to purchase most of the TCS required for our production of polysilicon. The quality of TCS that we have been able to purchase has fluctuated, and the price has increased substantially since we commenced TCS procurement. Even if we or our affiliates are able to produce TCS, we may from time to time be required to purchase from external sources a substantial quantity of the TCS required for our production of polysilicon. Although the Taixing joint venture has commenced pilot production of TCS, it may be forced to stop production and expansion. See “– Our Taixing joint venture has not obtained land use rights and related planning and construction permits for the buildings it is constructing and may be required to stop operations, further expansion and cure deficiencies and could be subject to fines.” The expansion or development of polysilicon production capacity by existing or new solar industry participants could increase the price or limit the supply of TCS available to us. If we are unable to source the TCS we require at a reasonable cost or at all, it could have a material adverse effect on our financial condition and results of operations.

***The production of polysilicon presents operational difficulties and dangers; if we are unable to operate effectively or natural disasters or operational disruptions occur, our business, results of operations and financial condition could be adversely affected.***

Production of polysilicon requires the use of volatile materials and chemical reactions sensitive to temperature, pressure and requires the use of external controls to maintain safety and provide commercial production yields. For example, in the production of polysilicon we use TCS, which is a type of chlorosilane gas that when purified can be a highly combustible substance if brought into contact with moisture in the air and is therefore potentially destructive and extremely dangerous if mishandled or used in uncontrolled circumstances. The occurrence of a

catastrophic event involving TCS as a result of a natural disaster or human error or otherwise at one of our polysilicon production facilities could threaten, disrupt or destroy a significant portion or all of our polysilicon production capacity at such facility for a significant period of time. Additionally, our polysilicon production facilities, in particular, are highly reliant on our ability to maintain temperatures and pressure at appropriate levels, the supply of steam at a consistent pressure level, the availability of adequate electricity and our ability to control the application of such electricity. Accordingly, mistakes in operating our equipment or an interruption in the supply of electricity at our production facilities could result in the production of substandard polysilicon or substantial shortfalls in production and could reduce our production capacity for a significant period of time. In connection with the start up of our Phase II production facility, we experienced trial production quality issues caused by a shortfall in the supply of steam at a consistent level of pressure to our Phase II production facility. Damage or loss of revenue from any such events or disruptions may not be adequately covered by insurance, and could also damage our reputation, any of which could have a material adverse effect on our business, operating results and financial condition.

---

## [Table of Contents](#)

***Polysilicon and wafer production is energy-intensive and if our energy costs rise or if our energy supplies are disrupted, our results of operations will be materially adversely affected.***

The polysilicon production process is highly dependent on a constant supply of electricity to maintain the optimal conditions for polysilicon production. The wafer production process is similarly dependent on electricity. If these levels are not maintained, we may experience significant delays in the production of polysilicon and wafers. With the rapid development of the PRC economy, demand for electricity has continued to increase. There have been shortages in electricity supply in various regions across China, especially during peak seasons, such as summer. We currently depend on a single power grid for our electric power and we do not have any backup electricity generators in case there is a power shortage. In the event that energy supplies to our manufacturing facilities are disrupted, our business, results of operations and financial condition could be materially and adversely affected. In addition to shortages, we are subject to potential risks of interruptions in energy supply due to equipment failure, weather events or other causes. There can be no assurance that we will not face power related problems in the future.

Even if we had access to sufficient sources of electricity, as we consume substantial amounts of electricity in our manufacturing process, any significant increase in the costs of electricity could adversely affect our profitability. Our supply arrangement with Xuzhou Electricity Company, does not provide protection against electricity price fluctuations. At the end of June 2008, the NDRC announced an increase in average electricity rates by RMB0.0301 per KWh in Jiangsu Province, where our production facilities are located. Our electricity costs starting in July 2008 increased as a result of the June 2008 announcement. We expect additional increases in electricity costs in the future. The electricity price in China will also be largely dependent on the price for coal, which has been increasing. If energy costs were to rise, our business, financial condition, results of operations or liquidity position could be adversely affected.

***We obtain certain production equipment from a limited number of suppliers and if such equipment is not delivered on time, is damaged in shipment or is otherwise unavailable, our ability to deliver polysilicon and wafers on time will suffer, which in turn could result in order cancellations and loss of revenue.***

Our operations and expansion plans depend on our ability to obtain a sufficient amount of equipment that meets our specifications on a timely basis. Some of our equipment used in polysilicon, TCS and wafer production is not readily available from alternative vendors and would be difficult to repair or replace if it were to become damaged or stop working. If any of these suppliers were to experience financial difficulties or go out of business, or if there were any damage to or a breakdown of our production equipment, our business would suffer. In addition, a supplier's failure to supply our ordered equipment in a timely manner, with adequate quality and on terms acceptable to us, could delay the capacity expansion of our manufacturing facilities and otherwise disrupt our production schedule or increase our costs of production. Failure to obtain equipment meeting our specifications could have a material adverse effect on our business, financial condition and results of operations.

We have experienced significant delays in the delivery of our key equipment in the past. For example, the delivery of our Phase I reactors was delayed up to six months from the original contracted delivery schedule. In the event we experience delays in equipment deliveries for any of our production facilities in the future, we will not be able to increase our output at the rates we anticipate. In addition, demand for polysilicon and wafer production equipment may result in significant increases to prices of such equipment or shortages in related components for our intended expansion. If deliveries are delayed or such prices increase beyond our expectations, our business, financial condition and results of operations would be adversely affected.

***We have sourced and will continue to source some of our production equipment from PRC manufacturers and we cannot assure you that this domestically sourced equipment will perform at the same level as our imported equipment or will meet our quality requirements.***

We have purchased key equipment from domestic suppliers. In particular, 13 out of a total of 18 reactors for our Phase II production facility were purchased from domestic suppliers. In our Phase III production facility, we intend to use substantially all domestic reactors. We have entered into a reactor supply agreement with Tap Mate



## [Table of Contents](#)

Limited to obtain 144 reactors manufactured by Shanghai Morimatsu Chemical Equipment Engineering Co., Ltd., or Shanghai Morimatsu. We have separately entered into a guaranty agreement with Tap Mate Limited and Shanghai Morimatsu, under which Shanghai Morimatsu has guaranteed the obligations of Tap Mate Limited under the reactor supply agreement. A substantial number of these reactors will be used for our Phase III production facilities. Shanghai Morimatsu, like the other domestic suppliers of our reactors, has limited experience in producing polysilicon reactors. Although we believe the domestic reactors we have purchased and have contracted to purchase are of at least similar quality as those we have sourced from foreign suppliers, these locally made reactors may not perform at similar levels of quality and reliability or they may not be delivered in a timely manner. We cannot assure you that the polysilicon we may produce using equipment from domestic suppliers will be of similar quality or quantity as those we currently produce which may lead to rejections of our polysilicon by our customers. In the event the domestic equipment does not perform as well as the imported equipment or does not perform at all, our business, financial condition and results of operations could be adversely affected.

In addition, certain components of the hydrochlorination equipment for our Phase I production facility, most of which were sourced from domestic suppliers, have shown significant corrosion, which has increased and may continue to increase our maintenance costs and may adversely affect our results of operations. While we have replaced the affected parts and have required the domestic suppliers to improve the quality of the components supplied to us, we cannot assure you that the components we will receive from such suppliers will meet our quality requirements in the future.

***We do not have the land use rights on the land on which we are building our Phase III production facilities and we have not obtained the required construction permits for our Phase III production facilities. Without such rights and permits, we may be forced to terminate the construction of our Phase III production facilities.***

Our Phase III production facilities are being built on 80.9 acres of land adjacent to our Phase I and Phase II production facilities in the Xuzhou Economic Development Zone in Jiangsu Province, China. Under PRC law, the land use right of such parcel cannot be granted until various governmental approvals have been obtained and we have won the public auction in connection with such parcel. With the knowledge of the Xuzhou Economic and Development Committee and pursuant to a memorandum of understanding between us and such Committee, we have commenced the construction of our Phase III production facilities before winning the public auction for the sale of such parcel and the receipt of all necessary approvals. We believe such public auction will occur in September 2008. Because we do not have the land use right for the underlying land, we have not obtained the required construction or zoning permits for the construction of our Phase III production facilities, and therefore we are not the rightful owner of this facility. In addition, construction on land prior to its legal approval for sale is a violation of PRC law and could result in prosecution of us and the imposition of monetary penalties, which could be substantial. In the event we fail to obtain the land use rights, we will need to locate another site and delay our planned expansion, which will have a material impact on our ability to meet contractual obligations to our customers. As a result, we may incur a loss on the cost of constructing our Phase III production facilities on our current site, which will negatively affect our profitability. We cannot assure you that we will be able to obtain the land use rights for the construction of our Phase III production facilities. Our rights as owner or occupier of the parcel on which our current Phase III production facilities are located and buildings on such parcel may be adversely affected as a result of the absence of formal land use rights and we may be subject to lawsuits or other actions taken against us and/or lose the right to continue to operate on such property.

***Our Taixing joint venture has not obtained land use rights and related planning and construction permits for the buildings it is constructing and may be required to stop operations and further expansion and to cure deficiencies and could be subject to fines.***

Our Taixing joint venture does not have land use rights to the land on which construction has begun and does not have the required planning and construction permits for the buildings it is constructing. The joint

venture could be required to stop construction of the project and cure the deficiencies and could be subject to a fine related to such construction. While we received approval to commence pilot production of TCS from the bureau of safety production in August 2008 that extends to February 2009, we have not yet obtained the approval to commence pilot production from the bureau of environmental protection. However, when we commence commercial production of TCS, we will be required to obtain applicable environmental, work safety and professional health approvals. Our failure to obtain the land use right and construction permits could delay or prevent us from obtaining such approvals. If the joint venture is unable to obtain the necessary approvals, permits and land use rights, it would not be able to produce TCS for us and we will need to continue to source TCS from third parties, which could prevent us from achieving self sufficiency in TCS production and adversely affect our results of operations.

***We operate in a highly competitive market and we may not be able to compete successfully with competitors who have greater resources than us.***

The solar wafer market is highly competitive and the polysilicon market is expected to become increasingly competitive. While we currently do not manufacture wafers, we compete directly with wafer manufacturers for wafer sales. Our competitors include polysilicon producers, such as DC Chemical Co., Ltd., or DC Chemical, Hemlock Semiconductor Corporation, or Hemlock, MEMC Electronic Materials, Inc., or MEMC, Renewable Energy Corporation ASA, or REC, Tokuyama Corporation, or Tokuyama, Wacker Chemie AG, or Wacker, and wafer manufacturers such as Deutsche Solar AG, a subsidiary of Solarworld AG, or SolarWorld, Green Energy Technology, Inc., or Green Energy, Glory Silicon Energy Co., Ltd., or Glory Silicon, Jiangsu Shunda PV-Tech Co., Ltd., or Shunda, Jinglong Industry and Commerce Group Co., Ltd., or Jinglong, Kyocera Corporation, or Kyocera, LDK Solar Co., Ltd., or LDK Solar, MEMC, M.SETEK Co. Ltd., or M.SETEK, PV Crystalox Solar AG, or PV Crystalox, REC, ReneSola Ltd., or ReneSola, and Sino-American Silicon Products Inc., or Sino-American Silicon. We also compete with producers of upgraded metallurgical silicon such as Dow Corning Corporation, or Dow Corning, Elkem AS, or Elkem and Becancour Silicon Inc., or Becancour, which is a division of Timminco Limited, or Timminco.

We believe our competitors have substantially greater financial, technical, manufacturing and other resources than we do. Our competitors' greater size and longer operating history in some cases provide them with a competitive advantage with respect to manufacturing costs because of their economies of scale and their ability to purchase raw materials at lower prices. In addition, our competitors may have stronger relationships or may enter into exclusive relationships with some of our key customers. As a result, they may be able to respond more quickly to changing customer demands or to devote greater resources to the development, promotion and sales of polysilicon or wafers than we can. Our failure to adapt to changing market conditions and to compete successfully with existing or new competitors may materially and adversely affect our financial condition and results of operations.

***We depend on a limited number of customers and supply contracts for a significant portion of our revenues and the loss of any customer or cancellation of any contract may cause significant fluctuations or declines in our revenues.***

We have entered into polysilicon and wafer supply agreements with cell and module manufacturers that provide for aggregate sales of approximately 15.1 GW of wafers and approximately 40,356 MT of polysilicon for aggregate total contract prices of \$21.3 billion (RMB146.2 billion). These contracts are with JA Solar, Trina Solar, CSI, Suntech, AIDE, Solarcell and Solarfun. See "Business-Customers and Markets". Our commitments in 2009 and 2010 under the supply contracts exceed our Phase I and Phase II production capacity by approximately 5,309 MT and approximately 16,993 MT, respectively. Any significant delays in our anticipated capacity expansion or deviation from the contract terms on our customers' part or our inability to negotiate or renegotiate acceptable quantities, prices and delivery terms from time to time with our customers may disrupt our operations and materially adversely affect our financial results. In addition, if any customers were to default on their obligations under our polysilicon and wafer supply contracts, we may need to find other buyers for our products. Sales to these other customers may be on less favorable terms or may not be feasible at all.

---

## [Table of Contents](#)

We intend to expand our customer base and enter into additional polysilicon and wafer supply contracts. There can be no assurance that we will be able to enter into contracts with any additional customers. Furthermore, there can be no assurance that if we enter into such contracts with other customers, that the terms of such contracts will be on equal or more favorable terms as those contracts we have with our existing customers or that such additional customers will be of equal quality to our existing customers. Failure to enter into additional supply contracts will have a material adverse effect on our business, financial condition and results of operations.

***If we are unable to fulfill our commitments to customers or customer orders on a timely basis or at all, we may lose customers, our reputation may be damaged, and we may face significant penalties for breach of contract.***

Due to delays in the delivery of the reactors for our Phase I production facility, we did not meet contractual commitments for delivery of polysilicon as a result of delayed ramp-up of commercial production in 2007. Our ability to meet existing contractual commitments to our customers depends on the successful and timely implementation of our expansion plan. Delays in the delivery of equipment, like those we experienced in the past, could delay implementation of our expansion plan. If we are unable to fulfill our commitments to customers or customer orders on a timely basis or at all, we may lose our customers and our reputation may be damaged. Moreover, our contracts with our customers sometimes provide for specified monetary damages or penalties, which may be significant, for non-delivery or failure to meet delivery schedules or product specifications and allow a termination of the contract by our customer. See “Business–Customers and Markets”. If any of our customers invoke these clauses against us, we may lose future sales and need to defend against the relevant claims, which could be time consuming and expensive. We may be found liable under these clauses and be required to pay damages.

***Our future success depends substantially on our ability to significantly expand both our polysilicon production capacity and output, which exposes us to a number of risks and uncertainties. Our announced intention to increase polysilicon production capacity to 24,000 MT per year is preliminary and may not be implemented.***

Our future success depends on our ability to significantly increase both our polysilicon production capacity and output. If we are unable to do so, we may be unable to benefit from economies of scale to decrease our costs per kilogram of polysilicon, apply capital efficiently, meet our obligations under supply agreements, maintain our competitive position and improve our profitability. Our ability to establish additional production capacity and increase output is subject to significant risks and uncertainties, including:

the need to raise significant additional funds to purchase additional production equipment or to build additional manufacturing facilities, which we may be unable to obtain on commercially viable terms or at all;

cost overruns and delays as a result of a number of factors, many of which are beyond our control, such as increases in the price of electricity and problems with equipment delivery, particularly with respect to major equipment such as our polysilicon deposition reactors;

delays or denial of required approvals by relevant government authorities;

failure to obtain production inputs in sufficient quantities or at acceptable cost;

diversion of significant management attention and other resources; and

failure to execute our expansion plan effectively.

We intend to construct additional production facilities that would bring our aggregate annual polysilicon production capacity to 24,000 MT. Although we have determined a preliminary location of such expanded facilities in China, we have not secured the land for such production facility, have not applied nor been granted any construction or operation permits and have not ordered any production equipment. We intend to apply for such permits and commence equipment orders shortly after the completion of this offering. Market conditions change very rapidly in the solar industry. Industry research institutions such as Solarbuzz and others have forecasted



---

## [Table of Contents](#)

substantial overcapacity in polysilicon and wafer manufacturing in the next few years. We may not complete our polysilicon manufacturing expansion due to cost, demand, financing or other reasons. If we do not complete such expansion, we may not be able to meet contractual obligations and our share price and financial results could be adversely affected.

### ***Our profitability may suffer as we continue with our capacity expansion.***

We expect to experience increased costs as a result of the ramp-up of our Phase II production facility and the construction and ramp-up of our Phase III and any additional production facilities, including our wafer production facility. Before our production facilities become fully operational, we will need to make substantial payments for the installation of machinery and equipment, the training of personnel and other related expenses. Much of these payments will be incurred prior to any revenue being realized from these projects, as the Phase II production facility is not expected to be fully ramped up until December 2008, the first production line of the Phase III production facilities is not expected to commence commercial production until December 2008 and our production facilities for our intended expansion to 24,000 MT by the end of 2010 are not expected to begin initial production until the end of 2009. We expect to experience initial operational inefficiencies and lower production yields during the early stages of production at our newly constructed production facilities. As with our Phase I production facility, we will install the hydrochlorination process equipment in our Phase II production facility and two of the three lines of our Phase III production facilities and will integrate the hydrochlorination process after initial production has commenced on our newly constructed production facilities. For one of the three production lines in our Phase III production facilities we intend to install and integrate a hydrogenation process. We have no experience in constructing, installing or operating a facility that employs the hydrogenation process. Unless we are able to integrate our hydrochlorination or hydrogenation processes at these facilities and increase production yields and benefit from efficiencies in purchasing, manufacturing, sales and shipping, we may not be able to achieve lower costs per unit of production, which would decrease our margins and lower our profitability.

### ***We have significant outstanding bank borrowings and may not be able to arrange adequate financing to repay these borrowings when they mature.***

As of June 30, 2008, we had principal amount of \$60.0 million of outstanding floating rate bonds, one-third of which will be redeemed upon the closing of this offering and the remaining two-thirds will be converted into 27,183,400 ordinary shares. See “Use of Proceeds” and “Description of Share Capital—Tranche A Floating Rate Secured Redeemable Bonds due 2009 and Tranche B Floating Rate Secured Convertible Bonds due 2009”. As of June 30, 2008, we had \$206.1 million in onshore bank borrowings, \$95.8 million of which were due within one year. Subsequent to June 30, 2008, we incurred an additional RMB533.0 million in onshore borrowings which will be used to finance our intended expansion of polysilicon production facilities and in-house wafer production facility. Although we believe, with existing onshore bank borrowings, the proceeds of this offering and our cash flow from operating activities, we will have sufficient cash flow for our current expansion, there can be no assurance that additional funding needs will not arise. We cannot assure you that we will be able to meet these or other current obligations as they become due. In the event we are unable to meet these obligations or obtain extensions of borrowings, or if we are unable to obtain sufficient alternative funding at reasonable terms or at all to make payment, we will have to make payments with cash generated by our operating activities. In addition, meeting the payment obligations of these borrowings with cash generated by our operating activities will divert our financial resources from the requirements of our ongoing operations and future growth, and would have a material adverse effect on our business, financial condition and future prospects.

It is difficult to plan for capital requirements in our rapidly changing industry. Future market conditions or other developments may require us to obtain additional funds.

Our ability to obtain additional funds on acceptable terms will be subject to a variety of uncertainties, including:

investor perceptions of and demand for securities of companies engaged in the solar industry;

---

## [Table of Contents](#)

conditions of the U.S. and other capital markets in which we may seek to raise funds;

our future results of operations, financial condition and cash flows;

Chinese governmental regulation of foreign investment;

economic, political and other conditions in China;

the amount of capital that other Chinese entities may seek to raise in the U.S. and other foreign capital markets; and

Chinese governmental policies relating to foreign currency borrowings.

Our inability to raise additional funds in a timely manner and on terms acceptable to us, or at all, may have a material adverse effect on our business, financial condition and results of operations. For example, we may be required to scale back our planned expenditures, which could adversely affect our ability to achieve economies of scale or achieve our planned growth. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations–Liquidity and Capital Resources.”

***We may not have sufficient cash available to pay holders of the 2008 Convertible Bonds if we are required to repay the outstanding principal amount at maturity.***

The 2008 Convertible Bonds will be issued concurrently with this offering in the aggregate principal amount of \$446.9 million. The 2008 Convertible Bonds mature 18 months after this offering. In the event bondholders choose not to exercise their conversion rights prior to maturity, we would be required to repay the outstanding principal amount of the 2008 Convertible Bonds at maturity. The 2008 Convertible Bonds will be U.S. dollar obligations and our sole source of operating cash flows are all generated in the PRC by our onshore subsidiaries. There can be no assurance that we will be able to upstream cash from our operating subsidiary, to successfully raise capital or that we will be able to access other credit facilities. Therefore, we may not have sufficient cash on hand or credit available to redeem the outstanding principal amount of the 2008 Convertible Bonds at maturity. Payment of amounts owed on the 2008 Convertible Bonds and the related financial covenant requiring us to maintain consolidated net indebtedness no more than 4.0 times our annualized consolidated earnings before interest, taxes, depreciation and amortization for the first three consecutive quarters following this offering and no more than 3.75 times our annualized consolidated earnings before interest, taxes, depreciation and amortization for the second three consecutive quarters following this offering may prevent us from maintaining our capital expenditures at the levels we have planned. Any delay in capital expenditures will have a material adverse effect on our business, financial condition and results of operations.

***We face risks associated with the marketing, distribution and sale of our wafers internationally, and if we are unable to effectively manage these risks, they could impair our ability to expand our business and operate profitably.***

With our increased production we intend to sell a portion of our wafers outside of China. The marketing, distribution and sale of our wafers in the international markets expose us to a number of risks, including:

fluctuations in currency exchange rates;

increased costs associated with maintaining marketing efforts in various countries;

difficulty and costs relating to compliance with the different commercial and legal requirements of the overseas markets in which we offer our products; and

trade barriers such as export requirements, tariffs, taxes and other restrictions and expenses, which could increase the prices of our products and make us less competitive in some countries.

If we are unable to effectively manage these risks, we may not be able to successfully expand our business abroad, operate profitably, exploit our expansion and grow our business as we have planned.

***We may construct our polysilicon production facilities in geographical regions in which we have no prior experience.***

We intend to expand our polysilicon production capacity to 24,000 MT per year and have determined a preliminary location in China for this expansion. We have no experience producing polysilicon outside of Jiangsu Province, China. We may face different legal requirements, experience delays in acquiring the necessary permits for construction and difficulties in complying with the various labor laws and other regulations. In addition, our operations could be more sensitive to fluctuations in the relative value of currencies. Any such difficulties or delays could have a material adverse effect on our business, financial condition and future prospects.

***Product defects could result in increased costs, decreased sales, and damage to our customer relationships and our reputation.***

Our polysilicon and wafers may contain defects that are not detected until after they are shipped or installed. As all of our wafers currently are and a portion of our wafers will continue to be produced by wafer manufacturers under tolling arrangements, we do not have complete control over whether our contractors use our polysilicon or the quality of wafers our contractors produce. If our tolling partners use defective polysilicon to produce wafers, such wafers will likely be defective. In the event our products are returned to us due to non-conformity with customers' specifications or product defects, we would be required to replace our products promptly. Product defects could cause significant damage to our customer relationships and our reputation. If we cannot successfully maintain the quality throughout our production process, this will result in substandard quality or performance of our polysilicon and wafers, including the reduced photovoltaic conversion efficiency of solar cells and modules made from the wafers we supply and higher wafer breakage. If we deliver products with defects, or if there is a perception that our products are of substandard quality, we may incur substantially increased costs associated with termination of contracts, replacements of polysilicon or wafers, and our credibility and market reputation will be harmed and sales of our products may be adversely affected.

***Most of our production, storage, administrative and research and development facilities are located in close proximity to one another in an industrial park in China. Any damage or disruption at these facilities would have a material adverse effect on our financial condition and results of operations.***

Our production, storage, administrative, research and development facilities are located in close proximity to one another in an industrial park in Xuzhou, Jiangsu Province, China. Significant damage or other impediments at such location, whether as a result of fire, weather, disease, civil strike, industrial strikes, breakdowns of equipment, difficulties or delays in obtaining materials and equipment, natural disasters, such as earthquakes, terrorist incidents, industrial accidents or other causes, could temporarily disrupt or even shut down our operations, which would have a material adverse effect on our business, financial condition and results of operations. Some of the processes utilized in our operations place us at risk of fire and other damage. We cannot assure you that the insurance we maintain will be sufficient to cover all of our potential losses.

On May 12, 2008, an earthquake reaching a magnitude of 8.0 on the Richter scale according to the State Seismological Bureau of China hit Sichuan Province, China. Businesses and production operations in the affected areas of Sichuan Province have been shut down due to safety concerns. Although our operations were not affected by the earthquakes in Sichuan Province, there can be no assurance that we may not be directly or indirectly affected by similar natural disasters in the future.

***Our business depends substantially on the continuing efforts of our executive officers and qualified technical personnel, and our business may be severely disrupted if we lose their services.***

Our industry is characterized by high demand and intense competition for talent. Our strategy and success therefore depends substantially on the continued services of our executive officers and, to a significant extent, on

## Table of Contents

our ability to attract, train and retain qualified technical personnel, particularly those with expertise in the solar and electronics industries. We depend on the efforts of Mr. Zhu Gongshan, our chairman, for a significant portion of our business operations. If one or more of our executive officers or key employees were unable or unwilling to continue in his or their present positions, we might not be able to replace him or them easily or at all. There is substantial competition for qualified technical personnel in China, and we cannot assure you that we will be able to attract new or retain our existing qualified technical personnel. As we are still a relatively young company and our business has grown rapidly, our ability to train and integrate new employees into our operations may not meet the growing demands of our business.

If any of our executive officers or key employees were to join a competitor or form a competing company, we may lose customers, suppliers, know-how and key professionals and staff members. Each of our executive officers has entered into an employment agreement with us, which contains non-competition provisions. However, if any dispute arises between our executive officers or key employees and us, we cannot assure you the extent to which any of these employment agreements could be enforced in China or Hong Kong, where these executive officers and key employees reside, in part as a result of the uncertainties with China's legal system. See "—Risks Relating to Doing Business in China—Uncertainties with respect to the Chinese legal system could have a material adverse effect on us."

***Our chairman recently resigned from his position as our chief executive officer and will not devote as much time and attention to us as he did in the past.***

Mr. Zhu Gongshan, our chairman, was also our chief executive officer in a formative period of our development. He is also the chairman of GCL-Poly Energy Holdings Limited, or GCL-Poly, a company listed on the Hong Kong Stock Exchange. He is also the head of the Golden Concord Group and actively involved in several businesses within such group. The Golden Concord Group has portfolio companies in fuel production, procurement, transportation and power plant safety. Mr. Zhu Gongshan, in his non-executive role, will devote less attention to the operation and management of our business than in past periods.

***Our existing shareholders have substantial influence over our company and their interests may not be aligned with the interests of our other shareholders.***

Mr. Zhu Gongshan, our chairman, will beneficially own approximately \_\_\_\_\_ % of our outstanding ordinary shares upon completion of this offering, assuming no exercise of the over-allotment option, and \_\_\_\_\_ % of our outstanding ordinary shares upon completion of this offering assuming the full exercise of the over-allotment option. As such, Mr. Zhu Gongshan has substantial influence over our business, including decisions regarding mergers, consolidations and the sale of all or substantially all of our assets, election of directors and other significant corporate actions, timing and amount of our dividend payments, and otherwise controls or influences actions that require the approval of our shareholders.

This concentration of ownership may discourage, delay or prevent a change in control of our company, which could deprive our shareholders of an opportunity to receive a premium for their shares as part of a sale of our company and might reduce the price of our ADSs. These actions may be taken even if they are opposed by our other shareholders, including those who purchase ADSs in this offering. Furthermore, our amended articles of association, which will become effective immediately upon the closing of this offering, contain a quorum requirement of two of our members present in person or by proxy representing in excess of 50% of the total issued voting shares in our company. Existing shareholders may approve actions which may not be in the best interest of our minority shareholders. In addition, Mr. Zhu Gongshan controls the Golden Concord Group. As a result, his interests in the Golden Concord Group may conflict with the interests of our other shareholders, as he may cause us to enter into transactions or take (or fail to take) other actions or make decisions that conflict with the best interests of our other shareholders.

---

## [Table of Contents](#)

***Any failure by us to control the use or to adequately restrict the discharge of hazardous substances or to obtain work safety and professional health approvals could subject us to potentially significant monetary damages and fines or suspensions in our business operations.***

We use, generate, store and discharge toxic, volatile and otherwise hazardous chemicals and wastes in our research and development and production processes, and we are subject to regulations and periodic monitoring by local environmental protection and work safety authorities and are required to comply with all PRC national and local environmental protection and work safety laws and regulations. Under PRC environmental and work safety regulations, we are required to obtain a pollutant discharging permit, a work safety permit for the storage and use of hazardous chemicals and a permit for the use of atmospheric pressure containers, from relevant governmental authorities after we have completed the installation of our manufacturing lines but before the manufacturing lines commence formal commercial production. We are also required to undergo the acceptance inspections of environmental protection, work safety and professional health and obtain respective approval with relevant governmental authorities before the manufacturing lines commence full production. We have obtained the pollutant discharge permit, the work safety permit for storage and use of hazardous chemicals and permit for the registration of use of atmospheric pressure containers for the pressure containers we have installed. We passed the environmental protection examination and work safety examination for our Phase I production facility in June 2008 and have received government approval in connection with professional health for Phase I production facility in July 2008. We obtained the environmental and work safety approvals for the pilot production of our Phase II production facility on May 21, 2008 and July 30, 2008, respectively. Since the pilot production period of our Phase II production facility expired on August 21, 2008, we must obtain the necessary environmental work safety and professional health approvals. We currently expect to obtain these approvals by the end of 2008. However, there can be no assurance that we will pass the necessary examinations and receive the necessary approvals for our Phase II, Phase III and other production facilities.

We obtained the work safety approval for pilot production at our Taixing joint venture on August 2, 2008 but currently lack environmental approval for pilot production. We are also required to obtain a health approval relating to occupational disease hazards, for which we need to prepare an assessment report for the city of Taixing. We have not prepared such report yet and if, upon review of our report, the city of Taixing deems our business has a high risk of occupational disease, we will also be subject to an occupational disease prevention examination in accordance with the Interim Examination Measure on the Occupational Hygiene of Construction Projects in the Jiangsu Province.

If we fail to comply with relevant environmental work safety and professional health laws, regulations and/or administrative rules relating to hazardous materials and chemicals in the future, we may be required to pay fines, suspend production or cease operation. In addition, if more stringent regulations are adopted in the future, the costs of compliance with these new regulations could be substantial. Any failure by us to control the use of, or to adequately restrict the discharge of, hazardous substances could subject us to potentially significant monetary damages and fines or suspensions in our business operations.

***Our ability to cost-effectively manufacture polysilicon depends on our ability to recycle the STC produced as a by-product of the polysilicon production process into TCS, which ability is materially dependent on our continued ability to install and integrate our hydrochlorination process into a closed loop system and our ability to install and operate a hydrogenation process and TCS production capability in our facilities.***

Our ability to recycle the STC produced as a by-product from the polysilicon production process into TCS is a critical factor in reducing production costs and environmental costs and is principally accomplished through hydrochlorination and hydrogenation.

We apply a hydrochlorination process in a closed loop application in our production facility to date. We have licensed our hydrochlorination process technology from Hualu Engineering Technology Co., Ltd, or Hualu,

---

## [Table of Contents](#)

and Xuzhou Southeast Polysilicon Materials Research and Development Ltd., or Xuzhou Southeast, which are relatively new participants in hydrochlorination process design. We are currently the sole licensee of this intellectual property. Hualu and Xuzhou Southeast are in the process of applying for the utility model patent and the inventory patent for the intellectual properties we are licensing from them. The State Intellectual Property Office of the PRC has notified them that their utility model patent application has been examined and approved and will be formally granted and registered upon full payment of related application fees in the required time limit. The invention application is still under examination and has been published for public review since April 2008. We cannot assure you that Hualu and Xuzhou Southeast will be granted such patents. Moreover, we cannot assure you that they have not infringed other market participants' patents, trade secrets, know-how or other intellectual properties. Because the relevant technologies we licensed from Hualu and Xuzhou Southeast have not previously been tested on a commercial scale, we cannot assure you that we will be successful in operating the hydrochlorination process on a continuing basis or with high conversion rates.

We commenced construction of a hydrogenation and a TCS production facility in Xuzhou in August 2008 which is designed to have a capacity to produce up to 90,000 MT of TCS per year by the third quarter of 2009. This is a separate facility to produce TCS which can then be used in our production process. We are purchasing equipment for the facility which includes the rights to the intellectual property incorporated into such equipment, but we have no experience in constructing, installing or operating a facility that employs the hydrogenation process. Our ability to cost-effectively manufacture polysilicon will depend, in part, on our ability to operate the hydrochlorination and hydrogenation process to produce TCS from STC efficiently.

Unless we are able to integrate our hydrochlorination or hydrogenation processes at our production facilities and increase production yields and benefit from efficiencies in purchasing, manufacturing, sales and shipping, we may not be able to achieve lower costs per unit of production, which would decrease our margins and lower our profitability. In addition, we do not have any proprietary access to hydrochlorination or hydrogenation technologies and our competitors may have access to better technologies or have greater resources and the ability to develop advanced process technologies based on the intellectual property to which we have access. If our current licenses with Hualu and Xuzhou Southeast are terminated, there can be no assurance that we will be able to independently develop equivalent technology successfully or obtain licenses for alternative technologies, or that we will be able to redesign our production lines to eliminate the need for such a license. Any of the foregoing factors could materially and adversely affect our business, operating results or financial condition.

***Our failure to protect our intellectual property rights may undermine our competitive position, and litigation to protect our intellectual property rights may be costly and may not be resolved in our favor.***

We seek to protect our proprietary production processes, documentation and other written materials primarily through intellectual property laws and contractual restrictions. However, we have not obtained patent protection for our technology related to our polysilicon production processes. Instead, we rely on know-how, trade secrets and other similar protections. We also require employees and consultants with access to our proprietary information to execute confidentiality agreements with us. The steps taken by us to protect our proprietary information may not be adequate to prevent misappropriation of our technology. In addition, our proprietary rights may not be adequately protected because:

others may not be deterred from misappropriating our technologies despite the existence of laws or contracts prohibiting it;

policing unauthorized use of our intellectual property may be difficult, expensive and time-consuming, and we may be unable to determine the extent of any unauthorized use; and

the intellectual property laws and enforcement proceedings in China are uncertain and do not protect intellectual property rights to the same extent as do the laws and enforcement procedures in the United States. See “–Risks Relating to Doing Business in China–Uncertainties with respect to the PRC legal system could have a material adverse effect on us.”

Reverse engineering, unauthorized copying or other misappropriation of our proprietary technologies could enable third parties to benefit from our technologies without paying us for doing so. Any inability to adequately protect our proprietary rights could harm our ability to compete, to generate revenue and to grow our business.



---

## [Table of Contents](#)

To protect our intellectual property rights and to maintain our competitive advantage, we may file suits against parties who we believe infringe our intellectual property. Such litigation may be costly and may divert management attention and expend our resources away from our business. In certain situations, we may have to bring suit in foreign jurisdictions, in which case we will be subject to additional risks as to the result of the proceedings, the amount of damages that we can recover and our ability to enforce a judgment. An adverse determination in any such litigation will impair our intellectual property rights and may harm our business, prospects and reputation. In addition, we have no insurance coverage against litigation costs and would have to bear all costs arising from such litigation to the extent we are unable to recover them from other parties. The occurrence of any of the foregoing could have a material adverse effect on our business, results of operations and financial condition.

***Although we are currently strengthening our research and development capability, to date, substantially all of the intellectual property used in our polysilicon production process was developed by third parties. We may be exposed to infringement or misappropriations claims by third parties which, if determined adversely to us, could cause us to pay significant damage awards.***

Our success depends largely on our ability to develop and use our technology and know-how without infringing the intellectual property rights of third parties. The validity and scope of claims relating to technology patents involve complex scientific, legal and factual questions and analysis and, therefore, may be highly uncertain. While we have a non-exclusive license from Hualu for the hydrochlorination process, for other steps of our production process, we do not have any patents or licenses. Hualu has also entered into agreements with us for the design of the production process for our Phase I, Phase II and Phase III production facilities. Although Hualu has represented to us that it has not violated any third party intellectual property rights in providing us the designs for our production facilities, these agreements only provide us with indemnity for a maximum of 50% of the total value of the agreements we have entered into with them in the event that we incur losses for intellectual property infringement claims as a result of engaging Hualu.

We also rely on protection against infringement claims afforded in the intellectual property indemnification provisions under our equipment supply contracts. Most of our equipment supply contracts with international suppliers include an indemnification provision, under which the supplier undertakes to indemnify us against actions, claims, demands, costs, charges, and expenses arising from or incurred by reason of any infringement or alleged infringement of patents, copyrights, trade marks or trade names by the use of the equipment provided by the supplier. However, it is unclear that we will be entitled to such indemnification in the event that we use the equipment supplied by such supplier in conjunction with other equipment not supplied by such supplier. In addition, a portion of our equipment from international manufacturers were supplied by several intermediate trading companies, not the manufacturer themselves. There is no assurance that such intermediate trading companies have sufficient assets to meet their indemnification obligations under their equipment supply contracts with us. Moreover, some of our equipment supply contracts with domestic suppliers do not provide any intellectual property indemnification provisions.

Historically, China has afforded less protection to a company's intellectual property than the United States and western Europe. The defense and prosecution of intellectual property suits, patent opposition proceedings and related legal and administrative proceedings can be both costly and time consuming and may significantly divert the efforts and resources of our technical and management personnel. An adverse determination in any such litigation or proceedings to which we may become a party could subject us to significant liability to third parties, require us to seek licenses from third parties, to pay ongoing royalties, or to redesign our products or subject us to injunctions prohibiting the manufacture and sale of our products or the use of our technologies. Protracted litigation could also result in our customers or potential customers deferring or limiting their purchase or use of our products until resolution of such litigation.

***Assertions that we or our affiliates have participated in misappropriation of trade secrets could result in severe monetary damages or injunctive relief.***

The polysilicon industry in China, and especially in Sichuan Province and Jiangsu Province, has received a great deal of attention with respect to potential trade secret violations. In response to departures of employees of

## [Table of Contents](#)

certain Sichuan Province-based silicon companies and the increasing development of the silicon-based industry in Jiangsu Province, representatives from the Sichuan and Jiangsu provincial governments met on several occasions in 2007 and 2008 to discuss the development of the solar industry in China in general and the issues arising from a specific ex-employee of a polysilicon manufacturer in Sichuan Province. This individual was detained and convicted of trade secret theft and sentenced to imprisonment and a RMB1.0 million fine. Although certain news articles indicated that the Sichuan manufacturer's commercial secrets alleged to be misappropriated by the ex-employee were provided to JZPTD, our domestic operating company, and were used in JZPTD's production process, neither we nor any of our affiliates has been named a party to any trade secret or other intellectual property case, civil or criminal. One news report indicated that the convicted individual collaborated with representatives of JZPTD and that JZPTD should be severally responsible for the damage caused, which the news report stated the court found to be RMB34.1 million (\$4.9 million). Although we do not believe that we have infringed on any party's intellectual property, we may nevertheless be subject in the future to civil intellectual property infringement claims or criminal prosecution against us, JZPTD or our other affiliates. If we lose in any such claim, we may be subject to severe monetary damages and/or injunctive relief, any of which would have a material impact on our reputation and results of operations.

***Our operations present risks of fire, explosions and other accidents that can create damage to our property or third-parties and we have limited insurance coverage. Such accidents may result in losses from operating hazards, product liability claims or business interruptions.***

As with other polysilicon producers, our operations involve the use, handling, generation, processing, storage, transportation and disposal of hazardous materials, which may result in fires, explosions, spills and other unexpected or dangerous accidents causing personal injuries or death, property damage, environmental damage and business interruption.

We are also exposed to risks associated with product liability claims in the event that the use of our wafers results in injury. Since our wafers are made into electricity producing devices, any product malfunctions, defects, improper installations or other deficiencies may endanger wafer users. Due to our limited operating history, we cannot predict whether product liability claims will be brought against us in the future or the effect of any resulting negative publicity on our business. Moreover, we do not have any product liability insurance and may not have adequate resources to satisfy a judgment in the event of a successful claim against us. The successful assertion of product liability claims against us could result in potentially significant monetary damages and require us to make significant payments. In addition, as the insurance industry in China is still in an early stage of development, business interruption insurance available in China offers limited coverage compared to that offered in many other countries. We cannot assure you that our existing insurance policies are sufficient to insulate us from all loss and liabilities that we may incur and significant damage to any of our production facilities could have a material adverse effect on our business, financial condition or results of operations.

***We have previously operated as a private company and have no experience in attempting to comply with U.S. public company obligations. In addition, we only recently began to prepare our financial reports in accordance with U.S. GAAP. Attempting to comply with these requirements will increase our costs and require additional management resources, and we still may fail to comply.***

We only recently began to prepare our financial reports in accordance with U.S. GAAP. We recently hired a new chief financial officer who has no prior experience with our company. Although we are in the process of expanding our accounting and finance staff, we expect to encounter substantial difficulty attracting qualified staff with requisite experience due to the high level of competition for experienced financial professionals. In the short term, we are providing training for our current staff with respect to U.S. GAAP. However, our training may not be effective.

We will face increased legal, accounting, administrative and other costs and expenses as a public company that we did not incur as a private company. Compliance with the U.S. Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, as well as other rules of the Securities and Exchange Commission, or the SEC, the Public Company

---

## [Table of Contents](#)

Accounting Oversight Board and the New York Stock Exchange, will result in significant initial costs to us as well as an ongoing increase in our legal, audit and financial compliance costs, and we still may fail to comply.

***If we are unable to remedy the material weakness and significant deficiencies in our internal control over financial reporting, we may be unable to timely and accurately record, process and report financial data or comply with disclosure controls and procedures, internal control over financial reporting and other obligations.***

During the course of the preparation and external audit of our consolidated financial statements as of December 31, 2006 and 2007 and for the period from March 7, 2006 to December 13, 2006 (predecessor), the period from November 13, 2006 to December 31, 2006 (successor) and the year ended December 31, 2007 (successor), we and our independent registered public accounting firm identified a number of deficiencies in our internal control over financial reporting, including a number of material weaknesses and significant deficiencies, as defined in the standards established by the U.S. Public Company Accounting Oversight Board.

The material weaknesses identified were: (1) lack of an accounting policies and procedures manual; and (2) a lack of dedicated financial reporting and accounting resources necessary to comply with U.S. GAAP. In addition, we and our independent registered public accounting firm identified certain significant deficiencies in our internal control over financial reporting. These significant deficiencies were: (1) lack of a risk assessment process; and (2) related party transactions were not accounted for separately from non-related party transactions. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations–Internal Control Over Financial Reporting.”

Material weaknesses and significant deficiencies in our internal control over financial reporting could result in a material misstatement of our financial statements that will not be prevented or detected. As a result, we have taken action and measures to significantly improve our internal control over financial reporting in order to obtain reasonable assurance regarding the reliability of our financial statements. However, we have not yet implemented all of these actions and measures and tested them. Furthermore, we cannot assure you if or when we will be able to remedy these control deficiencies, that our independent registered public accounting firm will agree with our assessment, or that additional material weaknesses or significant deficiencies in our internal control over financial reporting will not be identified in the future. If the control deficiencies we have identified recur, or if we identify additional weaknesses or deficiencies or fail to implement new or improved controls successfully in a timely manner, we may be unable to issue timely and accurate financial reports and investors could lose confidence in the reliability of our financial statements, which in turn could have a material adverse effect on the trading price of our ADSs, or otherwise harm our reputation.

We will be subject to reporting obligations under the U.S. securities laws upon completion of this offering. The SEC, as required by Section 404 of the Sarbanes-Oxley Act, adopted rules requiring each public company to include a management report on such company’s internal controls over financial reporting in its annual report, which contains management’s assessment of the effectiveness of the company’s internal controls over financial reporting. In addition, an independent registered public accounting firm must attest to and report on the effectiveness of the company’s internal controls over financial reporting. These requirements will first apply to our annual report on Form 20-F for the fiscal year ending on December 31, 2009. Our management may conclude that our internal controls over our financial reporting are not effective. Moreover, even if our management concludes that our internal controls over financial reporting are effective, our independent registered public accounting firm may still issue a report that is qualified if it is not satisfied with our internal controls or the level at which our controls are documented, designed, operated or reviewed, or if it interprets the relevant requirements differently from us.

We plan to continue to address and remedy these deficiencies in time to meet the deadline for compliance with the requirements of Section 404 of the Sarbanes-Oxley Act. If, however, we fail to timely achieve and maintain the adequacy of our internal controls, we may not be able to conclude that we have effective internal controls over financial reporting. Moreover, effective internal controls over financial reporting are necessary for us to produce reliable financial reports and are important to help prevent fraud. Furthermore, we anticipate that

---

## [Table of Contents](#)

we will incur considerable costs and devote significant management time and efforts and other resources to comply with Section 404 of the Sarbanes-Oxley Act.

***The grant of employee share options and other share-based compensation will dilute your investment in us and will reduce our reported net income.***

On February 29, 2008, we granted 5,000,000 options to purchase 50,000,000 ordinary shares in the aggregate to our directors, officers and certain other employees and consultants at an exercise price of \$0.50 per share. These options can only be exercised if we successfully complete this offering. As this grant price is substantially below the estimated initial offering price, if option holders exercised their options, such exercises will be dilutive to purchasers in this offering. In accordance with the Financial Accounting Standards Board, or FASB, Statement No. 123 (Revised 2004), Share-Based Payment or SFAS No. 123R, we account for compensation costs for all share options including share options granted to our directors and employees using a fair-value based method. The estimated fair value for the 5,000,000 options granted under the share incentive plan aggregates \$69.4 million. Such amount will begin to amortize on the closing of this offering as an expense over the vesting period for the options, which ends at the end of the 48th month after the closing of this offering. Assuming this offering is completed by the end of September 2008, we expect the amortization will decrease our net profit attributable to holders of our ordinary shares by \$21.7 million in the second half of 2008, which will be recognized entirely in the fourth quarter of 2008 and \$23.4 million will be recognized in 2009. We have adopted a restricted share compensation plan that provides for the grant of up to 15,000,000 restricted shares in the future. See “Management–2008 Restricted Share Compensation Plan”.

***Future acquisitions and expansion into the production of wafers may have an adverse effect on our financial condition and results of operations.***

We intend to produce wafers in-house and may consider future acquisitions of or investments in existing wafer manufacturers. We are currently in preliminary discussions with one of our tolling wafer manufacturers, Huasheng, regarding the potential purchase of the business. Such discussions are preliminary and there can be no assurance that any transaction will occur. We will likely acquire technologies, businesses or assets in businesses other than polysilicon production. Future acquisitions could expose us to potential risks, including risks associated with the assimilation of new technologies, businesses and personnel, unforeseen or hidden liabilities, the diversion of management attention and resources from our existing business, and the inability to generate sufficient revenue to offset the costs and expenses of acquisitions. Further, we have no experience in the business of ingot or wafer production. There can be no assurance we will be successful in producing wafers in-house. Any difficulties encountered in the acquisition of, or expansion into, any business other than polysilicon production may have an adverse effect on our financial condition and results of operations.

### **Risks Relating to Our Industry**

***Prices for polysilicon and wafers are expected to decline in the next few years, which is reflected in the pricing of our supply contracts, and could adversely affect our gross margin.***

According to Solarbuzz’ s Balanced Energy Forecast Scenario, global average polysilicon capacity is projected to grow from 63,000 MT per year in 2008 to 234,000 MT per year by 2012. If current capacity expansion plans are met, the polysilicon production industry may experience a period of excess capacity. During a period of excess capacity, polysilicon producers will experience pricing pressures and may be forced to reduce polysilicon prices until such time, if ever, as demand increases to such extent to offset such overcapacity. In addition, our polysilicon supply agreements provide for substantial reductions in the prices we will be paid over the life of the agreements. If the price of polysilicon decreases faster than we are able to reduce our manufacturing costs, our operating margins will be reduced and our financial condition and results of operations may be adversely affected.

According to Solarbuzz, wafer prices on a per-watt basis are expected to decline in the next few years. Our wafer supply agreements provide for substantial reductions in the prices we will be paid over the life of these



---

## [Table of Contents](#)

agreements. If we are unable to lower our costs in line with the price decline, our gross margins would be adversely affected. In addition, if polysilicon availability increases and prices decline faster than we are able to reduce our manufacturing costs, wafer manufacturers may be more inclined to produce wafers for their own sales and their willingness to enter into tolling agreements may decrease.

***Our future growth and profitability depend on the demand for solar power and semiconductor products and the development of solar power and semiconductor technologies.***

The solar industry is at a relatively early stage of development, and the extent of acceptance of solar power products is uncertain. Market data on the solar power industry are not as readily available as those for the electronics industry and other more established industries for which trends can be assessed more reliably from data gathered over a longer period of time. In addition, demand for solar power may not develop or may develop to a lesser extent than we anticipate. Many factors may affect the viability of widespread adoption of solar power technology and demand for solar power products, including:

decreases in government subsidies and incentives to support the development of the solar power industry;

the relative cost-effectiveness, performance and reliability of solar power products compared to conventional and other renewable energy sources and products;

success of other alternative energy sources, such as wind power, hydroelectric power and biofuel;

fluctuations in economic and market conditions that affect the viability of conventional and other renewable energy sources, such as increases or decreases in the prices of oil and other fossil fuels;

capital expenditures by end users of solar power products, which tend to decrease when the economy slows down; and

deregulation or other regulatory actions affecting the electric power industry and broader energy industry.

The electronics industry has experienced substantial and sustained growth globally over the last 20 years. In the PRC, demand for semiconductor products has been a more recent phenomenon and growth may not be sustained. Moreover, semiconductor technology development may not lead to greater demand for silicon-based products. In a mature industry it may be more difficult for us to break into the polysilicon market if demand growth is not sustained.

In the event demand for solar and semiconductor products does not expand as we expect or solar power or semiconductor technologies do not develop in a manner consistent with continued demand for polysilicon, our future growth and profitability will be adversely affected.

***The reduction or elimination of government subsidies and economic incentives could cause demand for our products and our revenue to decline.***

We believe that the near-term growth of the market for on-grid applications of solar energy depends in large part on the availability and size of government subsidies and economic incentives. The reduction or elimination of government subsidies and economic incentives may hinder the growth of this market or result in increased price competition for solar energy products, which could cause our revenue to decline.

Today, when upfront system costs are factored into cost per kilowatt hour, the cost of solar power substantially exceeds the cost of power furnished by the electric utility grid in many locations. As a result, federal, state and local governmental bodies in many countries, such as Germany, Spain, Italy, the United States, Japan and China, have provided subsidies and economic incentives in the form of feed-in tariffs, rebates, tax credits and other incentives to distributors, system integrators and manufacturers of solar power products to promote the use of solar energy in on-grid applications and to reduce dependency on other forms of energy. These government subsidies and economic incentives could be reduced or eliminated altogether. For example, Germany has been a strong supporter of solar power products and systems. Utilities in Germany are generally obliged to purchase electricity generated from grid-connected solar power installations at defined feed-in tariff rates, which decline over time according to a predetermined schedule. Any political or market changes in



Germany could result in significant reductions or the elimination of subsidies or economic incentives, such as a more accelerated reduction of feed-in tariffs than as planned according to the current schedule. Reductions in, or elimination of, government subsidies and economic incentives for on-grid solar energy applications before the solar power industry reaches the economies of scale necessary for solar power to become cost-effective in a non-subsidized market place could result in decreased demand for solar generation products and, as a result, for polysilicon, which could cause our revenue to decline.

***Existing regulations and policies and changes to these regulations and policies may present technical, regulatory and economic barriers to the purchase and use of solar power products, which may significantly reduce demand for our products.***

The market for electricity generation products is heavily influenced by government regulations and policies concerning the electric utility industry, as well as policies adopted by electric utilities. These regulations and policies often relate to electricity pricing and technical interconnection of customer-owned electricity generation. In a number of countries, these regulations and policies are being modified and may continue to be modified. Customer purchases of, or further investment in the research and development of, alternative energy sources, including solar power technology, could be deterred by these regulations and policies, which could result in a significant reduction in the potential demand for our products. For example, without a regulatory mandated exception for solar power systems, utility customers are often charged interconnection or standby fees for putting distributed power generation on the electric utility grid. These fees could increase the cost to the end customers of using the solar power products and make them less desirable, thereby harming our business, prospects, results of operations and financial condition.

We anticipate that our customers' products that use polysilicon will be subject to oversight and regulation in accordance with national and local regulations relating to building codes, safety, environmental protection, utility interconnection and metering and related matters. New government regulations or utility policies pertaining to solar power products may result in significant additional expenses to our customers and, as a result, could cause a significant reduction in demand for our products.

***Alternative technologies in cell manufacturing may replace the need to use polysilicon or wafers such as the wafers we sell and intend to manufacture in solar applications.***

The vast majority of silicon-based solar cell manufacturers uses chunk or granular polysilicon. However, alternative technologies are being developed. One such technology, thin-film cell production, uses little to no amounts of silicon in the production of solar cells. Thin-film solar cells are currently less costly to produce than silicon-based solar cells. Significant expansion of thin-film solar cell production has been announced which may put pressure on the entire value chain of silicon-based solar cell production. This expansion may in turn restrict the market for silicon-based solar cells which would decrease the demand for our polysilicon and wafers. The further development of thin-film or other alternative technologies may have a significant impact on the solar industry by reducing the necessity for wafers made from polysilicon. If the demand for polysilicon or wafers is negatively affected by increased demand for and improvements to alternative technologies, our revenue and results of operations could be negatively affected.

***Further development in the fluidized bed reactor, or FBR, method, upgraded metallurgical silicon or other alternative polysilicon production technologies or other changes in the solar power industry could render our production process too costly or obsolete, which could reduce our market share and cause our sales and profits to decline.***

Although the vast majority of the polysilicon produced in the world utilizes the Siemens process, several alternative production processes that may have significantly lower production costs have been developed. A clear disadvantage of the Siemens process is the large volume of electricity required. MEMC, REC and Wacker are three competitors that operate or are constructing facilities that use the FBR method for producing polysilicon. Tokuyama has developed a polysilicon technology called the "Vapor-to-Liquid Deposition" process. Companies such as Becancour, Dow Corning, Elkem and others are establishing facilities for the production of upgraded metallurgical silicon.



---

## [Table of Contents](#)

Further developments in competing polysilicon production technologies may result in lower manufacturing costs or higher product performance than those achieved from Siemens processes, including the one we employ. We will need to invest significant financial resources in research and development to expand our market position, keep pace with technological advances in polysilicon production and effectively compete in the future. Failure to further refine our technology could make our production process too costly or obsolete, which could reduce our margins and market share, cause our revenue to decline and adversely affect our results of operations.

### **Risks Relating to Doing Business in China**

*If we were required to obtain the prior approval of the China Ministry of Commerce, or MOFCOM, for or in connection with our restructuring, or of the China Securities Regulatory Commission, or the CSRC, for or in connection with this offering and the listing and trading of our ADSs on the New York Stock Exchange, our failure to do so could have a material adverse effect on our business, operating results, reputation and trading price of our ADSs, and may also create uncertainties for this offering.*

On August 8, 2006, six PRC regulatory agencies, including the CSRC, promulgated a regulation, or Regulation No. 10, that became effective on September 8, 2006. This regulation has provisions that purport to require an offshore special purpose vehicle, or SPV, formed for listing purposes and controlled directly or indirectly by PRC companies or individuals to obtain the approval of the CSRC prior to the listing and trading of such SPV's securities on an overseas stock exchange. On September 21, 2006, the CSRC published on its official website procedures specifying documents and materials required to be submitted to it by SPVs seeking CSRC approval of their overseas listings. However, the application of this PRC regulation remains unclear and no consensus currently exists among the leading PRC law firms regarding the scope and applicability of the CSRC approval requirement.

JZPTD was originally controlled by Mr. Zhu Gongshan through two PRC domestic entities which were direct equity holders of JZPTD. In December 2006, GCL HK acquired its initial 64% equity interest in JZPTD from these two PRC domestic entities, or the GCL HK acquisition. At the time of the GCL HK acquisition, GCL HK was a subsidiary of Happy Genius, which was controlled by Mr. Zhang Songyi. In September 2007, after the reorganization discussed in "Corporate Structure – Ownership of Our Business", Mr. Zhu Gongshan, through Boulina, purchased 100% of the total outstanding shares of Happy Genius from entities controlled by Mr. Zhang Songyi, or the Boulina acquisition. Mr. Zhang and Mr. Zhu had no affiliated relationship or entrustment arrangement for the GCL HK acquisition and the Boulina acquisition at the time of any of these two acquisitions.

Our PRC counsel, Grandall Legal Group, has advised us, based on their understanding of the current PRC laws, regulations and the procedures announced on September 21, 2006, and subject to any future rules, regulations, requirements, or explanations to the contrary promulgated by competent PRC governmental authorities, that:

the CSRC approval requirement under Regulation No. 10 described above is only applicable to an offshore special purpose vehicle which is defined as an offshore entity formed for listing purposes and controlled directly or indirectly by PRC domestic companies or individuals. Neither Mr. Zhu Gongshan nor Mr. Zhang Songyi is a PRC domestic natural person under Regulation No. 10. Mr. Zhu Gongshan, who currently controls our company, was not a PRC domestic natural person at the time of, or subsequent to, the GCL HK acquisition or the Boulina acquisition, and has not been a PRC domestic natural person since the GCL HK acquisition, as Mr. Zhu Gongshan has maintained non-immigrant permanent residency in the Philippines since 2002 and residency in Hong Kong since 2004, and deregistered his PRC residency in 2005. Mr. Zhang Songyi, a director and our second largest shareholder, was not a PRC domestic natural person at the time of, or subsequent to, the GCL HK acquisition or the Boulina acquisition, as Mr. Zhang Songyi has always been a permanent resident of Hong Kong. Our Company is not an offshore special purpose vehicle as defined in Regulation No. 10 since our Company is not directly or indirectly controlled by any PRC domestic enterprise or individuals. Therefore, we are not required to submit applications to the CSRC for its approval for the listing and subsequent trading of our ADSs on the New York Stock Exchange.



---

## [Table of Contents](#)

Article 11 of Regulation No. 10 requires domestic enterprises or domestic natural persons to submit application to the MOFCOM for approval when they, in the name of the offshore companies legally established or controlled by them, merge or acquire domestic companies having a connected relationship with them. The GCL HK acquisition did not require MOFCOM approval since no affiliated relationship existed between the GCL HK and the selling equity holders of JZPTD. Regulation No. 10 was not applicable to the Boulina acquisition since the Boulina acquisition did not involve any PRC domestic enterprise and was not subject to any PRC laws on cross border transactions. Since there was no affiliated relationship or arrangement between Mr. Zhu Gongshan and Mr. Zhang Songyi for the GCL HK acquisition and the Boulina acquisition, Mr. Zhu Gongshan and Mr. Zhang Songyi have not circumvented such MOFCOM approval requirement under Regulation No. 10, and the GCL HK acquisition and the Boulina acquisition, taken as a whole, will not be regarded as a circumvention of relevant approval requirement under Regulation No. 10. Therefore, the MOFCOM approval requirement under Regulation No. 10 is not applicable to the GCL HK acquisition, the Boulina acquisition or the combination of these two acquisitions, and we are not required to submit an application to the CSRC to obtain its approval.

A copy of Grandall Legal Group's legal opinion regarding this new PRC regulation is being filed as an exhibit to our registration statement on Form F-1, which is available at the website of the SEC at [www.sec.gov](http://www.sec.gov).

The application of Regulation No. 10 is unclear in certain respects, including the definition of a PRC domestic natural person and what constitutes a circumvention of its approval requirements. If the MOFCOM or the CSRC subsequently determines that MOFCOM approval of the transfer of JZPTD or CSRC approval was required for this offering, we may face regulatory actions or other sanctions from the MOFCOM or the CSRC or other PRC regulatory agencies. These regulatory agencies may impose fines and penalties on our operations in the PRC, limit our operating privileges in the PRC, delay or restrict the repatriation of the proceeds from this offering into the PRC, restrict or prohibit payment or remittance of dividends by JZPTD, or take other actions that may have a material adverse effect on our business, financial condition, results of operations, reputation and prospects, as well as the trading price of our ADSs. The CSRC or other PRC regulatory agencies also may take actions that require us, or make it advisable for us, to halt this offering before settlement and delivery of the ADSs offered hereby. Consequently, if you engage in market trading or other activities in anticipation of and prior to settlement and delivery, you do so at the risk that settlement and delivery may not occur.

Also, if the CSRC requires in the future that we obtain its approval for any part of our reorganization, we may be unable to obtain a waiver of the CSRC approval requirements, if and when procedures are established to obtain such a waiver. Any uncertainties and/or negative publicity regarding this CSRC approval requirement could have a material adverse effect on the trading price of our ADSs.

***Recent regulations relating to offshore investment activities by PRC residents may limit our ability to acquire PRC companies and could adversely affect our business, financial condition and results of operations.***

In October 2005, the SAFE promulgated a regulation entitled "Circular on several issues concerning foreign exchange regulation of corporate finance and roundtrip investments by PRC residents through special purpose companies incorporated overseas," or Circular No. 75. Circular No. 75 states that PRC residents, including both legal persons and natural persons, must register with the relevant local SAFE branches before establishing or controlling any company outside of China with assets or equity interests in PRC companies for the purpose of capital financing. Any such company is referred to as an "offshore special purpose company". Although we believe that Circular No. 75 does not apply to the sale of the interest in JZPTD to Happy Genius in December 2006 because Happy Genius was set up and owned by Mr. Zhang Songyi, who was a permanent Hong Kong resident at the time of sale and has not been a PRC resident since then, we cannot assure you that SAFE will not interpret Circular No. 75 to apply to the transactions through which our shareholders acquired their interests and conclude that under Circular No. 75 one or more of our existing shareholders should be treated as PRC domestic residents required to register with SAFE. Such PRC residents must also file amendments to their registrations if their offshore companies are engaged in material events involving capital variation, such as changes in share



---

## Table of Contents

capital, share transfers, mergers and acquisitions, spin-off transactions, long-term equity or debt investments or creation of any security interest over any assets located in China or any other material change in share capital. Under Circular No. 75, PRC domestic residents are allowed to pay profits to offshore special purpose companies in the form of dividends, to transfer shares in liquidation of a company, to decrease capital and take similar actions only after effecting registration pursuant to the registration procedures set forth in such regulation. Failure to comply with the registration procedures may result in restrictions being imposed on the foreign exchange activities of the relevant PRC entity, including the payment of dividends and other distributions to its offshore parent company, as well as restrictions on the capital inflow from the offshore entity to the PRC entity. We understand that any future failure by any of our shareholders who is a PRC resident, or controlled by a PRC resident, to comply with relevant requirements under Circular No. 75 could subject our company to fines or sanctions imposed by the PRC government, including restrictions on JZPTD's ability to pay dividends or make distributions to us and our ability to increase our investment in or to provide loans to JZPTD. According to the Regulation on the Foreign Exchange System of the PRC, as modified on August 5, 2008, or the Foreign Exchange Regulation, SAFE has been authorized to check the use of funds remitted from overseas.

As it is uncertain how SAFE will interpret or implement the Foreign Exchange Regulation and its Circular No. 75, we cannot predict how Circular No. 75 and other SAFE circulars will affect our business operations or future strategies. For example, we may be subject to a more stringent review and approval process with respect to our foreign exchange activities, such as remittance of dividends and foreign currency-denominated borrowings, which may adversely affect our business and prospects. See "PRC Government Regulation – Circular No. 75."

***Adverse changes in political and economic policies of the PRC government could have a material adverse effect on the overall economic growth of China, which could reduce the demand for our products and materially and adversely affect our competitive position.***

Substantially all of our business operations are conducted in China and we expect most of our sales will be made in China. Accordingly, we expect our business, financial condition, results of operations and prospects to be affected significantly by economic, political and legal developments in China. The Chinese economy differs from the economies of most developed countries in many respects, including the fact that it:

has a high level of government involvement;

is in the early stages of development of a market-oriented economy;

has tight government foreign exchange controls; and

has demonstrated inefficient allocation of resources.

While the Chinese economy has grown significantly in the past 20 years, the growth has been uneven, both geographically and among various sectors of the economy. The PRC government has implemented various measures to encourage economic growth and guide the allocation of resources. Some of these measures benefit the overall Chinese economy, but may have a negative effect on us. For example, our financial condition and results of operations may be adversely affected by government control over capital investments or changes in tax regulations that are applicable to us. The PRC government has implemented measures, including recent interest rate increases, to control the pace of economic growth.

The Chinese economy has been transitioning from a planned economy to a more market-oriented economy. Although in recent years the PRC government has implemented measures emphasizing the utilization of market forces for economic reform, the reduction of state ownership of productive assets and the establishment of sound corporate governance in business enterprises, a substantial portion of the productive assets in China are still

owned by the PRC government. The continued control of these assets and other aspects of the national economy by the PRC government could materially and adversely affect our business. The PRC government also exercises significant control over Chinese economic growth through the allocation of resources, controlling payment of foreign currency-denominated obligations, setting monetary policy and providing preferential treatment to particular industries or companies. Efforts by the PRC government to slow the pace of growth of the Chinese economy could result in decreased capital expenditure by solar energy users and semiconductor manufacturers, which in turn could reduce demand for our polysilicon and wafers.

Any adverse change in the economic conditions or government policies in China could have a material adverse effect on the overall economic growth and the level of renewable energy investments and expenditures in China, which in turn could lead to a reduction in demand for our polysilicon and wafers and consequently have a material adverse effect on our business.

***Uncertainties with respect to the Chinese legal system could have a material adverse effect on us.***

We conduct substantially all of our manufacturing operations through our wholly-owned subsidiary, JZPTD, a limited liability company established in China. JZPTD is generally subject to laws and regulations applicable to foreign investment in China. The PRC legal system is based on written statutes. Prior court decisions may be cited for reference but have limited precedential value. Since 1979, PRC legislation and regulations have significantly enhanced the protections afforded to various forms of foreign investments in China. However, since these laws and regulations are relatively new and the PRC legal system continues to rapidly evolve, the interpretations of many laws, regulations and rules are not always uniform and enforcement of these laws, regulations and rules involves uncertainties. We cannot predict the effect of future developments in the PRC legal system, including the promulgation of new laws, changes to existing laws or the interpretation or enforcement thereof, the preemption of local regulations by national laws, or the overturn of local government's decisions by the national government. These uncertainties may limit legal protections available to us. In addition, any litigation in China may be protracted and result in substantial costs and diversion of resources and management attention.

***PRC regulation of direct investment and loans by offshore holding companies to PRC entities may delay or limit us from using the proceeds of this offering to make additional capital contributions or loans to JZPTD.***

Any capital contributions or loans that we, as an offshore entity, make to JZPTD, including from the proceeds of this offering, are subject to PRC regulations. For example, none of our loans to JZPTD can exceed the difference between the total amount of investment in JZPTD approved under relevant PRC laws and the registered capital of JZPTD, and the loans must be registered with the local branch of the SAFE. In addition, our capital contributions to JZPTD must be approved by the PRC Ministry of Commerce and the NDRC or their respective local counterparts. We cannot assure you that we will be able to obtain these approvals on a timely basis, or at all. If we fail to obtain such approvals, our ability to make equity contributions or provide loans to JZPTD or to fund its operations may be negatively affected, which could adversely affect JZPTD's liquidity and its ability to fund its working capital and expansion projects and meet its obligations and commitments.

***An economic slowdown in China may adversely affect our financial condition and results of operations, as well as our future prospects.***

We conduct most of our business and generate most of our revenue in China. As a result, economic conditions in China have a significant effect on our financial condition and results of operations, as well as our future prospects. Since 1978, China has been one of the world's fastest growing economies in terms of GDP growth. We cannot assure you, however, that such growth will be sustained in the future. Moreover, the recent slowdown in the economies of the United States, the European Union and certain Asian countries may adversely affect economic growth in China. An economic downturn in China could adversely affect our financial condition and results of operations, as well as our future prospects.

***We will rely on dividends paid by our subsidiary for our cash needs.***

We will rely on dividends paid by our wholly-owned Chinese subsidiary, JZPTD, for our cash needs, including the funds necessary to pay dividends and other cash distributions, if any, to our shareholders, to service any debt we may incur outside of the PRC and to pay our offshore operating expenses. The payment of dividends by entities organized in China is subject to limitations. Regulations in the PRC currently permit payment of dividends only out of accumulated profits as determined in accordance with accounting standards and regulations in China. JZPTD is also required to set aside at least 10% of its after-tax profit based on PRC accounting standards each year to its general reserves until the accumulative amount of such reserves reach 50% of its registered capital. These reserves are not distributable as cash dividends. JZPTD is also required to allocate a portion of its after-tax profit, as determined by its board of directors, to its staff welfare and bonus funds, which may not be distributed to equity owners. In addition, if JZPTD incurs debt on its own behalf in the future, the instruments governing the debt may restrict its ability to pay dividends or make other distributions to us.

Pursuant to the new EIT Law and its Implementing Regulation, which became effective on January 1, 2008, dividends payable by a foreign-invested enterprise to its foreign investors are subject to a 10% withholding tax if the foreign investors are considered as non-resident enterprises without any establishment or place within China or if the dividends payable have no connection with the establishment or place of the foreign investors within China, unless any such foreign investor's jurisdiction of incorporation has a tax treaty with China that provides for a different withholding arrangement. As JZPTD is owned directly by our Hong Kong subsidiary, which is a non-resident enterprise, and as Hong Kong has an arrangement with the PRC under which the tax rate from dividend income is 5%, dividends paid by JZPTD would be subject to a 5% withholding tax.

***Fluctuation in the value of the Renminbi may have a material adverse effect on your investment.***

The change in value of the Renminbi against the U.S. dollar and other currencies is affected by, among other things, changes in China's political and economic conditions. On July 21, 2005, the PRC government changed its decade-old policy of pegging the value of the Renminbi to the U.S. dollar. Under the new policy, the Renminbi is permitted to fluctuate within a narrow and managed band against a basket of certain foreign currencies. This change in policy has resulted in an approximately 17.1% appreciation of Renminbi against the U.S. dollar between July 21, 2005 and June 30, 2008. While the international reaction to the Renminbi revaluation has generally been positive, there remains significant international pressure on the PRC government to adopt an even more flexible currency policy, which could result in a further and more significant appreciation of the Renminbi against the U.S. dollar. Since substantially all of our costs and expenses are denominated in Renminbi, any appreciation or revaluation of the Renminbi could increase our costs in U.S. dollar terms. For example, to the extent that we need to convert U.S. dollars we receive from this offering into Renminbi for our operations, appreciation of the Renminbi against the U.S. dollar would have an adverse effect on the Renminbi amount we receive from the conversion. Conversely, if we decide to convert our Renminbi into U.S. dollars for the purpose of making payments for dividends on our ordinary shares or ADSs or for other business purposes, appreciation of the U.S. dollar against the Renminbi would have a negative effect on the U.S. dollar amount available to us.

In addition, an appreciation in the value of the Renminbi against foreign currencies could make our polysilicon more expensive for our international customers as well as reduce the competitiveness of our PRC customers in the international market, thus potentially leading to a reduction in our sales and profitability. Furthermore, many of our competitors are foreign companies that could benefit from such a currency fluctuation, making it more difficult for us to compete with these companies.

***You may experience difficulties in effecting service of legal process, enforcing foreign judgments or bringing original actions in China based on United States or other foreign laws against us, our management or the experts named in the prospectus.***

We conduct all of our operations in China and substantially all of our assets are located in China. In addition, some of our directors and executive officers reside within China. As a result, it may not be possible to



## [Table of Contents](#)

effect service of process within the United States or elsewhere outside China upon some of our directors and senior executive officers, including with respect to matters arising under U.S. federal securities laws or applicable U.S. state securities laws. Moreover, our PRC legal counsel, Grandall Legal Group, has advised us that the PRC does not have treaties with the United States or many other countries providing for the reciprocal recognition and enforcement of judgment of courts.

Our PRC legal counsel, Grandall Legal Group, has also advised us that PRC courts are unlikely to (a) recognize or enforce judgments of United States courts obtained against us or our directors or officers predicated on the civil liability provisions of the securities laws of the United States or (b) entertain original actions brought against us or our directors or officers predicated upon the securities laws of the United States as there is no treaty between United States and the PRC and the PRC courts will only recognize and enforce foreign judgments in accordance with PRC Civil Procedure Law.

***An outbreak of the highly pathogenic avian influenza caused by the H5N1 virus, or avian flu or bird flu, Severe Acute Respiratory Syndrome, or SARS, or other contagious disease may have an adverse effect on the economies of certain Asian countries and may adversely affect our results of operations.***

During 2004, large parts of Asia experienced unprecedented outbreaks of avian flu which, according to a report of the World Health Organization, or WHO, in 2004, placed the world at risk of an influenza pandemic with high mortality and social and economic disruption. Currently, no fully effective avian flu vaccines have been developed and there is evidence that the H5N1 virus is evolving so there can be no assurance that an effective vaccine can be discovered in time to protect against a potential avian flu pandemic. In the first half of 2003, certain countries in Asia experienced an outbreak of SARS, a highly contagious form of atypical pneumonia, which seriously interrupted economic activities and caused the demand for goods to plummet in the affected regions. An outbreak of avian flu, SARS or other contagious disease or the measures taken by the governments of affected countries against such potential outbreaks, could seriously interrupt our production, which could have a material adverse effect on our results of operations.

***Governmental control of currency conversion may affect the value of your investment.***

The PRC government imposes controls on the convertibility of the Renminbi into foreign currencies and, in certain cases, the remittance of currency out of China. We have received substantially all our revenue in Renminbi. Shortages in the availability of foreign currency may restrict the ability of our PRC subsidiary to remit sufficient foreign currency to pay dividends or other payments to us, or otherwise satisfy their foreign currency-denominated obligations. Under existing PRC foreign exchange regulations, payments of current account items, including profit distributions, interest payments and expenditures from trade related transactions, can be made in foreign currencies without prior approval from the SAFE by complying with certain procedural requirements. However, approval from the SAFE or its local branch is required where Renminbi is to be converted into foreign currency and remitted out of China to pay capital expenses such as the purchase of equipment from foreign suppliers. The PRC government may also at its discretion restrict access in the future to foreign currencies for current account transactions. If the foreign exchange control system prevents us from obtaining sufficient foreign currency to satisfy our currency demands, we may not be able to expand our production facilities as planned or pay in dividends in foreign currencies to our shareholders, including holders of our ADSs.

### **Risks Relating to Our ADSs and This Offering**

***There has been no public market for our ADSs prior to this offering, and you may not be able to resell our ADSs at or above the price you paid, or at all.***

Prior to this initial public offering, there has been no public market for our ADSs. Our ADSs have been approved for listing on the New York Stock Exchange. If an active trading market for our ADSs does not develop after this offering, the market price and liquidity of our ADSs will be materially and adversely affected.

---

## [Table of Contents](#)

The initial public offering price for our ADSs is determined by negotiations between us and the underwriters and may bear no relationship to the market price for our ADSs after this initial public offering. We cannot assure you that an active trading market for our ADSs will develop or that the market price of our ADSs will not decline below the initial public offering price.

### ***The market price for our ADSs may be volatile.***

The market price for our ADSs is likely to be highly volatile and subject to wide fluctuations in response to factors including the following:

announcements of technological or competitive developments;

regulatory developments in our target markets affecting us, our customers or our competitors;

actual or anticipated fluctuations in our quarterly operating results;

changes in financial estimates by securities research analysts;

changes in the economic performance or market valuations of other solar power technology companies;

addition or departure of our executive officers and key research personnel;

announcements of studies and reports relating to solar or electronics industry applications that do not require polysilicon;

announcements regarding patent litigation or the issuance of patents to us or our competitors;

fluctuations in the exchange rates between the U.S. dollar, the Euro and Renminbi;

release or expiry of lock-up or other transfer restrictions on our outstanding ordinary shares or ADSs; and

sales or perceived actual or potential sales of additional ordinary shares or ADSs.

In addition, the securities markets have from time to time experienced significant price and volume fluctuations that are not related to the operating performance of particular companies. These market fluctuations may also have a material adverse effect on the market price of our ADSs.

***Because the initial public offering price is substantially higher than our net tangible book value per ADS, you will incur immediate and substantial dilution.***

If you purchase ADSs in this offering, you will pay more for your ADSs than the amount paid by our existing shareholders for their ordinary shares on a per share basis. As a result, you will experience immediate and substantial dilution of approximately \$            per ADS (assuming no exercise by the underwriters of their over-allotment option), representing the difference between our net tangible book value per ADS as of June 30, 2008, after giving effect to this offering and the assumed initial public offering price of \$            per ADS, the midpoint of the estimated range of the initial public offering price. See “Dilution.” In addition, you may experience further dilution to the extent that our ordinary shares are issued upon the exercise of share options and upon conversion of the 2008 Convertible Bonds.

***We may need additional capital and may sell additional ADSs or other equity securities or incur indebtedness, which could result in additional dilution to our shareholders or increase our debt service obligations.***

We will require borrowings of significant amounts to refinance Renminbi denominated bank debt, the 2008 Convertible Bonds, and to fund our Phase III and additional facility expansions as well as wafer production facilities. We may, in addition, require additional cash resources due to changes in business conditions or other future developments, including any investments or acquisitions we may decide to pursue. If these resources are

---

## [Table of Contents](#)

insufficient to satisfy our cash requirements, we may seek to sell additional equity or debt securities or obtain a credit facility. The sale of additional equity securities could result in additional dilution to our shareholders. The incurrence of indebtedness would result in increased debt service obligations and could result in operating and financing covenants that would restrict our operations. We cannot assure you that financing will be available in amounts or on terms acceptable to us, if at all.

### ***Substantial future sales or perceived sales of our ADSs in the public market could cause the price of our ADSs to decline.***

Sales of our ordinary shares or ADSs in the public market after this offering, or the perception that these sales could occur, could cause the market price of our ADSs to decline. Upon completion of this offering, we will have                      ordinary shares outstanding, including                      ordinary shares represented by                      ADSs. All ADSs sold in this offering will be freely transferable without restriction or additional registration under the Securities Act of 1933, as amended, or the Securities Act. The remaining ordinary shares outstanding after this offering will be available for sale upon the expiration of any applicable 180-day lock-up period beginning from the date of this prospectus, subject to volume and other restrictions as applicable under Rule 144 and Rule 701 under the Securities Act. In addition, although persons who will receive our 2008 Convertible Bonds concurrently with the closing of this offering have agreed, subject to certain exceptions, to refrain from offering for sale or selling, directly or indirectly, 2008 Convertible Bonds or entering into certain hedging transactions for 130 days after the date of this prospectus, the permitted sales and hedging under such lock-up agreements and sales or hedging after such period could cause the market price of our ADSs to decline. Any or all of these shares may be released prior to expiration of these lock-up periods at the discretion of the representatives of the underwriters. See “Shares Eligible for Future Sale.” We are also obligated to file a registration statement for resales of ADSs issued on conversion of our 2008 Convertible Bonds within 60 days of the closing of this offering. The registration statement will allow such sales only after six months from the closing of this offering. We intend to ask the representatives of the underwriters for their agreement to file such registration statement as an exception to the lock-up. The representatives of the underwriters are not required to grant this exception. To the extent prior to the expiration of the lock-up periods, ordinary shares, ADSs or 2008 Convertible Bonds are sold into the market or hedging transactions are conducted by the holders of the 2008 Convertible Bonds, the market price of our ADSs could decline.

### ***As a holder of our ADSs, you may not have the same voting rights as the holders of our ordinary shares and may not receive voting materials in time to be able to exercise your right to vote.***

As a holder of ADSs, you will not be treated as one of our shareholders. Instead, the depositary will be treated as the holder of the shares underlying your ADSs. However, you may exercise some of the shareholders’ rights through the depositary, and you will have the right to withdraw the shares underlying your ADSs from the deposit facility as described in “Description of American Depositary Shares–Deposit, Withdrawal and Cancellation” and “Your Right to Receive the Shares Underlying Your ADRs.”

Except as described in this prospectus and provided in the deposit agreement, holders of our ADSs will not be able to exercise voting rights attaching to the shares evidenced by our ADSs on an individual basis. Holders of our ADSs may instruct the depositary to exercise the voting rights attaching to the shares represented by the ADSs. If no instructions are received by the depositary on or before a date established by the depositary, the depositary shall deem the holders to have instructed it to give a discretionary proxy to a person designated by us to exercise their voting rights. You may not receive voting materials in time to instruct the depositary to vote, and it is possible that you, or persons who hold their ADSs through brokers, dealers or other third parties, will not have the opportunity to exercise a right to vote.

---

## [Table of Contents](#)

***The depositary of our ADSs will, except in limited circumstances, grant to us a discretionary proxy to vote the ordinary shares underlying your ADSs if you do not vote at shareholders' meetings, which could adversely affect your interests and the ability of our shareholders as a group to influence the management of our company.***

Under the deposit agreement for the ADSs, the depositary will give us a discretionary proxy to vote our ordinary shares underlying your ADSs at shareholders' meetings if you do not vote, unless:

we have failed to timely provide the depositary with our notice of meeting and related voting materials;

we have instructed the depositary that we do not wish a discretionary proxy to be given;

we have informed the depositary that there is substantial opposition as to a matter to be voted on at the meeting;

a matter to be voted on at the meeting would have a material adverse impact on shareholders; or

voting at the meeting is made on a show of hands.

The effect of this discretionary proxy is that you cannot prevent our ordinary shares underlying your ADSs from being voted, absent the situations described above, and it may make it more difficult for shareholders to influence the management of our company. Holders of our ordinary shares are not subject to this discretionary proxy.

***As a holder of our ADSs, you may not be able to participate in rights offerings that are made available to our shareholders, and you may not receive cash dividends if it is impractical to make them available to you.***

We may from time to time distribute rights to our shareholders, including rights to acquire our securities. Under the deposit agreement, the depositary will not make rights available to you unless the distribution to ADS holders of both the rights and any related securities are either registered under the Securities Act, or exempted from registration under the Securities Act with respect to all holders of ADSs. We are under no obligation to file a registration statement with respect to any such rights or securities or to endeavor to cause such a registration statement to be declared effective. Moreover, we may not be able to establish an exemption from registration under the Securities Act. Accordingly, you, as a holder of our ADSs, may be unable to participate in our rights offerings and may experience dilution in your holdings.

In addition, the depositary of our ADSs has agreed to pay to you the cash dividends or other distributions it or the custodian receives on our ordinary shares or other deposited securities after deducting its fees and expenses. You will receive these distributions in proportion to the number of ordinary shares your ADSs represent. However, the depositary may, at its discretion, decide that it is inequitable or impractical to make a distribution available to any holders of ADSs. For example, the depositary may determine that it is not practicable to distribute certain property through the mail, or that the value of certain distributions may be less than the cost of mailing them. In these cases, the depositary may decide not to distribute such property and you will not receive such distribution.

***You may be subject to limitations on transfer of your ADSs.***

Your ADSs are transferable on the books of the depositary. However, the depositary may close its transfer books at any time or from time to time when it deems expedient in connection with the performance of its duties. In addition, the depositary may refuse to deliver, transfer or register transfers of ADSs generally when our books or the books of the depositary are closed, or at any time if we or the depositary deem it advisable to do so because of any requirement of law or of any government or governmental body, or under any provision of the deposit agreement, or for any other reason.

---

## [Table of Contents](#)

***We are a Cayman Islands company and, because shareholders of Cayman Islands companies have more limited rights and judicial precedent regarding the rights of shareholders is more limited under Cayman Islands law than that under United States law, our shareholders may have less protection for their shareholder rights than they would under United States law.***

Unlike many jurisdictions in the United States, Cayman Islands law does not specifically provide for shareholder appraisal rights on a merger or consolidation of a company. This may make it more difficult for you to assess the value of any consideration you may receive in a merger or consolidation or to require that the offeror give you additional consideration if you believe the consideration offered is insufficient.

Shareholders of Cayman Islands exempted companies such as ourselves have no general rights under Cayman Islands law to inspect corporate records (save for the register of mortgages) and accounts or to obtain copies of lists of shareholders of these companies. Save for the register of mortgages, our directors have discretion to determine whether or not, and under what conditions, our corporate records may be inspected by our shareholders, but are not obliged to make them available to our shareholders. This may make it more difficult for you to obtain the information needed to establish any facts necessary for a shareholder motion or to solicit proxies from other shareholders in connection with a proxy contest.

Our corporate affairs are governed by our amended and restated memorandum and articles of association, the Cayman Islands Companies Law and the common law of the Cayman Islands. The rights of shareholders to take action against the directors, actions by minority shareholders and the fiduciary responsibilities of our directors to us under Cayman Islands law (2007 Revision) are to a large extent governed by the common law of the Cayman Islands. The common law of the Cayman Islands is derived in part from comparatively limited judicial precedent in the Cayman Islands as well as from English common law, which has persuasive, but not binding, authority on a court in the Cayman Islands. The rights of our shareholders and the fiduciary responsibilities of our directors under Cayman Islands law are not as clearly established as they would be under statutes or judicial precedent in some jurisdictions in the United States. In particular, the Cayman Islands has a less developed body of securities laws than the United States. In addition, some U.S. states, such as Delaware, have more fully developed and judicially interpreted bodies of corporate law than the Cayman Islands.

There is uncertainty as to whether the Cayman Islands courts will:

recognize or enforce judgments of United States courts obtained against us or our directors or officers predicated upon the civil liability provisions of the securities laws of the United States or any state in the United States; or

entertain original actions brought against us or our directors or officers predicated upon the securities laws of the United States or any state in the United States.

There is no statutory recognition in the Cayman Islands of judgments obtained in the United States, although the Cayman Islands will generally recognize as a valid judgment a final and conclusive judgment in person obtained in the federal or state courts in the United States under which a sum of money is payable (other than a sum of money payable in respect of generally, taxes or other charges of a like nature or in respect of a fine or other penalty) and would give a judgment based thereon provided that (i) such courts were competent to hear the action in accordance with private international law principles as applied in the Cayman Islands; (ii) such courts did not contravene the rules of natural justice of the Cayman Islands; (iii) such judgment was not obtained by fraud; (iv) the enforcement of the judgment would not be contrary to the public policy of the Cayman Islands; and (v) is not bound on an error in Cayman Islands law. You should also read “Description of Share Capital–Differences in Corporate Law” for some of the differences between the corporate and securities laws in the Cayman Islands and the United States.

As a result of all of the above, public shareholders may have more difficulty in protecting their interests in the face of actions taken by management, members of the board of directors or controlling shareholders than they would as public shareholders of a U.S. company.





## FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements that involve risks and uncertainties. All statements other than statements of historical facts are forward looking statements. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from those expressed or implied by the forward-looking statements.

The words “anticipate,” “believe,” “could,” “estimate,” “intend,” “may,” “plan,” “seek,” “would” and similar expressions, as they relate to us, are intended to identify a number of these forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategies and financial needs. These forward-looking statements includes, without limitation:

our business and operating strategies;

our expansion and capital expenditure plans;

our operations and business prospects;

our planned use of proceeds;

our financial condition and results of operations;

the industry regulatory environment as well as the industry outlook generally; and

future PRC or global developments in the polysilicon manufacturing and solar and electronics industries.

You should read this prospectus thoroughly and the documents that we refer to in this prospectus with the understanding that our actual future results may be materially different from and worse than what we expect. We qualify all of our forward-looking statements by these cautionary statements. Other sections of this prospectus include additional factors which could adversely impact our business and financial performance. Moreover, we operate in an evolving environment. New risk factors and uncertainties emerge from time to time and it is not possible for our management to predict all risk factors and uncertainties, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

This prospectus also contains data related to the polysilicon and wafer markets in several countries, including China. This market data, including data from Solarbuzz and iSuppli Corporation, or iSuppli, includes projections that are based on a number of assumptions. Solarbuzz is an independent solar energy research company headquartered in San Francisco, California, U.S.A. iSuppli is an electronics research firm

headquartered in El Segundo, California, U.S.A. The Solarbuzz data has been derived from *MARKETBUZZ 2007* and *MARKETBUZZ 2008*. The forecast information is taken from Solarbuzz' s Balanced Energy Scenario, which assumes end-market demand through the period is based on existing and currently known emerging PV incentive programs. The Solarbuzz report includes two more aggressive growth scenarios which have not been discussed in this prospectus. The iSuppli data has been derived from the iSuppli *Global IDM Market Tracker-H1 2008* and *Regional Application Market Forecast Tool (AMFT)<sup>™</sup> 2008-Q2 2008*. The polysilicon and wafer markets may not grow at the rates projected by the market data, or at all. The failure of such markets to grow at the projected rates may materially and adversely affect our business and the market price of our ADSs. In addition, the rapidly changing nature of the polysilicon and wafer markets subjects any projections or estimates relating to the growth prospects or future condition of such markets to significant uncertainties. If any one or more of the assumptions underlying the market data proves to be incorrect, actual results may differ from the projections based on these assumptions. Because of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this prospectus might not occur in the way we expect, or at all. You should not place undue reliance on these forward-looking statements.

---

## [Table of Contents](#)

Although we will become a reporting company after this offering and have ongoing disclosure obligations under U.S. federal securities laws, we do not intend to update or otherwise revise the forward-looking statements in this prospectus, whether as a result of new information, future events or otherwise.

## USE OF PROCEEDS

We estimate we will receive net proceeds from this offering of approximately \$            million, after deducting the underwriting discounts and offering expenses payable by us in this offering. These estimates are based upon an assumed initial offering price of \$            per ADS, the midpoint of the range shown on the cover page of this prospectus.

We intend to use our net proceeds from this offering for the following purposes:

approximately \$400 million for contribution to JZPTD;

\$20.0 million to fully redeem the Tranche A Floating Rate Secured Redeemable Bonds due 2009 issued by us in September 2007;

\$240.6 million to acquire Sun Wave and Greatest Joy in connection with our acquisition of 36% of JZPTD from our affiliates;

approximately \$15.3 million to repay the principal of and fees relating to a promissory note issued by us to Happy Genius, our controlling shareholder in June 2008; and

the remaining amount for general corporate purposes, including potential acquisitions or investments in downstream expansion such as wafer operations. We are currently in preliminary discussions with one of our tolling wafer manufacturers, Huasheng, with respect to a potential acquisition of such manufacturer.

We intend to cause JZPTD to use the proceeds from our contribution in the amount of approximately \$400 million to fund the capital expenditures related to our Phase III production facilities expansion and our in-house wafer production facilities.

The floating rate bonds were issued to fund equity contributions to JZPTD to fund a portion of the cost of constructing our Phase II facility and to pay the balance of the purchase price of our initial 64% equity interest in JZPTD. The floating rate bonds bear interest at three month LIBOR plus 3.0% per annum.

The \$240.6 million to be used as part of the consideration to acquire the remaining 36% of JZPTD, which will be payable to entities affiliated with Mr. Zhu Gongshan and Moonchu, will be used partially to redeem the exchangeable bonds issued by Happy Genius.

The foregoing represents our current intentions to use and allocate the net proceeds of this offering based upon our present plans and business conditions. Our management, however, will have significant flexibility and discretion to apply the net proceeds of this offering. If an unforeseen event occurs or business conditions change, we may use the proceeds of this offering differently than as described in this prospectus.

To the extent that the net proceeds of this offering are not immediately applied for the above purposes, we intend to deposit the proceeds into interest bearing bank accounts or to invest in short-term investment grade debt securities.

A \$1.00 increase (decrease) in the initial public offering price would increase (decrease) the net proceeds of this offering by  
\$ million, after deducting underwriting discounts and commissions and the estimated offering expenses payable by us.

We will not receive any of the proceeds from the sale of ADSs by the selling shareholders. See “Principal and Selling Shareholders.”

## **DIVIDEND POLICY**

We have never declared or paid any dividends on our ordinary shares. We have no present plan to declare and pay any dividends on our shares or ADSs in the near future. We currently intend to retain our available funds and any future earnings to operate and expand our business.

We are a holding company incorporated in the Cayman Islands. We rely on dividends from JZPTD, our subsidiary in China, for our cash needs. Current PRC regulations restrict the ability of our subsidiary to pay dividends to us. See “Risk Factors–Risks Relating to Doing Business in China–We will rely on dividends paid by our subsidiary for our cash needs.”

Subject to our Memorandum and Articles of Association and the applicable laws, our board of directors has complete discretion as to whether to recommend a distribution of dividends to shareholders, which distribution is then subject to the approval of our shareholders. Even if our board of directors decides to pay dividends, the form, frequency and amount will depend upon our future operations and earnings, capital requirements and surplus, general financial condition, contractual restrictions and other factors that our board of directors may deem relevant. If we pay dividends, we will pay our ADS holders to the same extent as holders of our ordinary shares, subject to the terms of the deposit agreement, including the fees and expenses payable thereunder. See “Description of American Depositary Shares.” Cash dividends on our ADSs and ordinary shares, if any, will be paid in U.S. dollars.

## CAPITALIZATION

The following table sets forth our capitalization as of June 30, 2008. Our capitalization is presented:

on an actual basis;

on a pro forma basis to give effect to (i) the automatic conversion of our outstanding convertible redeemable preferred shares into 16,667,000 of our ordinary shares upon completion of this offering and (ii) the automatic redemption of our Tranche A Floating Rate Secured Redeemable Bonds due 2009 and the conversion of all of our outstanding Tranche B Floating Rate Secured Convertible Bonds due 2009 into 27,183,400 of our ordinary shares, upon completion of this offering;

on an as adjusted basis to give effect to (i) the events listed in the preceding paragraph, (ii) the issuance of 268,537,970 ordinary shares in the form of ADSs by us to entities affiliated with Mr. Zhu Gongshan and Moonchu in connection with our acquisition of the remaining 36% of JZPTD assuming an initial public offering price of \$            per ADS, the midpoint of the estimated range of the initial public offering price and (iii) the issuance and sale of \$446.9 million principal amount of the 2008 Convertible Bonds to entities affiliated with Mr. Zhu Gongshan and Moonchu in connection with our acquisition of the remaining 36% of JZPTD which will be delivered to the holders of the exchangeable bonds issued by Happy Genius and (iv) the acquisition of 36% of JZPTD; and

on an as further adjusted basis to give effect to (i) the events listed in the preceding paragraphs and (ii) the issuance and sale of            ordinary shares in the form of ADSs by us in this offering at the initial public offering price of \$            per ADS, the midpoint of the estimated range of the initial public offering price, after deducting underwriting discounts and estimated aggregate offering expenses payable by us.

You should read this table in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our audited consolidated financial statements included elsewhere in this prospectus.

	As of June 30, 2008			
	Actual	Pro Forma	As Adjusted <sup>(1)</sup>	As Further Adjusted
(in thousands, except share data)				
Long-term indebtedness:				
Floating rate bonds	\$65,789	\$–	\$ –	–
Bank borrowings	110,219	110,219	110,219	110,219
Convertible bonds	–	–	446,875	446,875

Series A convertible redeemable preferred shares, \$0.00001 par value, 50,000,000 shares authorized;  
16,667,000 shares outstanding

22,778      –      –      –

Shareholders' equity:

Ordinary shares, \$0.00001 par value, 100,000,000,000 ordinary shares authorized; 978,333,000  
ordinary shares issued,      ordinary shares outstanding on a pro forma basis,  
ordinary shares outstanding on an as adjusted basis<sup>(1)</sup>      ordinary shares outstanding  
on an as further adjusted basis

10      10      10

Additional paid-in capital

8,009      76,576      [      ]

Retained earnings (Accumulated deficit)

43,287      (645,710)      [      ]

Accumulated other comprehensive income

9,443      9,443      9,443      9,443

Total shareholders' equity (deficit)

60,749      (559,681)      [      ]

Total capitalization

\$259,535      \$(449,462)      \$ [      ]      \$

Note:

- (1) A \$1.00 increase (decrease) in the assumed initial public offering price of \$      per ADS, the midpoint of the estimated range of the initial public offering price, would increase (decrease) each of (i) ordinary shares and additional paid-in capital in the aggregate, (ii) total shareholders' equity and (iii) total capitalization by \$      million, assuming the number of ADSs offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.



DILUTION

If you invest in our ADSs, your interest will be diluted to the extent of the difference between the initial public offering price per ADS and our net tangible book value per ADS after this offering. Dilution results from the conversion of our convertible redeemable preferred shares and floating rate bonds and the fact that the initial public offering price per ordinary share of our ADSs is substantially in excess of the book value per ordinary share attributable to the existing shareholders for our presently outstanding ordinary shares. Our net tangible book value as of June 30, 2008 was approximately \$83.5 million, or \$0.085 per ordinary share and \$0.34 per ADS, giving effect to the conversions above. Net tangible book value per ADS represents our total tangible assets minus our total liabilities and minority interests, divided by the total number of ADS equivalents outstanding upon incorporation of our company. Dilution is determined by subtracting net tangible book value per ordinary share, after giving effect to the conversion of all outstanding convertible redeemable preferred shares and the convertible portion of our floating rate bonds into ordinary shares upon the completion of this offering and the additional proceeds we will receive from this offering, from the initial public offering price per ordinary share.

Without taking into account any other changes in such tangible book value after June 30, 2008 other than giving effect to the sale of our ADSs offered in this offering at the assumed initial public offering price of \$            per ADS, the midpoint of the estimated range of the initial public offering price, and after deducting underwriting discounts and commissions and other estimated expenses of this offering and the conversion of our convertible redeemable preferred shares and the convertible portion of our floating rate bonds into ordinary shares upon completion of this offering, our adjusted net tangible book value per ADS as of June 30, 2008 would have been \$            million, or \$            per outstanding ordinary share, including ordinary shares underlying our outstanding ADSs, and \$            per ADS. This represents an immediate increase of \$            in net tangible book value per ADS and an immediate dilution in net tangible book value of \$            per ordinary share and \$            per ADS, to investors purchasing ADSs in this offering.

The following table illustrates such dilution on a per ADS basis assuming the underwriters do not exercise the over-allotment option:

Assumed initial public offering price	\$
Net tangible book value as of June 30, 2008	
Adjusted net tangible book value after this offering after giving effect to the conversion of all outstanding convertible redeemable preferred shares and after giving effect to the conversion of the convertible portion of our floating rate bonds into ordinary shares upon completion of this offering	
Adjusted net tangible book value after the offering after giving effect to the conversion of all outstanding convertible redeemable preferred shares, the conversion of the convertible portion of our floating rate bonds into ordinary shares and the acquisition of 36% of the interests in JZPTD upon the completion of this offering	
Adjusted net tangible book value after giving effect to the conversion of all outstanding convertible redeemable preferred shares, the conversion of the convertible portion of our floating rate bonds, the acquisition of 36% of the interests in JZPTD and the additional proceeds we will receive from this offering	

Dilution in net tangible book value per ADS to new investors  
in this offering

A \$1.00 increase (decrease) in the assumed initial offering price of \$            per ADS (the mid-point of the price range set forth on the cover page of this prospectus) would increase (decrease) the total consideration and the total average price per ordinary share and per ADS paid by new investors by \$           , \$           , and \$           , assuming the number of ADSs offered by us, as set forth on the cover page of this prospectus, remains the same, and without deducting underwriting discounts and commissions and estimated expenses payable by us.

## [Table of Contents](#)

The following table summarizes, on an as adjusted basis, as of June 30, 2008, the differences between the existing shareholders (as defined below) and the new investors with respect to the number of ordinary shares (in the form of ADSs or ordinary shares) purchased from us, the total consideration paid and the average price per ordinary share paid at the assumed initial public offering price of \$ \_\_\_\_\_ per ADS, the midpoint of the estimated range of the initial public offering price, before deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

	<u>Ordinary Shares Purchased</u>		<u>Total Consideration</u>		<u>Average</u>	<u>Average</u>
	<u>Number</u>	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>	<u>Price Per</u> <u>Ordinary</u> <u>share</u>	<u>Price Per</u> <u>ADS</u>
Existing shareholders <sup>(1)</sup>		%	\$	%	\$	\$
New investors		%	\$	%	\$	\$
Total		%	\$	%	\$	\$

Note:

- (1) Existing shareholders for this purpose includes holders of our ordinary shares, holders of our convertible redeemable preferred shares to be converted into ordinary shares upon completion of this offering, holders of the convertible portion of our floating rate bonds to be converted into ordinary shares upon completion of this offering and holders of our ordinary shares to be issued in connection with our acquisition of 36% of JZPTD.

The discussion and tables above also assume no exercise of any outstanding stock options. As of June 30, 2008, we had outstanding options to purchase 50,000,000 ordinary shares at \$0.5 per share. These options will vest in four equal amounts at the end of one year from the date of this offering and on the three succeeding anniversaries of such date. Upon exercise, we will issue ADSs representing such ordinary shares. If all of these options had been exercised on or prior to June 30, 2008, after giving effect to the conversion of the convertible redeemable preferred shares, floating rate bonds, and this offering, ordinary shares purchased would have been \_\_\_\_\_, total consideration would have been \_\_\_\_\_, our net tangible book value per ADS would have been approximately \$ \_\_\_\_\_ million, or \$ \_\_\_\_\_ per ADS, and the dilution in net tangible book value per ADS to new investors would have been \$ \_\_\_\_\_ per ADS.

## EXCHANGE RATE INFORMATION

Our business is conducted in China and we expect that substantially all of our revenues will be denominated in RMB. This prospectus contains translations of RMB amounts into U.S. dollars at specific rates solely for the convenience of the reader. The conversion of RMB into U.S. dollars in this prospectus is based on the noon buying rate in The City of New York for cable transfers of RMB as certified for customs purposes by the Federal Reserve Bank of New York. Unless otherwise noted, all translations from RMB to U.S. dollars and from U.S. dollars to RMB in this prospectus were made at a rate of RMB6.8591 to \$1.00, the noon buying rate in effect as of June 30, 2008. We make no representation that any RMB or U.S. dollar amounts could have been, or could be, converted into U.S. dollars or RMB, as the case may be, at any particular rate, the rates stated below, or at all. The PRC government imposes control over its foreign currency reserves in part through direct regulation of the conversion of RMB into foreign exchange and through restrictions on foreign trade. On August 28, 2008, the noon buying rate was RMB6.8405 to \$1.00.

The following table sets forth information concerning exchange rates between the RMB and the U.S. dollar for the periods indicated. These rates are provided solely for your convenience and are not necessarily the exchange rates that we used in this prospectus or will use in the preparation of our periodic reports or any other information to be provided to you. The source of these rates is the Federal Reserve Bank of New York.

Period	Noon Buying Rate			
	Period			
	End	Average <sup>(1)</sup>	Low	High
(RMB per \$1.00)				
2006	7.8041	7.9579	8.0702	7.8041
2007	7.2946	7.5806	7.8127	7.2946
2008 (through August 28)	6.8405	7.0029	7.2946	6.7800
February	7.1115	7.1644	7.1973	7.1100
March	7.0120	7.0722	7.1110	7.0105
April	6.9870	6.9997	7.0185	6.9840
May	6.9400	6.9725	7.0000	6.9377
June	6.8591	6.8993	6.9633	6.8591

July

6.8388 6.8355 6.8632 6.8104

August (through August 28)

6.8405 6.8472 6.8705 6.7800

---

Source: Federal Reserve Bank of New York

Note:

- (1) Averages for a period are calculated by averaging the noon buying rates on the last business day of each month or the elapsed portion thereof during the relevant period. Monthly averages are calculated using the average of the daily rates during the relevant period.

## ENFORCEABILITY OF CIVIL LIABILITIES

We are incorporated in the Cayman Islands in order to enjoy the following benefits:

political and economic stability;

a relatively effective judicial system;

a favorable tax system;

the absence of exchange control or currency restrictions; and

the availability of professional and support services.

However, certain disadvantages accompany incorporation in the Cayman islands. These disadvantages include:

the Cayman Islands has a less developed body of securities laws as compared to the United States and these securities laws provide significantly less protection to investors; and

Cayman Islands companies may not have standing to sue before the federal courts of the United States.

Our constituent documents do not contain provisions requiring that disputes, including those arising under the securities laws of the United States, between us, our officers, directors and shareholders, be arbitrated.

Substantially all of our operations are conducted in China, and substantially all of our assets are located in China. The majority of our directors and officers are nationals or residents of jurisdictions other than the United States and a substantial portion of their assets are located outside the United States. As a result, it may be difficult for a shareholder to effect service of process within the United States upon these persons, or to enforce against us or them judgments obtained in the United States courts, including judgments predicated upon the civil liability provisions of the securities laws of the United States or any state in the United States.

We have appointed CT Corporation System, located at 111 Eighth Avenue, 13<sup>th</sup> Floor, New York, New York 10011, as our agent upon whom process may be served in any action brought against us under the securities laws of the United States.

Appleby, our Cayman Islands counsel, and Grandall Law Group, our PRC counsel, have advised us that there is uncertainty as to whether the courts of the Cayman Islands and China, respectively, would:

recognize or enforce judgments of United States courts obtained against us or our directors or officers predicated upon the civil liability provisions of the securities laws of the United States; or

entertain original actions brought in each respective jurisdiction against us or our directors or officers predicated upon the securities laws of the United States or any state in the United States.

Grandall Law Group has further advised us that the recognition and enforcement of foreign judgments are provided for under PRC Civil Procedures Law. PRC courts may recognize and enforce foreign judgments in accordance with the requirements for PRC Civil Procedures Law based either on treaties between China and the country where the judgment is made or on reciprocity between jurisdictions. If there are neither treaties nor the PRC Civil Procedures Law, matters relating to the recognition and enforcement of a foreign judgment in China may be resolved through diplomatic channels. China does not have any treaties or other arrangements that provide for reciprocal recognition and enforcement of foreign judgments with the United States or the Cayman Islands. As a result, it is generally difficult to recognize and enforce in China a judgment rendered by a court in either of these two jurisdictions.

## SELECTED CONSOLIDATED FINANCIAL DATA

The following tables present the selected consolidated financial information of us and our predecessor, JZPTD. You should read the following information in conjunction with our consolidated financial statements and related notes and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included elsewhere in this prospectus. The historic results are not necessarily indicative of results to be expected in any future period.

The following selected consolidated statement of operations data and consolidated statement of cash flow data for the period from March 7, 2006 to December 13, 2006 (predecessor), the period from November 13, 2006 to December 31, 2006 (successor) and for the year ended December 31, 2007 (successor) and the consolidated balance sheet data as of December 31, 2006 and December 31, 2007 have been derived from our audited consolidated financial statements, which are included elsewhere in this prospectus. Our consolidated financial statements are prepared and presented in accordance with U.S. GAAP. JZPTD is considered our predecessor because we acquired 64% of the equity interest in JZPTD on December 13, 2006 and our own operations prior to the succession were insignificant relative to the operations assumed or acquired.

The following selected consolidated statement of operations data and consolidated statement of cash flow data for the six months ended June 30, 2007 and 2008 and the selected consolidated balance sheet data as of June 30, 2007 and 2008 have been derived from the unaudited condensed consolidated financial statements included elsewhere in this prospectus. The unaudited pro forma balance sheet information as of June 30, 2008, which is derived from information included in our unaudited condensed consolidated financial statements included elsewhere in this prospectus, assumes the redemption and conversion upon completion of this offering of our convertible redeemable preferred shares and the convertible portion of our floating rate bonds, cash payment of \$240.6 million to entities affiliated with Mr. Zhu Gongshan and Moonchu and the issuance of the 2008 Convertible Bonds in the principal amount of \$446.9 million. We have prepared the unaudited condensed consolidated financial statements on the same basis as the audited consolidated financial statements. The unaudited financial information includes all adjustments, consisting only of normal and recurring adjustments, that we consider necessary for a fair presentation of our financial position and operating results for the periods presented. The unaudited results for the six months ended June 30, 2008 may not be indicative of our results for the full year ending December 31, 2008.



[Table of Contents](#)

	March 7, 2006 to December 13, 2006 (Predecessor)	November 13, 2006 to December 31, 2006 (Successor)	Year Ended December 31, 2007 (Successor)	Six Months Ended June 30,	
				2007 (Successor)	2008 (Successor)
(in thousands, except per share and per ADS data)					
<b>Consolidated Statement of Operations Data</b>					
Revenues					
Third party sales	\$ –	\$–	\$ 33,378	\$–	\$153,690
Related party sales	–	–	7,470	–	19,917
Total	–	–	40,848	–	173,607
Cost of revenues	–	–	(10,996 )	–	(48,730 )
Gross profit	–	–	29,852	–	124,877
Operating expenses (general and administrative)	(2,776 )	(239 )	(17,836 )	(8,978 )	(6,640 )
Operating income (loss)	(2,776 )	(239 )	12,016	(8,978 )	118,237
Non-operating income (expense)					
Interest income	58	54	376	109	582
Interest expense	(743 )	(147 )	(6,097 )	(1,482 )	(7,042 )
Other income (expense)	12	2	6	1	(747 )

Gain on disposal of JSJST	–	–	566	566	–
Amortization of other deferred income	–	–	–	–	232
(Loss) income before income tax and minority interest	(3,449 )	(330 )	6,867	(9,784 )	111,262
Income tax (expense) credit	–	–	(3,123 )	2	(297 )
(Loss) income before minority interest	(3,449 )	(330 )	3,744	(9,782 )	110,965
Minority interest	–	118	(5,540 )	1,336	(42,892 )
Net (loss) income	(3,449 )	(212 )	(1,796 )	(8,446 )	68,073
Deemed distribution on convertible redeemable preferred shares-accretion of redemption premium	–	–	(1,111 )	–	(1,667 )
Net (loss) income attributable to holders of ordinary shares	<u>\$ (3,449 )</u>	<u>\$(212 )</u>	<u>\$ (2,907 )</u>	<u>\$(8,446 )</u>	<u>\$66,406</u>
Weighted average shares used in (loss) earnings per share calculation					
Basic–ordinary share		1,000,000	994,292	1,000,000	979,844
Basic–convertible redeemable preferred share		–	–	–	16,667
Diluted–ordinary share		1,000,000	994,292	1,000,000	981,436
(Loss) earnings per ordinary share and ADS					
Basic–ordinary share		(0.0002 )	(0.0029 )	(0.0084 )	0.0666

Basic-convertible redeemable preferred share	–	–	–	0.1667
Diluted-ordinary share	(0.0002 )	(0.0029 )	(0.0084 )	0.0665
Basic-ADS	(0.0008 )	(0.0116 )	(0.0336 )	0.2664
Diluted-ADS	(0.0008 )	(0.0116 )	(0.0336 )	0.2660
Weighted average shares used in proforma earnings per ordinary share				
Basic				[ ]
Diluted				[ ]
Proforma earnings per ordinary share and ADS				
Basic-ordinary share				[ ]
Diluted-ordinary share				[ ]
Basic-ADS				
Diluted-ADS				

[Table of Contents](#)

	March 7, 2006 to December 13, 2006 (Predecessor)	November 13, 2006 to December 31, 2006 (Successor)	Year Ended December 31, 2007 (Successor)	Six Months Ended June 30,	
				2007 (Successor)	2008 (Successor)
			(in thousands)		
<b>Consolidated Statements of Cash Flow Data</b>					
Net cash (used in) provided by operating activities	\$ (2,782 )	\$ (842 )	\$ 15,515	\$(5,681 )	\$277,935
Net cash (used in) provided by investing activities	(60,857 )	1,865	(96,716 )	(19,327 )	(284,378)
Net cash provided by financing activities	87,670	4,010	116,120	42,923	115,675
Capital expenditures <sup>(1)</sup>	(40,928 )	(6,562 )	(96,025 )	(49,202 )	(249,901)

Note:

- (1) Capital expenditures consist of payments for purchase of property, plant and equipment and deposits for purchase of plant and equipment.

	December 31, 2006 (Successor)	December 31, 2007 (Successor)	June 30, 2008 (Successor)	June 30, 2008 Pro Forma (Successor)
				(in thousands, except share data)
<b>Consolidated Balance Sheet Data</b>				
Cash and cash equivalents	\$ 5,033	\$40,067	\$151,661	\$132,439
Total current assets	21,840	63,724	221,538	201,538
Property, plant and equipment, net	18,909	141,731	306,975	
Total assets	94,291	232,970	671,792	650,295

Distribution payable	–	–	–	240,625
Total current liabilities	49,258	60,948	187,411	428,036
Floating rate bonds	–	62,099	65,789	–
Convertible bonds	–	–	–	446,875
Total liabilities	82,680	181,697	507,115	1,128,826
Minority interest	9,823	34,935	81,150	81,150
Series A convertible redeemable preferred shares (\$0.00001 par value; no shares authorized and issued as of December 31, 2006 and 50,000,000 shares authorized and 16,667,000 shares outstanding as of December 31, 2007 and June 30, 2008; no shares outstanding on a pro-forma basis as of June 30, 2008)	–	21,111	22,778	–
Total shareholders' equity (deficit)	\$ 1,788	\$(4,773 )	60,749	(559,681 )

	March 7, 2006 to December 13, 2006 (Predecessor)	November 13, 2006 to December 31, 2006 (Successor)	Year Ended December 31, 2007 (Successor)	Six Months Ended June 30, 2008 (Successor)
<b>Selected Operating Data</b>				
Polysilicon production (in MT)	–	–	154	661
Polysilicon sold (in MT)	–	–	153	551
Wafers sold (in MW)	–	–	–	10.1
Average polysilicon selling price (net of VAT) (per kg)	\$ –	\$ –	\$ 267	\$ 293

Average wafer selling price (net of VAT)  
(per W)

\$ -

\$ -

\$ -

\$ 1.20

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*You should read the following discussion and analysis of our financial condition and results of operations in conjunction with the section entitled "Selected Consolidated Financial Data" and the historical consolidated financial statements of our company for the period from November 13, 2006 to December 31, 2006, the year ended December 31, 2007 and unaudited condensed consolidated financial statements for the six months ended June 30, 2007 and 2008 and the historical predecessor financial statements of JZPTD for the period from March 7, 2006 to December 13, 2006, including the related notes included elsewhere in this prospectus. This discussion contains forward-looking statements that involve risks, uncertainties and assumptions. Our actual results and the timing of selected events could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth under "Risk Factors" and elsewhere in this prospectus.*

### Overview

We supply polysilicon and wafers to companies operating in the solar industry. Polysilicon is the primary raw material for wafers used in the solar and electronics industries. We manufacture polysilicon at our production facility in Xuzhou, Jiangsu Province, China and intend to commence wafer manufacturing in the third quarter of 2009. Our business was founded in March 2006 and upon completion and ramp up of our planned expansion to 13,500 MT per year by February 2010, we believe we will be one of the leading polysilicon producers in terms of production capacity. We currently plan to build 2.7 GW of wafer production capacity by the end of 2011. We commenced construction of our first polysilicon production facility, which produces solar grade polysilicon, in July 2006 and produced our first batch of polysilicon in September 2007. We made our first commercial shipment of polysilicon in October 2007. In the six months ended June 30, 2008, we produced 661 MT of polysilicon. For the month of July 2008, we produced 175 MT of polysilicon. We began selling wafers produced for us through tolling arrangements with third party manufacturers in the second quarter of 2008 but expect polysilicon sales to contribute a significant majority of our revenues in the future until the end of 2009.

We have an extremely limited operating history to serve as the basis for evaluating our business. You should consider the risks and difficulties frequently encountered by companies such as us in new and rapidly evolving markets such as the polysilicon and wafer markets. We ramped up our Phase I production facility to its designed annual capacity of 1,500 MT in March 2008. We commenced commercial production of our Phase II production facility in June 2008 and expect to achieve its fully ramped up capacity by December 2008. In December 2007, we commenced preparation for construction of our Phase III production facilities, which is expected to have an aggregate annual production capacity of 10,500 MT. Our first production line at our Phase III production facilities is expected to commence commercial production in December 2008. We intend to fully ramp up our Phase III production facilities by February 2010 and to further expand our total annual polysilicon production capacity to 24,000 MT by the end of 2010. As we began selling wafers produced for us through tolling arrangements with third parties in April 2008, only the six months ended June 30, 2008 reflect the results of such sales. In addition, we intend to commence in-house wafer manufacturing in 2009, which will have an impact on our financial results. We may not be able to achieve significant revenues or revenues growth in the future. In addition, our limited operating history provides a limited basis to assess the impact that critical accounting policies may have on our business and our financial performance.

We have entered into polysilicon and wafer supply agreements with cell and module manufacturers that provide for aggregate sales of approximately 15.1 GW of wafers and approximately 40,356 MT of polysilicon for aggregate total contract prices of \$21.3 billion (RMB146.2 billion). These contracts are with JA Solar, Trina Solar, CSI, Suntech, AIDE, Solarcell and Solarfun. Some of these contracts are for solely polysilicon and some solely wafers and others a combination, which may vary over time. Prior to our entry into these supply contracts, we sold all of our polysilicon on the spot market to major Chinese solar manufacturers. See "Business –

---

## [Table of Contents](#)

Customers and Markets”. We will recognize the revenues from most of these supply contracts on a weighted average basis. See “– Key Factors Affecting Our Results of Operations – Supply Contracts with Customers”.

We have operated and managed our business as a single segment since inception. Although we commenced sales of wafers in April 2008, we intend to continue to operate and manage our business as a single segment. We currently do not account for the results of our operations on a geographic or other basis.

### **Key Factors Affecting Our Results of Operations**

The most significant factors that directly or indirectly affect and will affect our financial performance and results of operations are:

supply contracts with customers;

polysilicon production capacity and volume;

cost of producing polysilicon;

wafer production volume and cost;

market price of polysilicon and wafers; and

industry demand.

### ***Supply Contracts with Customers***

We began shipments of polysilicon and wafers under supply contracts in April 2008 that generally require customers to make advance payments or to provide other financial guarantees or support, have pre-set prices which decline over the length of the contract and have pre-set volumes that increase in the early years of the contract. Prior to these shipments we sold all of our polysilicon on the spot market. Under our current supply agreements, we contracted to sell approximately 90% of our anticipated production from now to the end of 2015 after giving effect to our current polysilicon and wafer expansion plans. We will recognize the revenues from most of our current supply contracts on a weighted average basis. The resulting per kilogram average selling price for polysilicon supply contracts and the per piece average selling price for wafer supply contracts are significantly lower than our historical spot market sales prices and lower than the initial set prices in the early years of our contracts.

Pursuant to preferential tax treatment in the PRC, we are exempt from income tax in 2008 and 2009 and will be exempt from 50% of the applicable income tax for each of 2010, 2011 and 2012. As a result, deferred tax benefits are expected to constitute a material portion of our reported net income starting in 2010 when we become subject to 50% of the applicable income tax.

### ***Polysilicon Production Capacity and Volume***



We ramped up our Phase I production facility to its designed annual capacity of 1,500 MT in March 2008. We plan to double our annual manufacturing capacity from 1,500 MT to 3,000 MT by December 2008 when we complete ramp up of our Phase II production facility, and to further expand our total fully ramped-up polysilicon production capacity to 13,500 MT per year by February 2010 and to 24,000 MT per year by the end of 2010. We believe anticipated increases in our production capacity will have a significant effect on our results of operations, both in allowing us to produce and sell more polysilicon and wafers and to achieve higher revenue, and in lowering our marginal manufacturing costs resulting from economies of scale.

---

## [Table of Contents](#)

New and existing polysilicon manufacturers have announced expansion plans that could add capacity by tens of thousands of MT per year. Such capacity additions could reduce polysilicon prices and result in increased competition for us. In the event that excess capacity results in reduced utilization of our facilities, our per unit cost of production will increase and our business will be less competitive.

### ***Cost of Producing Polysilicon***

We will need to significantly reduce our cost of polysilicon production. A significant portion of our future sales are subject to contracts which have fixed prices that decline substantially over the contract term. Accordingly, in order to maintain or improve our margins, we will need to continuously reduce our cost of polysilicon production.

To date we have focused on ramping Phase I capacity and maximizing the output. We have only a limited production history to measure our cost of manufacturing polysilicon. With the completion of our production ramp-up and implementation of the hydrochlorination process, we have shifted our focus to process integration in order to improve efficiency and reduce production costs. We plan to reduce the costs of our key production inputs, such as TCS and electricity consumption. We have thus far been able to shorten our production cycles by adjusting reactor parameters as well as improving the efficiency of our electricity usage.

We use TCS to produce polysilicon. TCS is one of the main and most costly production inputs and to date, we have relied on third party suppliers for substantially all of our TCS requirements. To reduce our reliance on TCS from third party suppliers, we are increasingly incorporating TCS production into our production process. We integrated the hydrochlorination process for our Phase I production facility in February 2008 and expect to integrate hydrochlorination in our Phase II production facility in September 2008. Our Taixing joint venture has constructed a TCS production facility with an initial annual capacity of 20,000 MT in Taizhou, Jiangsu Province, China, which commenced pilot production in August 2008. We intend to increase the Taixing joint venture annual TCS production capacity to up to 60,000 MT by 2010. We commenced construction of a hydrogenation facility and a TCS production facility in Xuzhou in August 2008 which we expect to have combined capacity to produce up to 90,000 MT of TCS per year by the third quarter of 2009. Upon ramp up of these facilities, we expect to substantially reduce our reliance on third parties for our TCS requirements.

### ***Wafer Production Volume and Cost***

We intend to use a portion of the proceeds from this offering to finance the construction of our monocrystalline and multicrystalline wafer production facilities. We intend to begin constructing our first monocrystalline and multicrystalline production facility in Xuzhou by the end of 2008 and to commence pilot production by the third quarter of 2009. We intend to ramp up these facilities to a combined 0.8 GW production capacity by the end of 2009 and to further expand our wafer production capacity to 1.9 GW by the end of 2010 and to 2.7 GW by the end of 2011. Our financial condition and results of operations will be determined, to a large extent, on whether we can finish the construction of and operate our wafer production plant at the planned production capacity in a cost effective manner.

We have entered into a tolling contract with Huasheng and intend to enter into additional tolling contracts with other wafer manufacturers.

### ***Market Price of Polysilicon and Wafers***

Companies in the solar industry have been paying increasingly higher prices in recent years for polysilicon as demand has exceeded supply. According to Solarbuzz, the average long-term contract price for polysilicon increased from \$35-40/kg in 2005 to \$60-65/kg in 2007. The spot market for polysilicon reached \$250-400/kg by the end of 2007.

## **Table of Contents**

We believe the average selling price of polysilicon will remain high in the near term due to the continued strong demand for polysilicon resulting from the rapid growth of the solar industry, the significant lead time required for building additional capacity for polysilicon production and significant competing demand for polysilicon from the electronics industry. We believe that none of these factors can be predicted with reasonable certainty as of the date of this prospectus. We expect that as polysilicon production capacity expands and the market supply increases, the price of polysilicon will likely decline in the medium- to long-term.

Wafer prices are based on a variety of factors, including global market wafer prices, supply and demand conditions in China, and the terms of our customer contracts. We price our wafers on a per-piece basis. According to Solarbuzz, wafer prices on a per-watt basis are expected to decline in the next few years. We expect this will be due to increased production efficiencies, expected increases in global polysilicon supplies and declines in polysilicon prices, and increased wafer production capacity in our industry, and we expect the average spot selling price of our wafers to decline in 2009 and thereafter.

### ***Industry Demand***

As we currently only sell polysilicon and wafers to the solar industry, our business and revenue growth depends significantly on the growth of the solar energy industry and associated demand for polysilicon and wafers. According to Solarbuzz, polysilicon-based technologies accounted for approximately 88.4% of global solar production in 2007. This market includes thin-film and other forms of solar production. Although solar power technology has been used for several decades, the solar market has only grown significantly in the past several years as solar power became an increasingly cost competitive alternative source of energy. We believe that the near-term demand growth for polysilicon and wafers depends largely on the availability and size of government subsidies and economic incentives for solar products and the current shortage of polysilicon supply. Today, the cost of solar power substantially exceeds the cost of electrical power generated from conventional fossil fuels such as coal and natural gas. As a result, governments in many countries, including Germany, Spain, Italy, the United States, Japan and China, have provided subsidies and economic incentives for the use of renewable energy such as solar power to reduce dependency on conventional fossil fuels as a source of energy. The demand for our polysilicon and wafers in our current, targeted or potential markets is affected significantly by these government subsidies and economic incentives.

China has also seen a recent increase in demand for electronic grade polysilicon for use in the manufacture of semiconductors. We believe the production of semiconductors in China will increase in the future and expect the demand for electronic grade polysilicon will also increase. We intend to improve our manufacturing process so that we have the flexibility to sell into both the solar and electronics industries.

## **Components of Results of Operations**

### ***Revenues***

Our polysilicon revenues are determined by the metric tonnes of polysilicon that we are able to sell as well as the average selling prices of our polysilicon. Our wafer revenues are determined by the number of wafers that we are able to sell as well as the average selling prices of our wafers. Through September 30, 2007, we had no revenue. Our production prior to that date was very small. In the three months ended December 31, 2007, we sold 153 MT of polysilicon and recorded \$40.8 million in revenues. In the six months ended June 30, 2008, we sold 551 MT of polysilicon and 10.1 MW of wafers that resulted in \$173.6 million in revenues.

To date, we have reported our revenues separated into third party and related party revenues. All related party revenues reflect sales to Jiangsu Yangguang Jingyuan Science and Technology Co., Ltd., or JSJST, an entity affiliated with minority shareholders of JZPTD and Hebei Jinglong, a minority shareholder of JZPTD. JSJST and Hebei Jinglong ceased to be related parties on June 10, 2008 upon the completion of the acquisition by entities affiliated with Mr. Zhu Gongshan and Moonchu of the 36% of JZPTD that we currently do not own. As a result, sales to JSJST and Hebei Jinglong will no longer be related party sales.

---

## [Table of Contents](#)

Our initial sales have consisted of solar grade polysilicon sold at spot market prices, where prices of our products are subject to greater price volatility than prices under negotiated contract agreements. We began selling wafers produced for us through tolling arrangements with third party manufacturers in April 2008. We have entered into polysilicon and wafer supply agreements with JA Solar, Trina Solar, CSI, Suntech, AIDE, Solarcell and Solarfun. These contracts generally require customers to make advance payments or provide financial guarantees or support, have pre-set prices which decline substantially over the length of the contract and have pre-set volumes that increase substantially in the early years of the contract. See “Business – Customers and Markets”. We will recognize the revenues from most of our current supply contracts on a weighted average basis.

Any dramatic decline in spot prices of polysilicon would cause us to incur losses later than some of our competitors with similar costs of production but who sell at lower spot market prices. On the other hand, participants in the spot market would benefit more quickly from continued high spot prices and face lower accounts receivable risks as spot market sales are generally not made on credit terms.

### ***Cost of Revenues***

Our cost of revenues related to polysilicon sales is affected primarily by our ability to control raw material costs, to achieve economies of scale in our operations and to efficiently manage our supply chain.

We expect to incur cost of revenues in our operations primarily consisting of:

*TCS.* TCS is a key component of producing polysilicon, the costs of which accounted for a majority of our total cost of sales for the year ended December 31, 2007 and the six months ended June 30, 2008. We currently purchase TCS pursuant to short term agreements with a number of TCS suppliers. We have a 70% controlling interest in the Taixing joint venture from which we expect to source a portion of our TCS needed once its TCS production facility commences production. In the future we expect the costs associated with the purchase of TCS from third parties will decrease as we are now able to implement the hydrochlorination process, we expect to source TCS from our Taixing joint venture and we are developing an in-house TCS production facility in conjunction with the hydrogenation process. We expect our initiatives at process integration will decrease TCS costs in the future. See “Business–Manufacturing Process–Materials and Inputs used in Polysilicon Production–Trichlorosilane”.

*Electricity.* The cost of electricity is a substantial component of our total cost of revenue. We source our electricity from the Xuzhou Electricity Company at market prices which could vary.

*Tolling fees.* We pay tolling fees in connection with the wafers we sell to our customers. Before we commence in-house production of wafers, we will pay a per wafer tolling fee on all our sales of wafers.

*Other materials and inputs.* The production of polysilicon requires water, steam, metallurgical silicon, or MG-Si, sulphuric acid and sodium hydroxide as its most significant inputs. Of these, we purchase water on long-term contracts and the other products on the spot market.

*Direct labor.* Direct labor costs include salaries and benefits for personnel directly involved in production activities.

*Depreciation of property, plant and equipment.* Depreciation of property, plant and equipment is provided on a straight-line basis over the estimated useful life, which is 50 years for land use rights, generally 20 years for buildings, 15 years for equipment and machinery and five years for motor vehicles and electronic equipment and furniture and fixtures, taking into account their estimated residual value. Due to our capacity expansion, depreciation in absolute terms has increased significantly. We expect this trend to continue as we expand our production capacity.

Our cost of revenues related to wafer sales, until our in-house wafer manufacturing facility is operational, is primarily affected by the tolling fees we pay, which will depend on market demand for such capacity and the amount of available capacity. We expect to have an increased portion of international wafer sales as our production increases. Current export VAT refund rate is 5% for wafer products. The remaining VAT after such refund of 12% due to the difference between the VAT rate and the export VAT refund will be recorded as our

---

## [Table of Contents](#)

cost of revenues. As polysilicon supplies become more readily available, to the extent wafer manufacturing capacity has not similarly increased, we would expect wafer processing capacity for third party processing will become less available and hence such capacity would be more expensive. We intend to build our own wafer manufacturing capacity in order to control our production costs. At such time, our cost of revenues related to wafer sales will be affected primarily by the same factors as the cost of revenues for polysilicon above, as well as the cost of other consumables used in the production of wafers.

### ***General and Administrative Expenses***

Our general and administrative expenses consist primarily of salaries and benefits for our administrative and finance personnel, other travel and other corporate expenses, bank charges and depreciation of equipment used for administrative purposes. We expect our general and administrative expenses will increase in the near term as a percentage of revenue as we hire additional personnel and incur professional expenses to support our operations as a listed company in the United States as well as additional employees in connection with the start-up of our Phase III production facilities and future production facilities. However, we expect that our general and administrative expenses will decrease as a percentage of our revenues over time as we achieve greater economies of scale. In addition, before we commence commercial production of a new manufacturing facility, we account for all production-related costs, including direct labor costs and overhead costs, as administrative expenses. After the commencement of commercial production at a production facility, these expenses are accounted for as our cost of revenues. We expect our administrative expenses to grow as we expect to hire additional supporting staff in conjunction with our growth.

### ***Research and Development Expenses***

To date, our research and development expenses have been minimal as we have focused on initial production. Research and development expenses have been included in general and administrative expenses. Our research and development expenses will consist primarily of costs of raw materials used in research and development activities, salaries and employee benefits for research and development personnel, and equipment costs relating to the design, development, testing and enhancement of our production process. We will conduct our research and development, design and manufacturing operations primarily in China, where the costs of skilled labor, engineering and technical resources, as well as land, facilities and utilities, tend to be lower than those in more developed countries. We expect our research and development expenses to increase significantly as a percentage of our revenues in the future as we continue to hire additional research and development personnel and focus on continuous innovation of process technologies for our products, including improving our technical know-how to produce higher purity polysilicon and wafers.

### ***Selling and Marketing Expenses***

We incurred no material selling and marketing expenses through June 30, 2008. To date, our selling expenses have been included in general and administrative expenses. Our selling and marketing expenses consist primarily of advertising costs, packaging and shipping costs, salaries and employee benefits of sales personnel, sales-related travel and entertainment expenses and other selling and marketing expenses including sales commissions paid to our sales agents. We expect that our selling and marketing expenses will increase in the near term as we increase our sales efforts, hire additional sales personnel and expand into the electronic grade polysilicon and international markets. However, we expect that the growth in revenues will outpace the growth in selling and marketing expenses over time.

## **Taxation**

We expect our net income to be derived primarily from JZPTD, our operating subsidiary in China. Prior to January 1, 2008, JZPTD was subject to PRC enterprise income tax of 33.0%, which included a 30.0% state income tax and a 3.0% local income tax. For the year ended December 31, 2007, JZPTD was exempt from the

## [Table of Contents](#)

local income tax. As of January 1, 2008, we became subject to the new EIT Law, which provides for a national 25% rate applicable to most enterprises and replaces the prior income tax rate subject to the benefits that had been previously granted.

We have received approval for a two-year tax exemption from the enterprise income tax for the years ended December 31, 2008 and 2009 and will be taxed at 50.0% of the new EIT tax rate for the years ending December 31, 2010, 2011 and 2012, providing a tax rate of 12.5%.

In addition, under the new EIT Law, an enterprise established outside of the PRC with “de facto management bodies” within the PRC may be considered a resident enterprise and will normally be subject to the enterprise income tax at the rate of 25% on its global income. The rule implementing the EIT Law provides that the term “de facto management bodies” refers to management bodies which have material management and control over all aspects of the business, including without limitation, the production, operation, personnel, finance, and assets of the enterprise. However, it is still unclear if the PRC tax authorities would subsequently determine that, notwithstanding our status as the Cayman Islands holding company of our operating business in the PRC, with administrative headquarters and personnel in Hong Kong, we should be classified as a resident enterprise, whereby our global income will be subject to PRC income tax at a tax rate of 25%. In any event, we do not expect to derive substantial earnings outside the PRC in the foreseeable future. A foreign investor would be subject to a 10% tax for dividends received from its PRC enterprise, provided that such foreign investor does not set up any entity in China. However, as JZPTD is owned directly by our Hong Kong subsidiary, which is a non-resident enterprise, and as Hong Kong has an arrangement with the PRC under which the tax rate from dividend income is 5%, dividends paid by JZPTD would be subject to a 5% withholding tax.

Pursuant to the Interim Regulations on Value Added Tax and its Implementation Rules issued in 1993, all entities and individuals that are engaged in the sale of goods, the provision of repairs and replacement services and the importation of goods in China are generally required to pay value-added tax, or VAT, at a rate of 17% of the gross sales proceeds received. We anticipate that most of our initial sales will be made domestically. We have received VAT rebates from the purchase of certain domestically manufactured equipment. As of December 31, 2007, we received VAT rebates of RMB10.0 million.

We expect to have minimal taxable income in jurisdictions other than China. Under current laws of the Cayman Islands, we are not subject to income or capital gains tax. Additionally, dividend payments made by us are not subject to withholding tax in the Cayman Islands.

## **Critical Accounting Policies**

We prepare our consolidated financial statements in accordance with U.S. GAAP, which requires us to make judgments, estimates and assumptions that affect (i) the reported amounts of assets and liabilities, (ii) disclosure of contingent assets and liabilities at the end of each reporting period and (iii) the reported amounts of revenue and expenses during each reporting period. We continually evaluate these estimates and assumptions based on historical experience, knowledge and assessment of current business and other conditions, expectations regarding the future based on available information and reasonable assumptions, which together form a basis for making judgments about matters not readily apparent from other sources. Since the use of estimates is an integral component of the financial reporting process, actual results could differ from those estimates. Some of our accounting policies require higher degrees of judgment than others in their application. When reviewing our financial statements, you should consider (i) our selection of critical accounting policies, (ii) the judgment and other uncertainties affecting the application of such policies and (iii) the sensitivity of reported results to changes in conditions and assumptions. We consider the policies discussed below to be critical to an understanding of our financial statements as their application places the most significant demands on the judgment of our management.

### ***Revenue Recognition***

We manufacture and sell polysilicon and wafers. We recognize revenue when all of the following conditions are met: price to the buyer is fixed and determinable, products are delivered and title has passed to customers and collectability is reasonably assured. Sales agreements typically do not contain customary product warranties except for return and replacement of defective products within period of 30 days from delivery. Sales agreements do not contain post-shipment obligations or any other return or credit provisions.

A majority of the sales contracts provide that customers must arrange for the shipping of the goods and bear all the costs of such shipping and the risks associated with loss or damage of the goods from our manufacturing premises. Thus, we fulfill our obligation of delivery when the goods are shipped. We required and received cash (or bank note of equivalent value) on or before delivery for a majority of our sales transactions. We extended a credit term to only one customer since commencement of operations and have assessed a number of factors to determine whether collection was reasonably assured including the customer's credit worthiness.

We also entered into supply agreements for sale of polysilicon and wafers. Most of these contracts provide for supply of specified volumes and pre-set pricing that decreases over the terms of the agreements. Revenues under our supply agreements have been recognized in the statement of operations using the weighted average prices over the contractual terms. Revenues relating to future price decreases under these agreements have been classified as a liability on the balance sheet and reported as deferred revenues.

### ***Long-lived Assets***

We depreciate and amortize our property, plant and equipment using the straight-line method of accounting over the estimated useful lives of the assets. We make estimates of the useful lives of plant and equipment in order to determine the amount of depreciation expense to be recorded during each reporting period. We estimate the useful lives at the time the assets are acquired based on historical experience with similar assets as well as anticipated technological or other changes. If technological changes were to occur more rapidly than anticipated or in a different form than anticipated, we might shorten the useful lives assigned to these assets, which would result in the recognition of increased depreciation and amortization expense in future periods. There has been no change to the estimated useful lives during the period presented.

We evaluate long-lived assets, including property, plant and equipment, which are subject to amortization, for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. We assess recoverability by comparing the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated undiscounted future cash flows, we recognize an impairment charge based on the amount by which the carrying amount of the asset exceeds the fair value of the asset. We estimate the fair value of the asset based on the best information available, including prices for similar assets and in the absence of an observable market price, the results of using a present value technique to estimate the fair value of the asset.

### ***Share-based Compensation***

As further described in Note 12 to our Consolidated Financial Statements, we account for share-based compensation under Statement of Financial Accounting Standards No. 123-R, "Share-Based Payment", or SFAS No. 123R. Under SFAS No. 123R, the cost of all share-based payment transactions must be recognized in our consolidated financial statements based on their grant-date fair value over the required period, which is generally the period from the date of grant to the date when the share compensation is no longer contingent upon additional service from the employee, or the vesting period. This statement also requires us to adopt a fair value-based method of measuring the compensation expense related to share-based compensation. For options granted to employees, we record share-based compensation expenses for the fair value of the options at the grant date. We categorize these share-based compensation expenses in our (i) cost of revenues; (ii) general and administrative expenses; and (iii) research and development expenses, depending on the job functions of the grantees of our restricted shares.



## Table of Contents

The determination of fair value of equity awards such as options requires making complex and subjective judgments about the projected financial and operating results of the subject company. It also requires making certain assumptions such as cost of capital, general market and macroeconomic conditions, industry trends, comparable companies, share price volatility of the subject company, expected lives of options and discount rates. These assumptions are inherently uncertain. Changes in these assumptions could significantly affect the amount of employee share-based compensation expense we recognize on our consolidated financial statements.

We had 5,000,000 options to acquire 50,000,000 shares outstanding as of June 30, 2008. The fair value of the options at February 29, 2008, the grant date, was \$13.89 per option.

We are responsible for estimating the fair value of the options granted by us. When estimating the fair value of such options, our management has considered a number of factors, including the result of a third-party appraisal and an equity transaction of our company, while taking into account standard valuation methods and the achievement of certain events. We engaged Jones Lang Lasalle Sallmans Limited, an independent third party valuation firm, to assess the fair value of our share options as of February 29, 2008 on a contemporaneous basis.

Changes in our estimates and assumptions regarding the expected volatility of our ordinary shares could significantly impact the estimated fair values of our share options and, as a result, our net income and the net income available to our ordinary shareholders.

We determined the fair value of the options on the date of grant by using the binomial option-pricing method under the following assumptions: risk free interest rate of 3.71%, 60.65% volatility, no dividends, zero forfeiture rate and a suboptimal exercise factor of 1.5. If different assumptions were used, our share-based compensation expenses, net income and income available to our shareholders could have been significantly different. The total compensation expenses in connection with our option grants that will be recognized for the vesting period of the options granted on February 29, 2008 will be approximately \$69.4 million.

The 5,000,000 options granted on February 29, 2008 had an exercise price of \$5 per option, or \$0.50 per share. At the grant date, the underlying ordinary shares had a fair value of \$1.71 per share; providing an intrinsic value of \$12.14 per option.

Determining the fair value of our ordinary shares requires making complex and subjective judgments regarding projected financial and operating results, our unique business risks, the liquidity of our shares and our operating history and prospects at the time of grant. The assumptions used in deriving the fair value of our ordinary shares include: i) there will be no material change in the existing political, legal, technological, fiscal or economic condition of China that may adversely affect our business; ii) the contracts and agreements we entered into will be honored; and iii) our competitive advantages and disadvantages do not change significantly during the period under consideration. These assumptions are inherently uncertain. If different assumptions were used, our share-based compensation expenses, net income and income per share could have been significantly different.

The independent appraiser used solely the income approach to determine the fair value of our ordinary shares. In the income approach, the value depends on the present worth of future economic benefits to be derived from our projected sales income. Indications of value are developed by discounting projected future net cash flows available for payment of shareholders' interest to their present worth at a discount rate that reflects a number of factors, including the current cost of financing and the risk considered inherent in the business. A discount rate represents an estimate of the rate of return required by a third party investor for an investment of this type. The rate of return expected from an investment by an investor relates to the perceived risk of the investment. The calculation of the discount rate is based on the Capital Asset Pricing Model, which takes into account the risk free rates, beta of selected comparable solar cell companies, market returns in comparative markets and our company specific risks, including business risk, small size risk and country risk. For this method, the independent appraiser used a discount rate of 13.25%.

## [Table of Contents](#)

Because the interest in the equity value of our company includes both preferred shares and ordinary shares, the fair value of the equity interest is allocated to preferred shares and ordinary shares using the option-pricing method. Under the option-pricing method, the independent appraiser treats ordinary shares and preferred shares as call options on our company's value, with exercise prices based on the value of the liquidation preference of the preferred shares. Because a call option is used, the Black-Scholes model, which is commonly adopted in the option-pricing method, is applied to price the call option. The independent appraiser considered various terms of the preferred shares and ordinary shares, including the level of seniority, dividend policy, conversion ratios, and cash allocation upon liquidation of the enterprise in the option-pricing method.

### **Internal Control Over Financial Reporting**

Prior to this offering, we have been a private company with limited accounting personnel and other resources to address our internal controls and procedures. During the course of the preparation and external audit of our consolidated financial statements as of December 31, 2006 and December 31, 2007 and for the period from March 7, 2006 to December 13, 2006 (predecessor), the period from November 13, 2006 to December 31, 2006 (successor) and the year ended December 31, 2007 (successor), we and our independent registered accounting firm identified a number of deficiencies in our internal control over financial reporting, including a number of material weaknesses and significant deficiencies as defined in the standards established by the U.S. Public Company Accounting Oversight Board. Material weaknesses and significant deficiencies in our internal control over financial reporting could result in a material misstatement of our financial statements that will not be prevented or detected. The material weaknesses identified were: (1) lack of an accounting policies and procedures manual; and (2) a lack of dedicated financial reporting and accounting resources necessary to comply with U.S. GAAP. In addition, we and our independent registered public accounting firm identified certain significant deficiencies in our internal control over financial reporting. These significant deficiencies were: (1) lack of a risk assessment process; and (2) related party transactions were not accounted for separately from non-related party transactions.

In order to remedy the material weaknesses and significant deficiencies, we are undertaking several measures to further improve our internal control over financial reporting. We hired Mr. Jason Li as our chief financial officer who commenced his employment with us in August 2008. We have hired an outside consulting firm to review our internal control processes, policies and procedures in order to assist us in identifying weaknesses in our internal control over financial reporting. We plan to provide further training to our financial and accounting staff to enhance their knowledge of U.S. GAAP. We are also adopting and implementing additional policies and procedures, including an enterprise resource planning system, to strengthen our internal controls over financial reporting. We plan to continue to take additional steps to remedy these material weaknesses and significant deficiencies in time to meet the deadline imposed by the Sarbanes-Oxley Act for compliance with the requirements of Section 404. These steps include (i) performing management testing on internal controls, (ii) hiring additional experienced internal auditors and (iii) conducting dry-run testing for compliance with Section 404. If, however, we fail to timely achieve and maintain the adequacy of our internal controls, we may not be able to conclude that we have effective internal control over financial reporting at a reasonable assurance level. Moreover, effective internal controls over financial reporting is necessary for us to produce reliable financial reports and is important to help prevent fraud. As a result, our failure to achieve and maintain effective internal controls over financial reporting could result in the loss of investor confidence in the reliability of our financial statements, which in turn could harm our business and negatively impact the trading price of our ADSs. Furthermore, we anticipate that we will incur considerable costs and use significant management time and other resources in an effort to comply with Section 404 and other requirements of the Sarbanes-Oxley Act.

### **Recent Quarterly Results of Operations**

The following table presents our consolidated quarterly results of operations for the three months ended December 31, 2007, March 31, 2008 and June 30, 2008 and as a percentage of total revenues for our respective

## [Table of Contents](#)

periods. You should read the following table in conjunction with our unaudited consolidated financial statements and related notes included elsewhere in this prospectus. We have prepared the consolidated quarterly financial information on the same basis as our audited consolidated financial statements. This unaudited consolidated financial information includes all adjustments, consisting only of normal recurring adjustments, that we consider necessary for a fair representation of our financial position and operating results for the quarters presented. Our operating results for any particular quarter are not necessarily indicative of our future results.

	Three Months Ended					
	December 31,		March 31,		June 30,	
	2007		2008		2008	
	(unaudited)		(unaudited)		(unaudited)	
(in thousands, except percentages)						
Consolidated Statement of Operations Data						
Revenues:						
Third party sales	\$33,378	81.7 %	\$72,947	89.5 %	\$80,743	87.7 %
Related party sales	7,470	18.3	8,584	10.5	11,333	12.3
Total revenues	40,848	100.0	81,531	100.0	92,076	100.0
Cost of revenues	(10,996)	(26.9)	(18,483)	(22.7)	(30,247)	(32.9)
Gross profit	29,852	73.1	63,048	77.3	61,829	67.1
Operating expenses (general and administrative)	(4,458 )	(10.9)	(3,449 )	(4.2 )	(3,191 )	(3.5 )
Non-operating income (expenses):						
Interest income	239	0.6	195	0.2	387	0.4
Interest expense	(3,949 )	(9.7 )	(3,419 )	(4.2 )	(3,623 )	(3.9 )
Other income (expenses)	1	0.0	(112 )	(0.1 )	(635 )	(0.6 )
Amortization of other deferred income	—	—	115	0.1	117	0.1

Income before income tax and minority interest	21,685	53.1	56,378	69.1	54,884	59.6
Income tax (expense) benefit	(3,290 )	(8.1 )	1,207	1.5	(1,504 )	(1.6 )
Income before minority interest	18,395	45.0	57,585	70.6	53,380	58.0
Minority interest	(8,010 )	(19.6 )	(22,063)	(27.0 )	(20,829)	(22.6 )
Net income	10,385	25.4	35,522	43.6	32,551	35.4
Deemed distribution on convertible redeemable preferred shares-accretion of redemption premium	(833 )	(2.0 )	(833 )	(1.0 )	(834 )	(0.9 )
Net income attributable to holders of ordinary shares	<u>\$9,552</u>	<u>23.4 %</u>	<u>\$ 34,689</u>	<u>42.6 %</u>	<u>\$31,717</u>	<u>34.5 %</u>

*Revenues, cost of revenues and gross profit.* Revenues increased 12.9% from \$81.5 million in the three months ended March 31, 2008 to \$92.1 million in the three months ended June 30, 2008. This increase was primarily due to increased sales volumes of polysilicon and sales of wafers which was partially offset by an increase in the percentage of sales volumes derived from contract sales. Our polysilicon sales volumes increased from 256 MT of polysilicon in the three months ended March 31, 2008 to 295 MT of polysilicon in the three months ended June 30, 2008. We sold 10.1 MW of wafers at a per W average selling price, excluding VAT, of \$1.20 in the three months ended June 30, 2008. We recognized the revenues from our contract sales on a weighted average basis, which effectively reduces the average selling prices on our polysilicon and wafers to a level below spot market prices for these periods. All of our sales volumes in the three months ended March 31, 2008 were done on the spot market whereas approximately 60% of our sales volumes in the three months ended June 30, 2008 were done on the spot market. The shift away from spot market sales decreased our average selling price for polysilicon, excluding VAT, from \$318.5 per kg to \$292.6 per kg. Our contract sales of wafers, excluding VAT, were at an average selling price of \$1.20 per W, which is lower than spot market prices for wafers in that period. Cost of revenues increased 63.6% from \$18.5 million in the three months ended March 31, 2008 to \$30.2 million in the three months ended June 30, 2008. This increase was primarily due to increased sales volumes and tolling contract costs. We incurred \$5.0 million in tolling contract costs in the three months ended June 30, 2008 as we began supplying wafers in April 2008. As a result of the foregoing, our gross profit declined from \$63.0 million in the three months ended March 31, 2008 to \$61.8 million in the three months ended June 30, 2008, and gross margins decreased from 77.3% in the three months ended March 31, 2008 to 67.1% in the three months ended June 30, 2008.

## [Table of Contents](#)

Revenues increased 99.6% from \$40.8 million in the three months ended December 31, 2007 to \$81.5 million in the three months ended March 31, 2008. This increase was primarily due to increased sales volume from 153 MT of polysilicon in the three months ended December 31, 2007 to 256 MT in the three months ended March 31, 2008 with an increase in the average selling price of polysilicon, excluding VAT, from \$267 per kg to \$318 per kg. All these sales were made on the spot market. Cost of revenues increased 68.1% from \$11.0 million in the three months ended December 31, 2007 to \$18.5 million in the three months ended March 31, 2008. This increase was primarily due to increased sales volumes and an increase in TCS purchase prices. As a result of the foregoing, our gross profit increased from \$29.9 million in the three months ended December 31, 2007 to \$63.0 million in the three months ended March 31, 2008, representing gross margins of 73.1% in the three months ended December 31, 2007 and 77.3% in the three months ended March 31, 2008.

*Operating expenses.* Operating expenses decreased 7.5% from \$3.4 million in the three months ended March 31, 2008 to \$3.2 million in the three months ended June 30, 2008. This increase was primarily due to a reversal of a provision for penalty payments pursuant to our supply contract with JSJST of \$0.3 million and a foreign exchange gain of \$0.8 million, partially offset by an increase in legal fees.

Operating expenses decreased 20.1% from \$4.5 million in the three months ended December 31, 2007 to \$3.6 million in the three months ended March 31, 2008. This decrease was primarily due to an exchange loss of \$0.5 million in the three months ended December 31, 2007 and an exchange gain of \$0.2 million in the three months ended March 31, 2008 and a decrease in management fees which were partially offset by an increase in entertainment expenses, legal and professional fees, consultancy fees and sundry expenses.

*Non-operating income (expenses).* Our non-operating expenses were \$3.2 million in the three months ended March 31, 2008 and \$3.8 million in the three months ended June 30, 2008. Non-operating expenses for both periods was primarily due to interest on our floating rate bonds, onshore loans and the amortization of deferred financing costs and a one time \$0.8 million charitable donation to the Sichuan Province earthquake disaster relief in the three months ended June 30, 2008. Interest income was \$0.2 million in the three months ended March 31, 2008 and \$0.4 million in the three months ended June 30, 2008 which was offset by a 6.0% increase in interest expenses from \$3.4 million in the three months ended March 31, 2008 to \$3.6 million in the three months ended June 30, 2008.

We had non-operating expenses of \$3.7 million in the three months ended December 31, 2007 and non-operating expense of \$3.2 million in the three months ended March 31, 2008. Non-operating expense in the three months ended December 31, 2007 was primarily due to interest on our floating rate bonds, onshore loans and the amortization of deferred financing costs aggregating \$3.9 million. Non-operating expenses in the three months ended March 31, 2008 was primarily due to interest expenses on our floating rate bonds, onshore loans and amortization of deferred financing cost aggregating \$3.4 million.

*Net income attributable to holders of ordinary shares.* Net income attributable to holders of ordinary shares decreased 8.6% from \$34.7 million in the three months ended March 31, 2008 to \$31.7 million in the three months ended June 30, 2008, and net margin decreased from 42.6% in the three months ended March 31, 2008 to 34.5% in the three months ended June 30, 2008. This decrease was mainly attributable to the decline in gross margin.

Net income attributable to holders of ordinary shares increased 263.2% from \$9.6 million in the three months ended December 31, 2007 to \$34.7 million in the three months ended March 31, 2008, representing a net margin of 23.4% in the three months ended December 31, 2007 and 42.6% in the three months ended March 31, 2008.

## **Comparative Results of Operations**

We have only been in existence for a limited period of time and only began to generate revenues in the three months ended December 31, 2007. We have no comparable annual periods for a year to year comparison. We

## [Table of Contents](#)

have set forth below a discussion of our results of operations comparing the six months ended June 30, 2007 to the six months ended June 30, 2008 and discussing each of the periods covered by our consolidated financial statements included elsewhere in this prospectus. In addition, we received our first revenues from wafer sales in April 2008. None of the periods covered by our consolidated financial statements reflect wafer revenues or wafer related cost of revenues.

### ***Six months ended June 30, 2007 and 2008***

*Revenues, cost of revenues and gross profit.* We had no revenues, cost of revenues or gross profit for the six months ended June 30, 2007, as we were constructing our Phase I production facility. For the six months ended June 30, 2008 we had \$173.6 million in revenues and \$48.7 in cost of revenues, reflecting the factors outlined in the previous section, which resulted in gross profit of \$124.9 million.

*Operating expenses and non-operating expenses.* We had operating expenses of \$9.0 million, consisting primarily of consultancy fees of \$5.1 million paid to Triple A Investments Limited and Goldfinch Consultants Limited, which are both non-affiliates, for consulting services, for the six months ended June 30, 2007. For the six months ended June 30, 2008, we had \$6.6 million of operating expenses due primarily to the increase in staffing to support our operations, legal and professional fees, entertainment expenses and management fees paid to the Golden Concord Group. We had non-operating expenses of \$0.8 million for the six months ended June 30, 2007 which increased to \$7.0 million for the six months ended June 30, 2008. This increase was primarily due to increased interest expenses due to our increased domestic Renminbi borrowings and the addition of our floating rate bonds.

*Net (loss) income attributable to holders of ordinary shares.* We had a net loss attributable to holders of ordinary shares for the six months ended June, 2007 resulting from the expenses discussed above and the absence of any revenues. We had net income attributable to holders of ordinary shares of \$66.4 million for the six months ended June 30, 2008.

### ***Year ended December 31, 2007***

*Revenues, cost of revenues and gross profit.* We had revenues of \$40.8 million in the year ended December 31, 2007, all of which was recorded in the final three months of that period. We sold 153 MT of polysilicon in the final three months of 2007, which was substantially all we manufactured. Our cost of revenues in the year ended December 31, 2007, which related entirely to the final three months of the period, was \$11.0 million. As this period reflected initial ramping up of production and did not include any benefit from the hydrochlorination process, we do not believe our gross profit of \$29.9 million on sale of 153 MT and revenues of \$40.8 million is necessarily representative of results to be expected in future periods.

*Operating expenses.* Our operating expenses consisted of both general and administrative and of selling and marketing expenses in the year ended December 31, 2007. Operating expenses for the year ended December 31, 2007 were \$17.8 million, including consulting fees of \$5.1 million paid to Triple A Investments Limited and Goldfinch Consultants Limited, which are both non-affiliates, for consulting services, salaries for employees of \$2.5 million, a discretionary bonus paid to our employees for meeting construction targets of \$0.7 million, handling fees paid to Shanghai Creative Energy Company Limited, an affiliate, for the acquisition of property, plant and equipment of \$0.4 million and a foreign exchange loss of \$1.5 million. The consulting services related to assistance in setting up our business, sourcing equipment, human resources and regulatory matters. The exchange loss in the year ended December 31, 2007 primarily related to the delayed payment of the RMB-denominated purchase price of JZPTD. The payment, which was made in December 2007, was made in U.S. dollars to Guotai Energy Investments Ltd. and Beijing Zhongneng Renewable Energy Investments Ltd., which are both non-affiliate equity investors in JZPTD. Other operating expenses in the year ended December 31, 2007 included travel expenses and other professional expenses.

---

## [Table of Contents](#)

*Non-operating income (expenses).* Our non-operating expenses for the year ended December 31, 2007 were \$5.2 million. This was primarily due to interest expenses on our loan facilities and our floating rate bonds of \$5.7 million and amortization of deferred financing costs of \$0.4 million which was partially offset by a gain on the disposal of JSJST of approximately \$0.6 million and interest income of approximately \$0.4 million earned from our bank deposits.

*Net loss attributable to holders of ordinary shares.* As a result of the factors described above, we had a net loss attributable to holders of ordinary shares of \$2.9 million for the year ended December 31, 2007.

### ***Period from November 13, 2006 to December 31, 2006 (successor)***

*Revenues, cost of revenues and gross profit.* No revenues, cost of revenues and gross profit were recorded by us in the period from November 13, 2006 to December 31, 2006 (successor).

*Operating expenses.* Operating expenses for the period from November 13, 2006 to December 31, 2006 (successor) were \$0.2 million. Our operating expenses consisted only of general and administrative expenses. These expenses consisted of initial business start up costs to fund the commencement of construction of our Phase I production facility.

*Non-operating income (expenses).* Non-operating expenses for the period from November 13, 2006 to December 31, 2006 (successor) were \$0.1 million. These expenses consisted primarily of net interest expenses related to borrowings incurred to fund our initial operations.

*Net loss attributable to holders of ordinary shares.* As a result of the factors described above, we had a net loss attributable to holders of ordinary shares of \$0.2 million for the period from November 13, 2006 to December 31, 2006 (successor).

### ***Period from March 7, 2006 to December 13, 2006 (predecessor)***

*Revenues, cost of revenues and gross profit.* No revenues, cost of revenues and gross profit were recorded by our predecessor in the period from March 7, 2006 to December 13, 2006 (predecessor).

*Operating expenses.* Operating expenses for the period from March 7, 2006 to December 14, 2006 (predecessor) were \$2.8 million. These expenses consisted of initial business start up costs to fund the commencement of construction of our Phase I production facility in June 2006, and included \$1.5 million in consultancy fees paid to an affiliate under a technical consultancy agreement for the procurement of polysilicon production technology including the sourcing and import of equipment.

*Non-operating income (expenses).* Non-operating expenses for the period from March 7, 2006 to December 13, 2006 (predecessor) were \$0.7 million. These expenses consisted primarily of net interest expenses related to borrowings incurred to fund our initial operations.

*Net loss attributable to holders of ordinary shares.* As a result of the factors described above, we had a net loss attributable to holders of ordinary shares of \$3.4 million for the period from March 7, 2006 to December 13, 2006 (predecessor).

## **Plan of Operations for 2008**

We have received a number of the approvals needed for our 1,500 MT per year Phase II production facility, which is designed to produce both solar and electronic grade polysilicon. We have completed installation of all 18 reactors, five imported and 13 domestically produced, and in July 2008, we commenced commercial production and expect to achieve its fully ramped up capacity by December 2008. After June 30, 2008, we incurred RMB533.0 million in onshore borrowings which will be used to finance our intended expansion of polysilicon production facilities and in-house wafer production facility.



Our Taixing joint venture has constructed a TCS production facility with an initial annual capacity of 20,000 MT which commenced pilot production in August 2008. We intend to increase the Taixing joint venture annual



---

## [Table of Contents](#)

TCS production capacity to up to 60,000 MT by 2010. We commenced construction of a hydrogenation and a TCS production facility in Xuzhou in August 2008 which we expect to have capacity to produce up to 90,000 MT of TCS per year by the third quarter of 2009. We expect the capital expenditures related to the hydrogenation and in-house TCS production facility, excluding capitalized interest during construction, will be approximately RMB260.0 million and RMB60.0 million, respectively, the majority of which we expect to incur in 2008.

We have received PRC government environmental and NDRC approvals for 6,000 MT per year of our 10,500 MT per year Phase III production facilities and have commenced negotiations for equipment purchase contracts. We intend to apply for NDRC approvals for the remaining capacity of Phase III production facilities in the near future. We will source a greater portion of our equipment for the Phase III production facilities from domestic manufacturers and have entered into equipment supply contracts for reactors and certain other equipment for our Phase III production facilities. See “Business–Equipment”. We expect the capital expenditures related to the Phase III production facilities, excluding capitalized interest during construction, will be approximately \$874.8 million, approximately one-third of which we expect to incur in 2008. We expect to finance this expenditure with part of the \$400.0 million proceeds from this offering and the balance from domestic RMB-denominated borrowings. For initial equipment purchases, we may fund a portion of the equipment deposits or purchase price from advance payments we receive on wafer and polysilicon supply contracts discussed below. Phase III is expected to consist of three production lines with annual capacities of 3,500 MT each, each of which is expected to be able to produce both solar and electronic grade polysilicon. The first production line at our Phase III production facilities is expected to commence commercial production in December 2008. We intend to fully ramp up our Phase III production facilities by February 2010.

We have entered into equipment supply contracts for wire saws and squarers for our in-house production of wafers. We will also enter into additional equipment purchase contracts for our wafer capacity expansion. Committed capital expenditures related to these equipment purchase contracts are approximately \$238.7 million. Although deposits will be made in 2008, we expect the majority of such capital expenditures to be incurred in 2009.

We have entered into supply contracts for the sale of polysilicon and wafers with seven customers. The weighted average selling price for the polysilicon supply contracts and for the wafer supply contracts are significantly lower than our historical spot market sales prices. We recognize revenues from most of these contracts on a weighted average basis. For the three months ended June 30, 2008, approximately 60% of our sales volumes were from spot market sales. As a result of the foregoing, our profitability for the three months ended June 30, 2008 was adversely effected. We expect that for the three months ending September 30, 2008 and December 31, 2008, approximately 25% and less than 10% of our sales volumes will be derived from spot market sales, respectively. See “Risk Factors – Risks Relating to Our Business – We did not achieve profitability until the three months ended December 31, 2007 and we may not maintain profitability.” We also intend, especially as Phase III production begins, to seek a greater proportion of international sales. We have determined a preliminary location in China for our polysilicon production beyond Phase III, and we intend to apply for necessary permits and commence equipment orders shortly after the completion of this offering.

We expect to finance the expenditure to be incurred in connection with our expansion plans described above in this section with the portion of the proceeds of the offering that will be contributed to JZPTD, existing onshore borrowings and cash generated by our operating activities.

We expect to significantly increase the number of our employees, but less than proportionally to our increased capacity, as our Phase II production facility ramps up and our Phase III production facilities come on line.

[Table of Contents](#)

**Liquidity and Capital Resources**

***Cash Flows and Working Capital***

To date, we have financed our operations primarily through the issuance of ordinary shares and bonds, bank loans and contributions from a shareholder. We received \$60.0 million in proceeds from the issuance and sale of our floating rate bonds. We obtained bank loans which aggregated \$206.1 million as of June 30, 2008. We also received net contributions from shareholders in the total amount of \$8.0 million as of June 30, 2008.

The following table sets forth a summary of our cash flows for the periods indicated:

	March 7, 2006 to December 13, 2006 (Predecessor)	November 13, 2006 to December 31, 2006 (Successor)	Year Ended December 31, 2007 (Successor)	Six Months Ended June 30, 2007 (Successor)      2008 (Successor)	
					(in thousands)
Net cash (used in) provided by operating activities	\$ (2,782 )	\$ (842 )	\$ 15,515	\$(5,681 )	\$277,935
Net cash (used in) provided by investing activities	(60,857 )	1,865	(96,716 )	(19,327 )	(284,378)
Net cash provided by financing activities	87,670	4,010	116,120	42,923	115,675
Net increase in cash and cash equivalents	24,031	5,033	34,919	17,915	109,232
Cash and cash equivalents at beginning of period	—	—	5,033	5,033	40,067
Effect of foreign exchange on cash and cash equivalents	453	—	115	134	2,362
Cash and cash equivalents at end of period	<u>\$ 24,484</u>	<u>\$ 5,033</u>	<u>\$ 40,067</u>	<u>\$ 23,082</u>	<u>\$ 151,661</u>

In addition to our past sources of liquidity, we expect in the future to enter into additional polysilicon and wafer supply contracts that will include interest-free advance payments or provide for financial guarantees or support against future polysilicon or wafer deliveries. We have received such advances or financial guarantees or support from all of our customers so far. We will recognize the revenues from most of these supply contracts on a weighted average basis. As the prices paid in the early years on the supply agreements exceed the prices paid in later years, this will have the effect of deferring revenues, and as a result the cash flows from sales under these contracts will exceed recorded

revenues from these contracts in the early years. We believe the ability to enter into such agreements will add to our ability to fund both capital expenditures and working capital. Subsequent to June 30, 2008, we incurred an additional RMB533.0 million in onshore borrowings which may be used to finance our intended expansion of polysilicon production facilities and in-house wafer production facility. We believe the proceeds of this offering, our existing onshore borrowings and the cash generated from our operations should provide us with sufficient funds for our intended capacity expansion plans.

### ***Operating Activities***

Net cash provided by operating activities for the six months ended June 30, 2008 was \$277.9 million compared to cash used in operating activities for the six months ended June 30, 2007 of \$5.7 million. Net cash provided by operating activities for the six months ended June 30, 2008 primarily resulted from net income of \$68.1 million, advances from customers of \$147.2 million, an increase in deferred revenues of \$23.5 million, decrease in accounts receivable of \$6.4 million and non-cash adjustments of \$51.9 million mainly including the depreciation of property, plant and equipment of \$4.6 million, amortization of discount and deferred financing

## [Table of Contents](#)

costs on the floating rate bonds of \$4.4 million and minority interests of \$42.9 million, partially offset by an increase in inventories of \$5.6 million, a decrease in accrued expenses and other current liabilities of \$5.4 million, an increase in prepaid expenses and other current assets of \$5.3 million and a decrease in income tax payables of \$4.5 million. Net cash used in operating activities for the six months ended June 30, 2007 primarily resulted from a net loss of \$8.4 million, an increase in amounts due to affiliated companies of \$3.3 million and an increase in accrued expenses and other current liabilities of \$1.7 million, partially offset by non-cash adjustments of \$1.7 million, which consisted primarily of minority interests of \$1.3 million and a gain on the disposal of JSJST of \$0.6 million.

Net cash provided by operating activities for the year ended December 31, 2007 was \$15.5 million compared to cash used in operating activities for the period from November 13, 2006 to December 31, 2006 and the period from March 7, 2006 to December 13, 2006 (predecessor) of \$0.8 million and \$2.8 million, respectively. Net cash provided by operating activities for the year ended December 31, 2007 primarily resulted from an increase in accrued expenses and other current liabilities of \$11.0 million, an increase in minority interest of \$5.5 million and an increase in income tax payable of \$4.3 million, depreciation of \$2.4 million and amortization of discount and deferred financing costs on floating rate bonds of \$2.5 million, partially offset by an increase in accounts receivable of \$6.2 million, an increase in prepaid expenses of \$2.5 million and our net loss of \$1.8 million. Net cash used in operating activities from November 13, 2006 to December 31, 2006 primarily resulted from a net loss of \$0.2 million and a decrease in accrued expenses and other current liabilities of \$0.6 million. Net cash used in operating activities from March 7, 2006 to December 13, 2006 primarily results from a net loss of \$3.4 million which was partially offset by an increase in accrued expenses and other current liabilities of \$0.7 million. The improvement in operating cash flows in 2007 as compared to the 2006 periods reflects the commencement of polysilicon sales in October 2007. Prior to March 31, 2008, substantially all of our product sales were made on a spot basis, for which we generally have not taken any credit risk of our buyers. As we make more sales under contracts, we will take more of such risk, which we have not had to analyze in the past. Although medium- to long-term supply contracts offer assurance of future sales, pricing of such sales are commonly at a discount to sales on the spot market. Although through December 31, 2007 we only made spot sales, we had \$6.3 million of accounts receivable as of December 31, 2007 from an extension of credit on one sale to a large public solar company.

### ***Investing Activities***

Net cash used in investing activities for the six months ended June 30, 2007 and 2008 was \$19.3 million and \$284.4 million, respectively. Net cash used in investing activities for the six months ended June 30, 2008 primarily resulted from deposits for the purchase of property and equipment of \$130.6 million, payments for the purchase of property, plant and equipment of \$119.3 million and an increase in restricted cash of \$40.0 million. Net cash used in investing activities for the six months ended June 30, 2007 primarily resulted from payments for the purchase of property, plant and equipment of \$35.2 million and deposits for the purchase of property and equipment of \$14.0 million, partially offset by a full repayment of a \$17.9 million (RMB130 million) short-term advance to Shanghai Creative, an affiliated company and \$12.0 million from the disposal of JSJST.

Net cash used in investing activities totaled \$96.7 million in the year ended December 31, 2007. Net cash provided by investing activities totaled \$1.9 million in the period from November 13, 2006 to December 31, 2006. Net cash used in investing activities totaled \$60.9 million in the period from March 7, 2006 to December 13, 2006 (predecessor). Net cash used in investing activities in the year ended December 31, 2007 primarily resulted from payments for the purchase of property, plant and equipment of \$80.5 million, deposits for purchase of property, plant and equipment of \$15.5 million, an increase in restricted cash related to our convertible bonds and deposits for short-term letters of credit for the purchase of property, plant and equipment of \$13.8 million and a net payment for the acquisition of JZPTD of \$16.4 million, which was partially offset by a full repayment of a \$17.5 million (RMB130 million) short-term advance to Shanghai Creative and net proceeds

## [Table of Contents](#)

from the disposal of JSJST of \$12.0 million. We acquired JSJST from onshore parties on December 6, 2006 and sold it to two minority shareholders of JZPTD on June 20, 2007. Net cash provided by investing activities in the period from November 13, 2006 to December 31, 2006 was primarily due to the cash balances of JZPTD of \$24.5 million that we acquired on December 13, 2006 which was partially offset by a RMB130 million short-term advance to Shanghai Creative of \$16.8 million and a deposit for the purchase of property, plant and equipment of \$5.1 million. Cash balances of JZPTD on December 13, 2006 included cash balances of JSJST which was a subsidiary of JZPTD on such date. Net cash used in investing activities in the period from March 7, 2006 to December 13, 2006 was primarily due to deposits for the purchase of property, plant and equipment of \$34.5 million, payment for the purchase of land use rights of \$6.9 million, payment for the purchase of property, plant and equipment of \$6.4 million and consideration paid for the acquisition of JSJST of \$12.2 million. See “Related Party Transactions–Share Transfer Agreement with Prior Onshore Shareholders Regarding JSJST”.

### ***Financing Activities***

Net cash provided by financing activities for the six months ended June 30, 2007 and 2008 was \$42.9 million and \$115.7 million, respectively. Net cash used in financing activities for the six months ended June 30, 2008 primarily resulted from proceeds from bank borrowings of \$130.8 million and advances from affiliated companies of \$16.3 million, partially offset by our repayment of loans from Taicang Harbour Golden Concord Electric-Power Generation Co., Ltd., an affiliated company, of \$14.3 million, our repayment of bank borrowings of \$10.2 million and the repurchase of shares amounting to \$7.0 million. Net cash provided by financing activities for the six months ended June 30, 2007 was primarily due to proceeds from bank borrowings of \$38.9 million and contributions from shareholders and minority shareholders of JZPTD of \$16.6 million, partially offset by a repayment of other borrowings of \$12.6 million.

Net cash provided by financing activities in the year ended December 31, 2007, the period from November 13, 2006 to December 31, 2006 and the period from March 7, 2006 to December 13, 2006 was \$116.1 million, \$4.0 million and \$87.7 million, respectively. Net cash provided by financing activities in the year ended December 31, 2007 primarily resulted from the issuance of floating rate bonds of \$60.0 million, bank borrowings of \$46.8 million, capital contributions to JZPTD by its minority shareholders of \$18.1 million and equity contributions from shareholders of \$13.0 million, which was partially offset by repayments of other borrowings of \$19.2 million, which included repayments of loans received from Guotai for the acquisition of JSJST of \$12.2 million, and financing costs for the floating rate bonds of \$2.5 million. See “Related Party Transactions–Share Transfer Agreement with Prior Onshore Shareholders Regarding JSJST”. Net cash provided by financing activities in the period from November 13, 2006 to December 31, 2006 primarily resulted from contribution by shareholders of \$2.0 million and capital contributed to JZPTD by its minority shareholders of \$2.0 million. Net cash provided by financing activities in the period from March 7, 2006 to December 13, 2006 primarily resulted from bank borrowings of \$31.5 million, our initial capital contribution of \$25.0 million and other borrowings of \$31.2 million.

### **Capital Expenditures**

We made capital expenditures for construction of our production facilities of \$40.9 million, \$6.6 million, \$96.0 million and \$249.9 million in the period from March 7, 2006 to December 13, 2006 (predecessor), the period from November 13, 2006 to December 31, 2006, the year ended December 31, 2007 and the six months ended June 30, 2008, respectively. Our capital expenditures have historically been used primarily to purchase polysilicon production equipment but we anticipate approximately \$83.1 million will be spent on costs associated with land, construction and additional wafer production equipment for the year ended December 31, 2008. We expect that purchases of equipment for our polysilicon and wafer capacity expansion will continue to constitute a significant portion of our capital expenditures.

## [Table of Contents](#)

We believe that our current cash and cash equivalents, anticipated cash flow from operations and the net proceeds from this offering, will be sufficient to meet our anticipated cash needs, including our cash need for working capital and our anticipated capital expenditures for our Phase III, wafer production facilities and further expansion. As part of the anticipated cash need for the year ending December 31, 2008, we have, after June 30, 2008, incurred additional RMB533.0 million onshore borrowings, which may be used for our intended expansion of polysilicon production facilities and in-house wafer production facility. We expect our capital expenditures in connection with our current expansion plans will be approximately \$700 million and approximately \$1.7 billion for the years ending December 31, 2008 and 2009, respectively. We may require additional cash due to changes in business conditions or other future developments, including any additional investments or acquisitions we may decide to pursue and in the event we cannot extend indebtedness that is maturing in 2008. If our existing cash and cash flows from operations are insufficient to meet our requirements, we may seek to sell additional equity or debt securities or borrow from lending institutions. See “Risk Factors – Risks Relating to Our Business – We have significant outstanding bank borrowings and may not be able to arrange adequate financing to repay these borrowings when they mature.”

### Contractual Obligations and Commercial Commitments

The following table sets forth our contractual obligations and commercial commitments as of June 30, 2008:

	Payments Due by Period				
	Total	Within 1	1-3 Years	3-5	Thereafter
		Year		Years	
(in thousands)					
Contractual Obligations:					
Short-term debt <sup>(1)</sup>	\$80,425	\$80,425	\$–	\$–	\$ –
Long-term debt <sup>(1)</sup>	143,601	28,454	115,147	–	–
Floating rate bonds <sup>(2)</sup>	75,000	–	75,000		
Capital commitments <sup>(3)</sup>	392,226	392,226	–	–	–
Operating lease obligations	218	160	58	–	–
Total obligations	\$691,470	\$501,265	\$190,205	\$ –	\$ –

Notes:

- (1) Includes fixed rate interest payments at the interest rate in effect as of June 30, 2008. Our fixed interest rate debt is all RMB-denominated and the interest rate can be adjusted annually by the People's Bank of China. Does not include interest on our floating rate bonds which will be redeemed and converted in connection with the closing of this offering.

- (2) Represents payments that would be due at maturity if we have not effected a qualified public offering. The floating rate bonds mature on September 10, 2009. At the closing of this offering, we will redeem \$20 million principal amount of such bonds and the remaining \$40 million principal amount will be converted into our shares.
- (3) Represents commitments related to construction of our Phase II and Phase III production facilities and purchase of plant and machinery related to such facilities.

In addition to the contractual obligations discussed above, we are party to polysilicon and wafer supply agreements. Those agreements obligate us to manufacture polysilicon and to manufacture wafers in-house or produce wafers through tolling arrangements for our customers. In addition, we have entered into a tolling agreement with respect to the manufacture of wafers for us using our polysilicon. After June 30, 2008, we entered into several equipment purchase contracts relating to our wafer production equipment for which we have committed \$238.7 million. See “Business—Customers and Markets.”

## **Off Balance Sheet Commitments and Arrangements**

We have not entered into any financial guarantees or other commitments to guarantee the payment obligations of third parties. Furthermore, we do not have any retained or contingent interest in assets transferred to an unconsolidated entity that serves as credit, liquidity or market risk support to such entity. We do not have any variable interest in any unconsolidated entity that provides financing, liquidity, market risk or credit support to us or that engages in leasing, hedging or research and development services with us.

## **Inflation**

Since our inception, inflation in China has not materially affected our results of operations. According to the National Bureau of Statistics of China, the change in the consumer price index in China was 1.5% and 4.8% for 2006 and 2007, respectively. Since the beginning of 2008, the rate of change in the consumer price index in China has accelerated, and inflation may have effects on our business in the future.

## **Market Risks**

### ***Foreign Exchange Risk***

Most of our sales are currently denominated in Renminbi, with a small portion in U.S. dollars. Substantially all of our operating costs are denominated in Renminbi. Our material non-Renminbi expenses consist of U.S. dollar interest expenses for interest on our debt outside of the PRC and employee compensation expenses for employees based in Hong Kong who are paid in Hong Kong dollars. Immediately after this offering our only U.S. dollar interest expense will be related to the 2008 Convertible Bonds. We also have U.S. dollar obligations for equipment purchases for our Phase II facility we are contractually obligated to buy and expect to have U.S. dollar and Euro obligations for equipment we expect to order for our Phase III facilities expansion. We expect in the future to have a greater portion of our revenue generated from export sales. As a result of these factors, we do not believe our operations are exposed to a significant amount of currency risk. For the three months ended June 30, 2008 we entered into four short-term forward currency purchases with Bank of China to hedge an aggregate of \$11.0 million and 11.7 million principal amount of onshore borrowings incurred for equipment purchases. We have no other forward contracts, currency options or borrowings to hedge our exposure to foreign currency exchange risk.

JZPTD maintains its books in its functional currency, which is Renminbi. Monetary assets and liabilities of JZPTD denominated in other currencies, such as U.S. dollar bank balances are recorded at the prevailing exchange rate at the date of the transaction. Changes in relative exchange rates are recorded as gains and losses in the JZPTD statements of operations, which can result in gains or losses in our statements of operations. As the functional currency of our Cayman Islands holding company is U.S. dollars, in the event we maintained monetary assets and liabilities denominated in currencies other than U.S. dollars, we would translate their value at the rates of exchange in effect at each balance sheet date. We would record these exchange gains and losses in the statements of operations. We recorded net foreign currency gain of approximately \$1.0 million for the six months ended June 30, 2008 related to non-RMB denominated monetary assets at JZPTD. We cannot predict the impact of future exchange rate fluctuations on our results of operations and may incur net foreign currency losses in the future. If our sales denominated in foreign currencies, continue to grow, we will consider using derivative instruments to hedge our exposure to foreign currency exchange risk.

As a result, the value of your investment in our ADSs will be affected by the foreign exchange rate between U.S. dollars and Renminbi. To the extent we hold assets denominated in U.S. dollars, including the net proceeds to us from this offering, any appreciation of the Renminbi against the U.S. dollar could result in a change to our statement of operations and a reduction in the value of our U.S. dollar denominated assets. On the other hand, a decline in the value of Renminbi against the U.S. dollar could reduce the U.S. dollar equivalent amounts of our financial results, the value of your investment in our company and the dividends we may pay in the future, if any, all of which may have a material adverse effect on the prices of ADSs.



### ***Interest Rate Risk***

Our exposure to interest rate risk primarily relates to interest expenses incurred by our short-term and long-term borrowings, as well as interest income generated by excess cash invested in demand deposits and liquid investments with original maturities of three months or less. Such interest-earning instruments carry a degree of interest rate risk. As of June 30, 2008, our total outstanding interest-bearing onshore borrowings were \$206.1 million with varying interest rates of 5.98% to 9.40%. An increase of 1.0% in the applicable interest rate would have added \$1.0 million to our interest expense for the six months ended June 30, 2008. We have not used any derivative financial instruments to manage our interest rate risk exposure. However, our future interest expense may increase due to changes in market interest rates. Our fixed interest rate debt is all RMB-denominated and the interest rate can be adjusted annually by the People's Bank of China.

### **Recent Accounting Pronouncements**

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurement*, or SFAS No. 157. SFAS No. 157 addresses standardizing the measurement of fair value for companies that are required to use a fair value measure for recognition or disclosure purposes. The FASB defines fair value as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." SFAS No. 157 is effective and applicable to us on and after January 1, 2008. The adoption of this statement did not have a material effect on our consolidated financial statements.

In February 2007, the FASB issued SFAS No. 159, *Fair Value Option for Financial Assets and Financial Liabilities*, or SFAS No. 159. SFAS No. 159 permits companies to measure certain financial instruments and certain other items at fair value. The standard requires that unrealized gains and losses on items for which the fair value option has been elected be reported in earnings. SFAS No. 159 is effective for fiscal years beginning after November 15, 2007. The adoption of SFAS No. 159 did not have a material effect on our consolidated financial statements.

In December 2007, the FASB issued SFAS No. 141R, *Business Combination*, or SFAS No. 141R, to improve reporting creating greater consistency in the accounting and financial reporting of business combinations. The standard requires the acquiring entity in a business combination to recognize all (and only) the assets acquired and liabilities assumed in the transaction; establishes the acquisition-date fair value as the measurement objective for all assets acquired and liabilities assumed; and requires the acquirer to disclose to investors and other users all of the information they need to evaluate and understand the nature and financial effect of the business combination. SFAS No. 141R applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. We do not expect the adoption of SFAS 141R to have a material impact on our financial statements.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements*, or SFAS No. 160, to improve the relevance, comparability, and transparency of financial information provided to investors by requiring all entities to report noncontrolling (minority) interests in subsidiaries in the same way as required in the consolidated financial statements. Moreover, SFAS No. 160 eliminates the diversity that currently exists in accounting for transactions between an entity and noncontrolling interests by requiring they be treated as equity transaction. SFAS No. 160 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. We are currently evaluating whether the adoption of SFAS No. 160 will have a significant effect on our consolidated financial position, results of operations or cash flows.

In March 2008, the FASB issued SFAS No. 161, or SFAS No. 161, *Disclosures About Derivative Instruments and Hedging Activities*, an amendment of FASB Statement No. 133. The new standard requires enhanced disclosures to help investors better understand the effect of an entity's derivative instruments and related hedging activities on its financial position, financial performance and cash flows. SFAS No. 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008, with early application encouraged. We will apply SFAS No. 161 effective January 1, 2009.

## UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL INFORMATION

The following unaudited pro forma condensed consolidated financial information is derived from our historical consolidated financial statements included elsewhere in this prospectus. It should be read in conjunction with our consolidated financial statements and related notes included elsewhere in this prospectus, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and the other financial information included elsewhere in this prospectus.

In early May and early June 2008, respectively, Sun Wave and Greatest Joy, companies owned by entities affiliated with Mr. Zhu Gongshan and Moonchu, acquired 20% and 16% equity interest of JZPTD, respectively, from the remaining minority shareholders for a cash consideration of \$430.5 million. Concurrent to this offering, entities owned by Mr. Zhu Gongshan and Moonchu, will transfer 36% of JZPTD through 100% purchase of Sun Wave and Greatest Joy by our Company for a consideration consisting of (i) \$240.6 million in cash using a portion of the proceeds from this offering, (ii) the 2008 Convertible Bonds, to be issued concurrently with this offering, with principal value of \$446.9 million convertible into our Company’s ordinary shares and (iii) 268,537,970 ordinary shares of our Company to be issued concurrently with this offering. Sun Wave and Greatest Joy are under the common control of Mr. Zhu Gongshan, our chairman and majority shareholder, which have been created for the sole purpose of holding their respective ownership interests in JZPTD.

The unaudited pro forma condensed consolidated statements of operations for the year ended December 31, 2007 and for the six months ended June 30, 2008 and the unaudited pro forma condensed consolidated balance sheet as of June 30, 2008 have been prepared by our management based on our historical consolidated statement of operations for the year ended December 31, 2007 and for the six months ended June 30, 2008, and our historical unaudited condensed consolidated balance sheet as of June 30, 2008. These pro forma adjustments were made to give effect to the following events (1) redemption and conversion of the convertible redeemable preferred shares and floating rate bonds into ordinary shares upon completion of the initial public offering, (2) the acquisition of 36% equity interest in JZPTD by Sun Wave and Greatest Joy for a cash consideration of \$430.5 million, (3) transfer by entities owned by Mr. Zhu Gongshan and Moonchu of 36% interest in JZPTD through contribution of Sun Wave and Greatest Joy and elimination of minority interest upon completion of the initial public offering, and (4) distribution to the shareholders by (i) payment of cash of \$240.6 million, (ii) issuance of 2008 Convertible Bonds with principal value of \$446.9 million, and (iii) issuance of 268,537,970 ordinary shares to entities owned by Mr. Zhu Gongshan and Moonchu. The pro forma consolidated statements of operations were prepared as if the above pro forma adjustments had occurred on January 1, 2007 for the year ended December 31, 2007 and the six months ended June 30, 2008. The pro forma condensed consolidated balance sheet has been prepared as if the event had occurred on June 30, 2008.

The unaudited pro forma condensed consolidated financial information reflects pro forma adjustments that are described in the accompanying notes and is based on currently available information and assumptions that we believe provide a reasonable basis for presenting the significant effects of the acquisition of 36% equity interest in JZPTD. We have made, in our opinion, adjustments that are necessary to present fairly the pro forma condensed consolidated financial information. The unaudited pro forma condensed consolidated financial information is presented for informational purposes only and does not purport to represent what our actual results of operations or financial position would have been had the transaction been consummated on the dates indicated and does not purport to be indicative of our financial position as of any future date or our results of operations for any future period.

**UNAUDITED PRO FORMA CONDENSED BALANCE SHEET**  
**AS OF JUNE 30, 2008**  
(in thousands, except share and per share data)

	<b>June 30, 2008</b>	<b>Pro forma Adjustments</b>	<b>Notes</b>	<b>Pro forma Results</b>
<b>ASSETS</b>				
<b>CURRENT ASSETS</b>				
Cash and cash equivalents	\$151,661	\$(20,000 )	A	\$[      ]
		778	A	
		[      ]	C	
		(240,625 )	E	
Restricted cash	54,486	(778 )	A	53,708
Accounts receivable	287			287
Inventories	6,556			6,556
Prepaid expenses and other current assets	8,548			8,548
Total current assets	221,538	[      ]		[      ]
Property, plant and equipments, net	306,975			306,975
Deposits for purchase of plant and equipment	131,381			131,381
Deposit for purchase of land use right	2,449			2,449
Land use right	7,940			7,940
Intangible assets		397,198	D	397,198

Goodwill		51,365	D	51,365
Deferred financing cost	1,497	(1,497 )	B	–
Deferred tax assets	12			12
<b>TOTAL ASSETS</b>	<u>\$671,792</u>	<u>\$[ ]</u>		<u>\$[ ]</u>
<b>LIABILITIES</b>				
<b>CURRENT LIABILITIES</b>				
Accounts payable	\$3,345			\$3,345
Accrued expenses and other current liabilities	33,680			33,680
Advances from customers	36,590			36,590
Other deferred income	478			478
Bank borrowings	95,847			95,847
Loans from and other amounts due to affiliated companies	17,471			17,471
Total current liabilities	187,411			187,411
Floating rate bond	65,789	(20,000 )	A	–
		(45,789 )	B	
Deferred tax liabilities		99,300	D	99,300
Convertible bonds		446,875	E	446,875
Advance from customers under long-term sales arrangement	113,743			113,743

Other deferred income	6,458			6,458
Deferred revenues	23,495			23,495
Bank borrowings	<u>110,219</u>			<u>110,219</u>
<b>TOTAL LIABILITIES</b>	<u>507,115</u>	<u>480,386</u>		<u>987,501</u>
MINORITY INTEREST	81,150	(81,194 )	<b>F</b>	(44 )
Series A convertible redeemable preferred shares (\$0.00001 par value; 50,000,000 shares authorized and 16,667,000 shares issued and outstanding as of June 30, 2008; no shares outstanding on a pro-forma basis as of June 30, 2008)	22,778	(22,778 )	<b>G</b>	–
<b>SHAREHOLDERS' EQUITY</b>				
Ordinary shares (\$0.00001 par value; 100,000,000,000 shares authorized and 978,333,000 shares issued as of June 30, 2008; [ ] shares outstanding on a pro-forma basis as of June 30, 2008)	10	3	<b>E</b>	[ ]
		[ ]	<b>C</b>	
Additional paid-in capital	8,009	45,789	<b>B</b>	[ ]
		22,778	<b>G</b>	
		[ ]	<b>C</b>	
		[ ]	<b>E</b>	
(Accumulated deficit) Retained earnings	43,287	(1,497 )	<b>B</b>	[ ]
		430,457	<b>D</b>	
		[ ]	<b>E</b>	
Accumulated other comprehensive income	<u>9,443</u>			<u>9,443</u>
Total shareholders' equity	<u>60,749</u>	[ ]		[ ]
<b>TOTAL LIABILITIES, MINORITY INTEREST, CONVERTIBLE REDEEMABLE PREFERRED SHARES AND SHAREHOLDERS' EQUITY</b>	<u>\$671,792</u>	<u>\$[ ]</u>		<u>\$[ ]</u>

**UNAUDITED PRO FORMA CONDENSED STATEMENT OF OPERATIONS**  
**FOR THE YEAR ENDED DECEMBER 31, 2007**  
(in thousands, except share and per share data)

	For the year ended December 31, 2007	Pro forma Adjustments	Notes	Pro forma Results
<b>REVENUES</b>				
Third party sales	33,378			33,378
Related party sales	<u>7,470</u>			<u>7,470</u>
Total revenues	40,848			40,848
Cost of revenues	<u>(10,996 )</u>			<u>(10,996 )</u>
Gross profit	29,852			29,852
<b>OPERATING EXPENSES</b>				
General and administrative	(17,836 )			(17,836 )
Amortization of intangible assets	<u>—</u>	<u>(52,960 )</u>	<b>H</b>	<u>(52,960 )</u>
OPERATING INCOME (LOSS)	<u>12,016</u>	<u>(52,960 )</u>		<u>(40,944 )</u>
<b>NON-OPERATING INCOME (EXPENSE)</b>				
Interest income	376			376
Interest expense	(6,097 )	3,167	<b>I</b>	(18,476 )
		(2,528 )	<b>J</b>	

	388		<b>O</b>	
	(13,406 )		<b>K</b>	
Other income	6			6
Gain on disposal of JSJST	566			566
Total non-operating expenses	(5,149 )	(12,379 )		(17,528 )
INCOME (LOSS) BEFORE INCOME TAX AND MINORITY INTEREST	6,867	(65,339 )		(58,472 )
Income tax (expense)/benefit	(3,123 )	13,240	<b>N</b>	10,117
INCOME (LOSS) BEFORE MINORITY INTEREST	3,744	(52,099 )		(48,355 )
Minority interest	(5,540 )	5,540	<b>L</b>	–
NET INCOME (LOSS)	(1,796 )	(46,559 )		(48,355 )
Deemed distribution on convertible redeemable preferred shares–accretion of redemption premium	(1,111 )	1,111	<b>M</b>	–
NET LOSS ATTRIBUTABLE TO HOLDERS OF ORDINARY SHARES	(2,907 )	(45,448 )		(48,355 )
ORDINARY SHARES USED IN LOSS PER ORDINARY SHARE CALCULATION				
Basic and diluted–ordinary share	994,292,123			[ ]
LOSS PER ORDINARY SHARE				
Basic and diluted–ordinary share	(0.0029 )			[ ]

**UNAUDITED PRO FORMA CONDENSED STATEMENT OF OPERATIONS**  
**FOR THE SIX MONTHS ENDED JUNE 30, 2008**  
(in thousands, except share and per share data)

	For the period ended June 30, 2008	Pro forma Adjustments	Notes	Pro forma Results
<b>REVENUES</b>				
Third party sales	\$153,690	\$		\$153,690
Related party sales	19,917			19,917
Total revenues	173,607			173,607
Cost of revenues	(48,730 )			(48,730 )
Gross profit	124,877			124,877
<b>OPERATING EXPENSES</b>				
General and administrative	(6,640 )			(6,640 )
Amortization of intangible assets	—	(26,480 )	<b>H</b>	(26,480 )
OPERATING INCOME (LOSS)	118,237	(26,480 )		91,757
<b>NON-OPERATING INCOME (EXPENSE)</b>				
Interest income	582			582
Interest expense	(7,042 )	4,565	<b>I</b>	(8,537 )
		(6,703 )	<b>K</b>	
		643	<b>O</b>	



Amortization of other deferred income	232			232
Other non-operating expense	<u>(747 )</u>			<u>(747 )</u>
Total non-operating expenses	<u>(6,975 )</u>	<u>(1,495 )</u>		<u>(8,470 )</u>
INCOME BEFORE INCOME TAX AND MINORITY INTEREST	111,262	(27,975 )		83,287
Income tax (expense)/benefit	<u>(297 )</u>	<u>6,620</u>	N	<u>6,323</u>
INCOME BEFORE MINORITY INTEREST	110,965	(21,355 )		89,610
Minority interest	<u>(42,892 )</u>	<u>42,934</u>	L	<u>42</u>
NET INCOME	68,073	21,579		89,652
Deemed distribution on convertible redeemable preferred shares—accretion of redemption premium	<u>(1,667 )</u>	<u>1,667</u>	M	<u>—</u>
NET INCOME ATTRIBUTABLE TO HOLDERS OF ORDINARY SHARES	<u>\$66,406</u>	<u>\$ 23,246</u>		<u>\$89,652</u>
ORDINARY SHARES USED IN INCOME PER ORDINARY SHARE CALCULATION				
Basic—ordinary share	979,843,989			[ ]
Diluted—ordinary shares	<u>981,436,130</u>			<u>[ ]</u>
EARNINGS PER ORDINARY SHARE				
Basic—ordinary share	0.0666			[ ]

Diluted-ordinary shares

0.0665

[ ]

**Notes to Unaudited Pro Forma Condensed Consolidated Financial Information**

(in thousands, except shares and per share information)

**1. Basis of Presentation**

On May 6 and June 10, 2008, respectively, Sun Wave and Greatest Joy acquired 20% and 16% equity interest in JZPTD, respectively from the remaining minority shareholders for a total cash consideration of \$430,457. Sun Wave and Greatest Joy are under the common control of Mr. Zhu Gongshan, majority shareholder of our company.

On July 18, 2008, the Company signed a definitive agreement to acquire the remaining 36% equity interest in JZPTD through 100% acquisition of Sun Wave and Greatest Joy. The total distribution to our majority shareholders consists of (i) cash payment of \$240,625, (ii) issuance of 2008 Convertible Bonds with principal value of \$446,875 which is convertible into the Company's ordinary shares at initial public offering price and (iii) issuance of 268,537,970 ordinary shares of the Company. The number of ordinary shares will be reduced in the event the initial public offering price is below \$ per ADS. See "Related Party Transactions—Acquisition of 36% of JZPTD Onshore Equity Interests". The contribution of 36% of JZPTD to the Company by entities affiliated with Mr. Zhu Gongshan and Moonchu through 100% contribution of Sun Wave and Greatest Joy has been accounted for as a common control transaction as prescribed by Statement of Financial Accounting Standards, or SFAS, No. 141, "Business Combinations". The assets will be transferred into the Company at Sun Wave and Greatest Joy's carrying value and the difference between the total consideration described above and the carrying value of Sun Wave and Greatest Joy will be recorded as a distribution to shareholders.

Sun Wave and Greatest Joy accounted for the 36% equity interest acquisition of JZPTD under the purchase method. Sun Wave and Greatest Joy performed a preliminary allocation of the total purchase price of JZPTD's net tangible and identifiable intangible assets based on their estimated fair values as of May 6, 2008 and June 10, 2008. These estimations are based on Sun Wave and Greatest Joy's preliminary analysis and subject to change for up to twelve months from the date of acquisition. Sun Wave and Greatest Joy are arranging an independent professional appraisal firm to conduct a formal valuation on the assets acquired.

The purchase price has been preliminarily allocated by Sun Wave and Greatest Joy in May and June 2008 as follows:

	<u>Amount</u>	<u>Amortization Period</u>
Intangible assets acquired:		
–Long term sales contracts	\$397,198	7.5 years
Goodwill	51,365	
Other assets and liabilities acquired	81,194	
Deferred tax liabilities	(99,300)	
	<u>\$430,457</u>	

The pro forma adjustments were made to give effect to the following events (1) redemption and conversion of the convertible redeemable preferred shares and floating rate bonds into ordinary shares upon completion of the initial public offering, (2) the acquisition of 36% equity interest in JZPTD by Sun Wave and Greatest Joy for a cash consideration of \$430,457, (3) transfer by shareholders of 36% interest in JZPTD through contribution of Sun Wave and Greatest Joy and elimination of minority interest upon completion of the initial public offering, and (4) distributions to the Shareholders by (i) payment of cash of \$240,625, (ii) issuance of 2008 Convertible Bonds with principal value of \$446,875, and (iii) issuance of 268,537,970 ordinary shares to Mr. Zhu Gongshan and Moonchu.

## [Table of Contents](#)

### 2. Pro Forma Adjustments

- A** Repayment of \$20,000 for Tranche A of the floating rate bonds redeemed upon the initial public offering. Upon redemption and conversion of the floating rate bonds, cash deposit of \$778 is no longer restricted and is reclassified as cash and cash equivalents.
- B** Conversion of Tranche B floating rate bonds of \$45,789 into 27,183,400 ordinary shares and write-off of related deferred financing costs of \$1,497 as a result of automatic redemption and conversion upon the initial public offering.
- C** To record proceeds received from issuance of [ ] ordinary shares in the form of ADSs at an initial public offering price of [ ] per share, the midpoint of the estimated range of the initial public offering price, after deducting estimated underwriting discounts and offering expenses totaling [\$ ].
- D** The Company recorded the assets of Sun Wave and Greatest Joy at their carrying value upon contribution of Sun Wave and Greatest Joy to the Company as follows:

	<u>Amount</u>	<u>Amortization Period</u>
Intangible assets acquired:		
–Long term sales contracts	\$ 397,198	7.5 years
Acquired goodwill	51,365	
Other assets and liabilities acquired, net	81,194	
Deferred tax liabilities	(99,300 )	
	<u>\$430,457</u>	

- E** Distributions to the shareholders consisting of cash payment of \$240,625 from the initial public offering proceeds, issuance of convertible bonds with principal value of \$446,875 which is convertible into ordinary shares of the Company at the initial public offering price of [ ] per share (“2008 Convertible Bonds”) and issuance of 268,537,970 ordinary shares of the Company at the initial public offering price, assuming that the initial public offering price is \$ per ADS, the midpoint of the estimated range of the initial public offering price. The 2008 Convertible Bonds mature one and a half years after issuance and are convertible as follows: 50% of outstanding principal six months after issuance, 25% of outstanding principal nine months after issuance, and the remaining 25% outstanding principal twelve months after issuance.
- F** Reduction of 36% minority interests in JZPTD upon the contribution of Sun Wave and Greatest Joy.
- G** Reduction of Series A redeemable preferred shares as a result of automatic conversion into 16,667,000 ordinary shares upon the initial public offering.

- H** Recognition of amortization of intangible assets acquired as if the contribution had occurred on January 1, 2007. The intangible assets are amortized over the contractual term of the long term sales contracts.
- I** Reduction of the floating rate bonds interest as if floating rate bonds were redeemed and converted at January 1, 2007.
- J** Write-off of deferred financing costs related to the floating rate bonds as if the floating rate bonds were redeemed and converted on January 1, 2007.
- K** Recognition of 3% interest of the 2008 Convertible Bonds issued for the contribution of Sun Wave and Greatest Joy as if the 2008 Convertible Bonds were issued on January 1, 2007.
- L** Reduction of 36% minority interests of JZPTD as if the acquisition of Sun Wave and Greatest Joy had occurred on January 1, 2007.

## Table of Contents

- M** Reduction of deemed distribution of convertible redeemable preferred shares as if the conversion occurred on January 1, 2007.
- N** Deferred tax effect related to the pro forma amortization of the non-goodwill intangible assets, which was based on the effective enterprise income tax rate of 25%.
- O** To reverse the deferred financing charges amortized for the year ended December 31, 2007 and the period ended June 30, 2008 as if the floating rate bonds were redeemed and converted on January 1, 2007.

### 3. Pro Forma Shares

The pro forma basic and diluted earnings per share are based on the weighted average number of shares of the Company's ordinary shares outstanding for the year ended December 31, 2007 and period ended June 30, 2008 plus the (i) ordinary shares as a result of the conversion of preferred redeemable shares and floating rate bonds, (ii) the number of ordinary shares whose proceeds would be necessary to pay cash distribution of \$240,625, (iii) ordinary shares issued for the JZPTD acquisition assuming the initial public offering price is \$ per ADS or above and (iv) the [dilutive effect of the 2008 Convertible Bonds] on June 30, 2008 shares [(antidilutive for year ended December 31, 2007)] as shown in the following tables:

	<b>December 31, 2007</b>
Shares used in calculating basic and diluted loss per share on a pro forma basis:	
Weighted average shares outstanding used in computing basic and diluted loss per share for the Company	994,292,123
Ordinary shares as a result of redeemable preferred shares and floating rate bonds conversion	14,165,849
Issuance of ordinary shares for distribution proceeds	[ ]
Issuance of ordinary shares as distribution	268,537,970
	[ ]
	<b>June 30, 2008</b>
Shares used in calculating basic earnings per share on a pro forma basis:	
Weighted average shares outstanding used in computing basic earnings per share for the Company	979,843,989
Ordinary shares as a result of redeemable preferred shares and floating rate bonds conversion	43,987,000

Issuance of ordinary shares for distribution proceeds	[ ]
Issuance of ordinary shares as distribution	268,537,970
	[ ]
Shares used in calculating diluted earnings per share on a pro forma basis:	
Weighted average shares outstanding used in computing diluted earnings per share for the Company	981,436,130
Ordinary shares as a result of redeemable preferred shares and floating rate bonds conversion	43,987,000
Dilution of 2008 Convertible Bonds	[ ]
Issuance of ordinary shares for distribution proceeds	[ ]
Issuance of ordinary shares as distribution	268,537,970
	[ ]



## BUSINESS

### Overview

We supply polysilicon and wafers to companies operating in the solar industry. Polysilicon is the primary raw material for wafers used in the solar and the electronics industries. We manufacture polysilicon at our production facility in Xuzhou, Jiangsu Province, China and intend to commence wafer manufacturing in the third quarter of 2009. Our business was founded in March 2006 and upon completion and full ramp-up of our planned expansion to 13,500 MT per year by February 2010, we believe we will be one of the leading polysilicon producers in terms of production capacity. We currently plan to build 2.7 GW of wafer production capacity by the end of 2011. We commenced construction of our first polysilicon production facility, which produces solar grade polysilicon, in July 2006 and produced our first batch of polysilicon in September 2007. We made our first commercial shipment of polysilicon in October 2007. In the six months ended June 30, 2008, we produced 661 MT of polysilicon. For the month of July 2008, we produced 175 MT of polysilicon. We began selling wafers produced for us through tolling arrangements with third party manufacturers in the second quarter of 2008 and expect wafer sales to contribute a significant majority of our revenues after 2009.

We ramped up our Phase I production facility to its designed annual capacity of 1,500 MT in March 2008. We commenced commercial production of our Phase II production facility in July 2008 and expect it to achieve its fully ramped up capacity by December 2008. In December 2007, we commenced preparation for construction of our Phase III production facilities, which are expected to have an aggregate annual production capacity of 10,500 MT. We expect our Phase III production facility to commence commercial production in December 2008. We intend to fully ramp up our Phase III production facilities by February 2010 and to further increase our total annual polysilicon production capacity to 24,000 MT by the end of 2010. We have determined a preliminary location in China for our polysilicon production expansion beyond Phase III, and we intend to apply for necessary permits and commence equipment orders shortly after the completion of this offering. We have implemented proven technologies in our polysilicon production facilities. We utilize a modified Siemens process to produce polysilicon and, starting from Phase II onwards, our production facilities are designed to produce both solar and electronic grade polysilicon.

We use TCS to produce polysilicon. TCS is one of the main and most costly production inputs and, to date, we have relied on third party suppliers for substantially all of our TCS requirements. To reduce our reliance on TCS from third party suppliers, we are increasingly incorporating TCS production into our production process. We integrated the hydrochlorination process for our Phase I production facility in February 2008 and expect to integrate the hydrochlorination process in our Phase II production facility in September 2008. Our Taixing joint venture has constructed a TCS production facility with an initial capacity of 20,000 MT in Taizhou, Jiangsu Province, China, which commenced pilot production in August 2008. We intend to increase the Taixing joint venture's annual TCS production capacity to up to 60,000 MT by 2010. We commenced construction of a hydrogenation and a TCS production facility in Xuzhou in August 2008, which we expect to have combined capacity to produce up to 90,000 MT of TCS per year by the third quarter of 2009. Upon ramp up of these facilities, we expect to substantially reduce our reliance on third parties for our TCS requirements.

We intend to begin construction of our first multicrystalline and monocrystalline wafer production facility in Xuzhou by the end of 2008 to commence pilot production by the third quarter of 2009. We intend to ramp up these facilities to a combined 0.8 GW production capacity by the end of 2009 and to further expand our wafer production capacity to 1.9 GW by the end of 2010 and to 2.7 GW by the end of 2011. We have entered into equipment supply contracts to purchase over half of the wire saws and squarers for our expansion to 1.9 GW with the first deliveries expected to commence in early 2009. We also intend to explore opportunities to further expand our wafer production capacity through strategic acquisitions and partnerships. Until we have sufficient in-house wafer production capacity, we will continue to rely on wafer tolling arrangements to support our wafer sales. We are currently in preliminary discussions with one of our wafer tolling producers, Huasheng, with respect to a potential acquisition of such producer to increase our in-house manufacturing capacity.

---

## [Table of Contents](#)

We have entered into polysilicon and wafer supply agreements with cell and module manufacturers that provide for aggregate sales of approximately 15.1 GW of wafers and approximately 40,356 MT of polysilicon for aggregate total contract prices of \$21.3 billion (RMB146.2 billion). These contracts are with JA Solar, Trina Solar, CSI, Suntech, AIDE, Solarcell and Solarfun. Under our current supply agreements, we have contracted to sell approximately 90% of our anticipated production from now to the end of 2015 after giving effect to our current polysilicon and wafer expansion plans. See “–Customers and Markets”. Prior to our entry into these supply contracts, we sold all of our polysilicon on the spot market to major Chinese solar manufacturers.

For the year ended December 31, 2007, we sold 153 MT of polysilicon, all in the three months ended December 31, 2007. For the six months ended June 30, 2008, we sold 551 MT of polysilicon and 10.1 MW of wafers. Our revenues for the year ended December 31, 2007 and the six months ended June 30, 2008 were \$40.8 million and \$173.6 million, respectively. Net loss attributable to holders of ordinary shares was \$2.9 million in the year ended December 31, 2007 and net profit attributable to holders of ordinary shares was \$66.4 million in the six months ended June 30, 2008.

## **Our Industry**

### ***Solar Market***

Solar power is one of the most rapidly growing renewable energy sources in the world today. Solar power systems generally comprise a multitude of solar modules, which are made of multiple solar cells. There are two main categories of solar cell technology entailing different production processes:

polysilicon-based production technology; and

thin-film technology.

Polysilicon-based technologies accounted for approximately 88.4% of total solar production in 2007, according to Solarbuzz. There are alternatives to using silicon in photovoltaic applications that may gain marketwide acceptance. Thin-film cells use little to no amounts of silicon. Although currently thin-film cells exhibit lower conversion efficiencies, improvements in such production technology could have a significant negative impact on the demand for polysilicon.

The manufacturing value chain of polysilicon-based photovoltaic products starts with the processing of quartz sands to produce metallurgical-grade silicon. This material is further purified to become solar grade or electronic grade virgin polysilicon feedstock. Recyclable polysilicon raw materials, which include tops and tails of discarded portions of polysilicon ingots, pot scraps and broken polysilicon wafers acquired from the solar and electronics industries, may also be used as feedstock when combined with high purity polysilicon.

For multicrystalline wafers, polysilicon is cast into ingots through a crystallization process and subsequently cut into blocks, whereas monocrystalline wafers are produced from a single seed crystal which is dipped in molten polysilicon and pulled into a cylindrical ingot. These ingot blocks, or ingots, are first squared into bricks and then sliced into wafers.

Wafers are then manufactured into solar cells through a multi-step manufacturing process that entails etching, doping, coating and applying electrical contacts. Solar cells are then interconnected and packaged to form solar modules, which together with system components such as batteries and inverters, are distributed to installers, systems integrators, service providers or directly to end-users, for installation onto on-grid or off-grid systems.

We believe the following factors will continue to affect the global demand in the solar industry:

*Rising Prices of Conventional Energy Sources.* We believe more sustainable energy sources are needed given the limited nature and increasing price of fossil fuel supply as well as escalating electricity consumption.

*Government Incentives for Renewable Energy Sources.* Governments around the world have implemented renewable energy policies and incentives to encourage the use of clean and sustainable energy sources, such as solar energy. Countries including Australia, China, Germany, Japan, Korea, Spain and the United States have offered or announced plans to offer substantial incentives in the form of direct subsidies for solar power system installations or rebates for electricity produced from solar power.

*Tightening of Environmental Regulations.* Solar power is capable of generating electricity without producing pollution such as gaseous or water emissions or noise during operation. Many governments around the world have adopted initiatives aimed at addressing worldwide environmental concerns and climate change risks associated with the use of fossil fuels.

*Increasing Cost Competitiveness of Solar Energy.* The average prices of solar cells and modules are expected to decrease over the next few years as a result of improved production technologies and manufacturers attaining economies of scale. In addition, solar power systems are also more cost-effective for use in remote rural applications, where grid-connection costs are prohibitive.

Some of the key challenges faced by the solar industry include the following:

*Possible Reduction or Elimination of Government Subsidies and Incentives.* Solar energy may be more expensive than traditional fossil fuel generated electricity if the cost of installing a solar power system were taken into consideration. Relatively high product costs remain one of the impediments to growth in solar power usage. Therefore, the current growth of the solar power industry substantially relies on the availability and size of government subsidies and economic incentives, such as capital cost rebates, reduced tariffs, tax credits, net metering and other incentives. There have been significant government efforts to reduce or eliminate these subsidies and economic incentives. It remains a challenge for the solar power industry to reach sufficient scale to be cost-effective in a non-subsidized marketplace.

*Need to Broaden Awareness and Acceptance of Solar Power Usage.* Growth in solar power usage has been mostly limited to on-grid applications. Solar energy product sales consist substantially of standard solar modules and systems. Broader market awareness will be required in order to tap the potential of the off-grid market.

### ***Electronics Market***

Semiconductors are essential to all electronic products and have wide ranging end applications including computing, telecommunications, consumer electronics, automotive, industrial and medical applications. According to iSuppli, total worldwide semiconductor industry revenue was \$269 billion in 2007 and is expected to grow to \$369 billion by 2012.

Over the last few years, China has emerged as the global center for the manufacture of electronic systems. According to iSuppli, the share of semiconductor industry revenues in the Asia Pacific region (excluding Japan) increased from 27% to 52% from 2000 to 2007. This was a result of many original equipment manufacturers and original design manufacturers migrating their manufacturing operations to China to leverage the cost-effective facilities and the available pool of talent. We believe the production of semiconductors in China will increase in the future and thus demand for electronic grade polysilicon will also increase.

### ***Polysilicon Market***

Polysilicon is the primary raw material for the solar and electronics industries. The solar industry produces solar wafers, cells, modules and systems that convert energy from sunlight into electricity. The electronics industry produces semiconductors for use in electronic applications. Historically, the electronics industry has been the dominant user of polysilicon. Recent rapid growth of the solar industry has put it on equal footing with the electronics industry in polysilicon consumption. In 2007, for the first time the solar industry consumed more

than half, or 54%, of the polysilicon production while the electronics industry consumed the remaining 46%, according to Solarbuzz. As a result of this rapid expansion, sales to the solar industry are now the key factor affecting the price, profit and growth of the polysilicon market.

Polysilicon is produced by refining metallurgical silicon in a highly technical and energy-intensive process. Metallurgical silicon, or MG-Si, has a purity level of 95% to 99% and is widely available. To be qualified for use in the solar industry, MG-Si needs to be refined to reach a purity level of 99.9999% (often referred to as “six nines” or 6N pure), and to be qualified to be used in the electronics industry, MG-Si needs to be refined to reach a purity level of 99.9999999% (often referred to as “nine nines” or 9N pure).

There are several ways in which MG-Si can be refined. The three main technologies used in the production of polysilicon are the Siemens reactor process, which is the dominant technology, the FBR process and the upgraded metallurgical grade silicon process.

*Siemens Reactor Process.* The substantial majority of polysilicon used by the solar and electronics industries is produced via a process of chemical vapor deposition, whereby a chlorosilane gas is deposited onto a heated rod. By 2007, according to Solarbuzz, most new entrants have chosen Siemens technology for manufacturing. The technology in the Siemens reactor is mature, widely implemented and produces high quality material. The process of producing polysilicon begins with MG-Si. MG-Si is purified by various chemical processes to produce solar grade or electronic grade polysilicon.

At temperatures between 1,000-1,100°C, TCS is split into its constituents, hyper-pure silicon, which grows onto a polysilicon seed rod, and hydrogen chloride. After the polysilicon rods have grown to the desired thickness, ordinarily taking 5-12 days, the reactor must then be shut down, and the batch of polysilicon rods needs to be cooled and crushed into chunks. TCS has a high deposition rate and high volatility (which makes it easier to remove boron and phosphorous, the two compounds which cause low performance in solar cells). Using the Siemens reactor process has the disadvantage of requiring high electricity usage to maintain process temperatures.

A variation of the Siemens process further refines TCS to produce monosilane. This gaseous monosilane is then deposited on heated silicon rods. Monosilane is a higher purity starting material which leads to purer polysilicon. This higher purity polysilicon has historically been more expensive to produce.

*Fluidized Bed Reactor (FBR).* An alternative process for polysilicon production uses a FBR which results in granular silicon. Silicon fluoride is used instead of metallurgical silicon, which is converted into monosilane. Then polysilicon seeds are dropped into the reactor while monosilane and hydrogen gases continually pass through the reactor. This is a continuous process and the reactor does not need to be shut down to obtain the polysilicon, and the rods do not need to be crushed into chunks. The theoretical advantages of this process are lower capital and electricity costs than those required in the Siemens process. To date, however, only a few producers have established production using FBR technology on a commercial scale.

*Others.* In addition to the Siemens reactor process and the FBR process, some manufacturers have sought to commercialize other methods dedicated specifically to solar grade polysilicon. These methods seek to lower silicon production costs and to produce feedstock meeting the lower standards for use in the solar industry cost effectively.

### ***Polysilicon Supply***

The considerable growth in the solar industry over the past several years has resulted in greater demand for polysilicon and there is currently insufficient production capacity to meet the requirements of the solar and electronics industries. Although the raw material, MG-Si, is plentiful, there are significant barriers to enter the market to produce high-purity polysilicon. Polysilicon plants involve highly complex processes and technological know-how. Secondly, significant scale of at least 3,000-5,000 MT is required to achieve a competitive cost position.

## [Table of Contents](#)

According to Solarbuzz, at the end of 2007, total global polysilicon production capacity serving the solar and electronics industries exceeded 52,000 MT. Seven companies – Hemlock, MEMC, Mitsubishi, Osaka Titanium, REC, Tokuyama and Wacker– accounted for 82% of total polysilicon production capacity. More recently, the major incumbent polysilicon suppliers worldwide have announced new capacity expansion plans in response to the growing demand from the solar industry. In addition, many new entrants have either commenced or announced plans to produce polysilicon. Several downstream producers, such as LDK and ReneSola, have also expressed the intention to expand upstream to include polysilicon production. In China, polysilicon production capacity has lagged behind solar wafer and cell production capacity. The following table indicates market share in 2007:

	Polysilicon	Wafer	Cell <sup>(1)</sup>
China	18%	54%	41%
Rest of World	82%	46%	59%
Total capacity	52,007MT	5,834MW	6,980MW

Source: Solarbuzz 2008

Note:

(1) Includes cells produced using thin-film technology.

Companies in the solar industry have been paying increasingly higher prices in recent years for polysilicon as demand has exceeded the supply. According to Solarbuzz, the average long-term contract price for polysilicon has increased from \$35-40/kg in 2005 to \$60-65/kg in 2007. The spot market for polysilicon reached \$250-\$400/kg by the end of 2007.

Some of the key challenges faced by the polysilicon market include the following:

*Shortage of Polysilicon Supply.* The current market shortage for polysilicon may hinder the development and usage of polysilicon in the solar industry. Further, the shortage of polysilicon provides incentives to develop non-silicon based photovoltaic technologies.

*Potential Overcapacity.* In 2001 and 2002, the polysilicon market experienced a period of excess capacity. Many existing manufacturers and new manufacturers have announced plans to add additional polysilicon capacity. If all of such additional capacity is built, there may be overcapacity, with resultant pressures on pricing and market share.

### ***Solar Wafer Industry***

Multicrystalline wafers generally contain more impurities and crystal defects which impede the flow of electrons as compared to monocrystalline wafers, which are made from one single crystal. Compared to monocrystalline wafers, multicrystalline wafers are cheaper to produce and offer greater scope for further technological development, such as increasing the size of the ingot and reducing silicon waste and crystal defects. According to Solarbuzz, multicrystalline wafer-based cell production represented approximately 48.6% while monocrystalline wafer-based cell production constituted approximately 39.8% of the total photovoltaic market in 2007.

Many companies compete in the solar wafer market. Some of the major wafer producers, such as Kyocera, REC, Solar World, Trina Solar and Yingli, use a part or all of their wafer output for the in-house production of solar cells. In addition, various existing and new wafer manufacturers are expanding their production capacity to meet growing market demand. The main barriers to entry for wafer manufacturing currently include significant capital expenditures, access to high performance manufacturing equipment, availability of polysilicon, solid

customer relationships with leading solar cell producers worldwide and significant manufacturing experience required to achieve optimal manufacturing efficiency. While current polysilicon feedstock shortages enable

---

## Table of Contents

wafer manufacturers reliably to sell their output, relationships with the leading established solar cell producers are critical to gaining feedback on wafer performance and fine-tuning wafer production to ensure a sustainable technological lead.

The key competitive attributes of solar wafers are conversion efficiency, certain physical properties and the production cost. These three factors ultimately contribute to a solar cell's cost per watt of electricity generation. The photovoltaic industry's main goal is to reduce the cost per watt of solar electricity generation in order to increase solar energy's competitiveness. Often there exists a trade-off between achieving high technical efficiency, or a high conversion efficiency, and a high manufacturing efficiency, or low production costs. Companies in the industry are striving to improve the quality and efficiency of solar wafers through improvements to their production processes.

Production costs of monocrystalline or multicrystalline wafers can be reduced through the creation of larger ingots and thinner wafers, as well as the reduction of operational costs. Larger ingots reduce the amount of consumables and electricity used per watt of product manufactured and increase production yield. Additionally, larger ingots have less surface area per unit volume of monocrystalline or multicrystalline silicon produced, thus reducing the potential for contamination with impurities. The wafer area is the key factor in determining how much incident light can be absorbed and converted into electricity. By manufacturing thinner wafers, less polysilicon is required to capture the same area of incident light.

### **Competitive Strengths**

We believe that the following competitive strengths enable us to compete effectively and to capitalize on the rapid growth in the market for polysilicon and wafers for the solar industry:

#### ***Proven capability in constructing and ramping up polysilicon production capacity***

We have proven our capability to construct and ramp up polysilicon production capacity. Within 15 months, we completed construction of our Phase I production facility and shipped our first batch of polysilicon. In the three months ended December 31, 2007, March 31, 2008 and June 30, 2008, we produced 154 MT, 302 MT and 359 MT of polysilicon, respectively, and are now able to consistently produce 100 MT per month of polysilicon at our Phase I production facility. We believe we are one of the few manufacturers of polysilicon in China to have reached commercial production of at least 100 MT per month.

We commenced pilot production at our Phase II production facility in June 2008. On completion of our Phase II and Phase III production facilities, we will have a designed annual polysilicon capacity of 13,500 MT. Our in-house production of polysilicon protects us from the risk of insufficient polysilicon supply encountered by many of our wafer sales competitors.

We believe that we achieved these milestones by leveraging our management's execution and coordination capability, our technical and engineering resources and our supply chain management to overcome the substantial difficulty accompanying the design, installation and operation of our production facilities.

#### ***Contracted customer revenues***

We have entered into polysilicon and wafer supply agreements with cell and module manufacturers that provide for aggregate sales of approximately 15.1 GW of wafers and approximately 40,356 MT of polysilicon for aggregate total contract prices of \$21.3 billion (RMB146.2 billion). These contracts are with JA Solar, Trina Solar, CSI, Suntech, AIDE, Solarcell and Solarfun. These contracts generally require customers to make advance payments or provide other financial guarantees or support, have pre-set prices which decline substantially over the length of the contract and have pre-set volumes that increase substantially in the early years of the contract. See "—Customers and Markets". Through these contracts we have effectively contracted for the sale of a



substantial portion of our total polysilicon production from now to the end of 2015. These contracts provide us with stable revenues in the near- and medium-term and protection against spot price volatility.

***Cost effective production process, facilities and operations***

We believe our advanced production processes and the equipment we are installing as well as our China-based production facilities provide us with a cost structure that will be competitive with the leading polysilicon producers. We believe we will be able to maximize production efficiency by leveraging our competitive costs for skilled workforce, engineering and technical resources and production equipment and facilities. In addition, the close proximity of our Phase I, Phase II and Phase III production facilities to both solar and electronics product manufacturers located in Jiangsu Province, the center for the solar and electronics manufacturing industries in China, enables us to have a high level of communication with our customers and efficiently manage our inventory and allows our customers to source polysilicon and wafers locally.

***Experienced management team***

Our management team consists of an experienced and diversified group of entrepreneurs and professionals who have positioned our company to take advantage of the increased demand for polysilicon. Members of our senior management team have a track record of founding and successfully managing enterprises as well as constructing and operating large power and chemical plants. For example, Mr. Zhu Guoming, the general manager of JZPTD, was responsible for the construction of power plants owned and operated by the Golden Concord Group and Mr. Jiang Wenwu, the deputy general manager of JZPTD, was responsible for the operation of large petrochemical projects in China.

**Our Strategies**

Our goal is to become a leading global supplier of polysilicon and wafers for the solar industry. We intend to achieve this goal by pursuing the following strategies:

***Significantly expand polysilicon production capacity***

We plan to significantly increase our production capacity in order to meet growing demand for our polysilicon and to improve economies of scale. We ramped up our Phase I production facility to its designed annual capacity of 1,500 MT in March 2008. We commenced commercial production at our Phase II production facility in July 2008 and expect to ramp it up to its design annual capacity of 1,500 MT by December 2008. We commenced preparation for construction of Phase III facilities in December 2007 which are expected to increase our aggregate polysilicon production capacity to 13,500 MT per year by February 2010 and to further expand our total capacity to 24,000 MT per year by the end of 2010. We have determined a preliminary location in China for our polysilicon production expansion beyond Phase III, and we intend to apply for necessary permits and commence equipment orders shortly after the completion of this offering.

***Establishing wafer production capacity***

We expect wafer sales to contribute a significant majority of our revenues after 2009. We have plans to manufacture wafers at our facility by 2009 and intend to commence the construction of our multicrystalline and monocrystalline wafer production facilities by the end of 2008. As we currently do not have wafer manufacturing capabilities, we are entirely dependent on tolling arrangements for wafer manufacturing. We must ensure that our tolling partners are able to dedicate a sufficient amount of wafering capacity to support our obligations to deliver wafers pursuant to our wafer supply contracts. We will utilize tolling manufacturers to fulfill our contractual obligations until substantially all our wafers are produced in-house.

### ***Reducing our production costs***

We aspire to be one of the most cost-efficient polysilicon producers globally. We intend to do so by investing in technological advancements and applying prudent manufacturing principles. We plan to devote substantial resources to enhance the efficiency of our production processes and in particular, reducing our polysilicon production cycle times, electricity consumption and the use of raw materials. We have thus far been able to shorten our production cycles by adjusting reactor parameters as well as optimizing electricity usage. To support our capacity expansion plans, we have sourced a portion of our production equipment from cost-competitive domestic suppliers provided that the quality is similar to that of imported equipment from our current suppliers.

We use TCS to produce polysilicon. TCS is one of the main and most costly production inputs and to date, we have relied on third party suppliers for substantially all of our TCS requirements. To reduce our reliance on TCS from third party suppliers, we are increasingly incorporating TCS production into our production process. We integrated the hydrochlorination process for our Phase I production facility in February 2008 and expect to integrate hydrochlorination in our Phase II production facility in September 2008. Our Taixing joint venture has constructed a TCS production facility with an initial annual capacity of 20,000 MT in Taizhou Jiangsu Province, which commenced pilot production in August 2008. All of the Taixing joint venture's TCS output is expected to be exclusively supplied to us at market price. We commenced construction of a hydrogenation and a TCS production facility in Xuzhou in August 2008 which we expect to have a combined capacity to produce up to 90,000 MT of TCS per year by the third quarter of 2009. Upon ramp-up of these facilities, we expect to substantially reduce our reliance on third parties for our TCS requirements.

### ***Selectively pursuing strategic acquisitions and alliances to expand our business***

We will consider suitable opportunities to pursue strategic acquisitions and alliances to expand our business. We are currently in preliminary discussions with one of our tolling wafer manufacturers, Huasheng, with respect to a potential acquisition of such manufacturer. Such discussions are in their early stages and there can be no assurance we will complete any acquisition. We believe that there is significant third party wafer manufacturing capacity in place and we will continue to evaluate other acquisition opportunities. In exploring future expansion opportunities, we intend to carefully consider and balance some or all of the following criteria with a view to further growing our business: (i) the synergies between us and our potential targets; (ii) geographic proximity to our existing operations; and (iii) whether the acquisition can enhance the overall sustainability of our existing and future business. We believe our relationship with industry participants and our knowledge of, and experience in, the solar industry allow us to understand industry trends, technological developments and applications of solar technologies, which will assist us in making decisions regarding such acquisitions and alliances.

### **Our Products**

We sell polysilicon and wafers to companies operating in the solar industry. We currently produce only polysilicon and intend to produce monocrystalline and multicrystalline wafers by the end of 2009. We currently rely on third party tolling arrangements to produce the wafers we sell.

## [Table of Contents](#)

### Polysilicon Production

#### *Production Capacity*

The following table shows our major installed annual production capacity objectives as of the dates indicated and includes the expected date of initial commercial operation and fully-ramped production of each expansion phase:

	<b>Planning/ construction commencement</b>	<b>Start Commercial Production</b>	<b>Fully-ramped Capacity Production</b>
Phase I - 1,500 MT facility	July 2006	October 2007	March 2008
Phase II - 1,500 MT facility	August 2007	July 2008	December 2008
Phase III - 10,500 MT facility <sup>(1)</sup>	December 2007	December 2008	February 2010

*Note:*

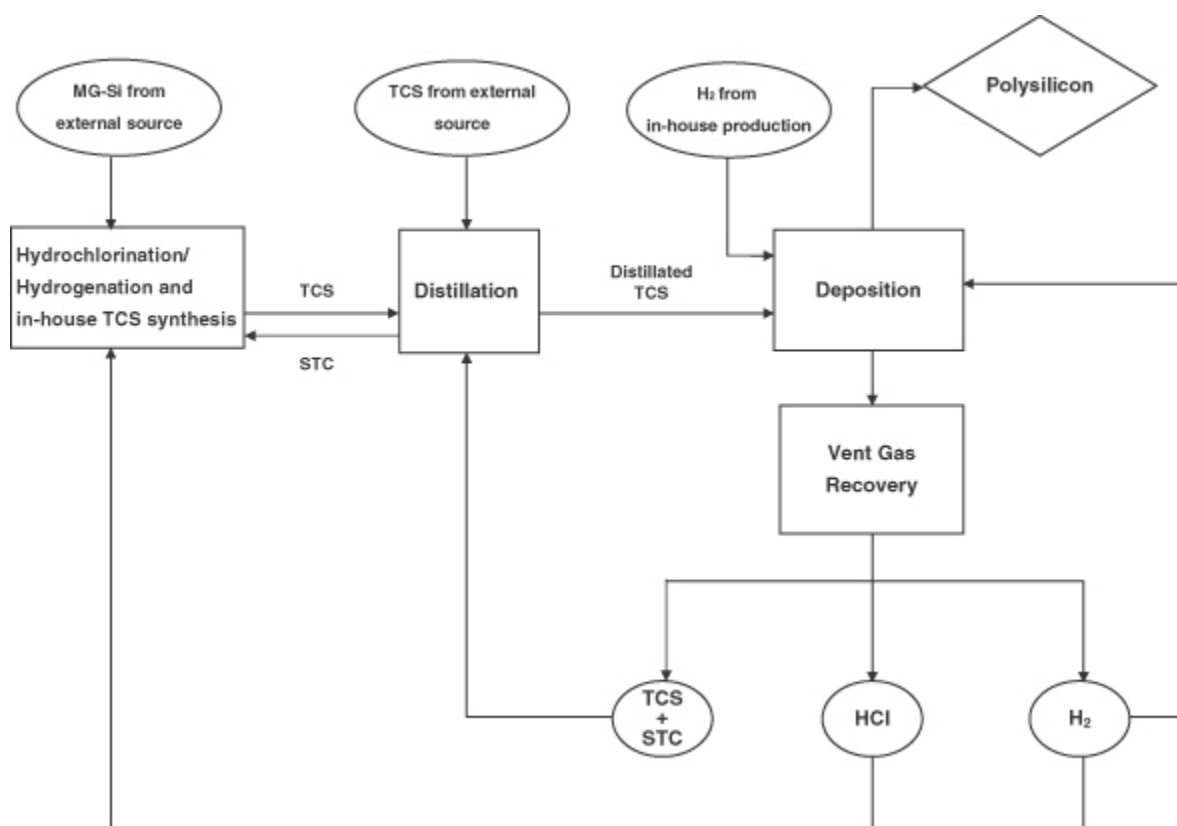
- (1) PRC national government environmental and NDRC approvals have been received for 6,000 MT per year of the intended Phase III expansion. We began preparing for construction of our Phase III facilities in December 2007. We received the approval to construct 6,000 MT per year of Phase III in April 2008 and intend to apply for the NDRC approval over the remaining capacity for our Phase III expansion shortly after this offering. We are in the process of obtaining the land use certificates for our Phase III production facility, See “–Facilities”.

As a result of these capacity installations, we expect to have 3,000 MT of fully-ramped annual polysilicon production capacity by December 2008 and 13,500 MT of fully-ramped annual production capacity by February 2010.

In addition to the above, we intend to expand our annual capacity to 24,000 MT by 2010 through additional production facilities. We have determined a preliminary location in China, and will begin to apply for the necessary permits and commence equipment orders shortly after the completion of this offering. See “Risk Factors–Risks Relating to Our Business–Our future success depends substantially on our ability to significantly expand both our polysilicon production capacity and output, which exposes us to a number of risks and uncertainties. Our announced intention to increase polysilicon capacity to 24,000 MT per year is preliminary and may not be implemented.”

We use a modified Siemens process to produce polysilicon. The modified Siemens process results in a higher utilization of silicon TCS, requires less electricity and is also more environmentally friendly as less pollutants are produced than the original Siemens reactor process. The process includes four distinct steps: (1) hydrochlorination/hydrogenation; (2) distillation; (3) poly deposition; and (4) vent gas recovery. The reactor in which polysilicon is formed is a key production component.

## Manufacturing Process



**Hydrochlorination.** This process is used to recycle the STC produced as by-product from the poly deposition process, combining the STC with hydrogen gas to produce TCS. HCl, a by-product from this reaction, will be mixed with MG-Si simultaneously, to further produce TCS.

**Hydrogenation.** This process involves combining the STC produced in the poly deposition process with hydrogen under high temperatures to produce TCS and HCl. The TCS can be immediately redirected to the distillation process after which it will be used in the poly deposition process. The resulting HCl can then be combined with MG-Si to also produce TCS in our in-house TCS production facility.

**Distillation.** This process involves separating the unused HCl and STC from the TCS through distillation and condensation, that is, pressure and temperature separation. The TCS will then undergo further distillation and results in high purity TCS feedstock to be used in poly deposition process.

**Deposition.** The resulting purified TCS is mixed with hydrogen and vaporized into a gas. The resulting gas is then released into the reactor with heated silicon rods inside the cooled bell jar of the reactor. The silicon contained in the gas is deposited on the heated rods, which gradually grow until the desired diameter has been reached. The reactor must then be shut down, and the rods cooled before being broken into chunks.

**Vent Gas Recovery.** The manufacturing of silicon crystals generates a vent gas comprised primarily of hydrogen, chlorosilanes and hydrogen chloride. The vent gas is separately recovered using a low temperature absorption method. We use the CDI vent gas recovery system which combines compression, cryogenic condensation, catalytic reaction, distillation, ambient absorption and cryogenic absorption, to separate the vent stream into components that are readily recycled. Mixed chlorosilanes are recovered as a liquid stream suitable

## [Table of Contents](#)

for distillation to TCS for reuse, and STC which can be converted to TCS through the hydrochlorination process. Anhydrous hydrogen chloride is recovered with high purity, suitable for use in TCS production. Recovered hydrogen typically contains contaminants of less than 10 parts per million, or ppm, in total and can be recycled to the TCS vaporizer without further treatment. For some applications, CDI has achieved less than 1 ppm total contaminants (99.9999% pure hydrogen). The Siemens reactor recovers and utilizes the vent gas, which enhances the quality of the polysilicon produced and reduces the need to store or dispose of by-products.

### ***Materials and Inputs Used in Polysilicon Production***

#### ***Trichlorosilane***

TCS is one of the main and most costly production inputs and to date, we have relied on third party suppliers for substantially all of our TCS requirements. We consumed 3,293 MT and 16,662 MT of TCS in the year ended December 31, 2007 and the six months ended June 30, 2008, respectively. In the six months ended June 30, 2008, 1,151 MT of the TCS that we consumed was produced in-house. We purchased our TCS in such periods from unrelated suppliers including Jiaozuo Zhongsheng Fine Chemical Ltd., Zibo Baoyun Chemical Ltd., Taian Guangming Silicon Ltd., Nanchang Ganyu Organic Silicon Ltd. at an average price of approximately RMB11,404 and RMB14,535 per MT including VAT for the year ended December 31, 2007 and the six months ended June 30, 2008, respectively. As our hydrochlorination process in our Phase I production facility is fully operational, we now need less third party produced TCS for the Phase I production facility.

Our Taixing joint venture constructed a TCS production facility with an initial annual capacity of 20,000 MT in Taizhou, Jiangsu Province, China which commenced pilot production in August 2008. We intend to increase the Taixing joint venture annual TCS production capacity to up to 60,000 MT by 2010. The joint venture agreement requires that the Taixing joint venture enter into a long-term contract to supply TCS to us at market price. Our maximum contribution to this joint venture is \$3 million under the current joint venture agreement, which we have already contributed.

We commenced construction of a hydrogenation and a TCS production facility in Xuzhou in August 2008 which we expect to have combined capacity to produce up to 90,000 MT of TCS per year by the third quarter of 2009. We have signed a hydrogenation process design contract with NKM Co. Ltd. Upon ramp up of these facilities, we expect to substantially reduce our reliance on third parties for our TCS requirements.

We need to store the STC generated by our polysilicon production process before it is reintroduced to a STC recycling process, such as hydrochlorination or hydrogenation. Our storage tanks are able to hold approximately 12,000 MT of STC in Xuzhou and 1,500 MT offsite. We have also sold and will continue to sell some excess STC from time to time, generally at very low prices. We have historically sold STC to Tokuyama Chemicals (Zhejiang) Co., Ltd., or Tokuyama Chemicals. Tokuyama Chemicals has, in return, supplied us with TCS. The quantity of TCS to be supplied by Tokuyama to us and STC to be supplied by us to Tokuyama from September to December 2008 and the related prices for any quantity increases are currently under discussion. Although when our STC recycling processes are operating at optimal efficiency levels, there is no need to sell excess STC to ensure we do not exceed sufficient storage facility. When our STC recycling processes are not operating, either during normal production interruptions or due to an unexpected failure, or not operating at optimal efficiency level, storage or disposition may be required. We believe we have sufficient storage capacity for our Phase I, Phase II and Phase III production facilities so long as we are able to integrate our STC recycling processes in our intended ramp-up plan.

#### ***Electricity***

Electricity is a significant cost in the production of polysilicon. We obtain our electricity supply from the 220/10kv transformer station of the Xuzhou Electricity Company in the Jiangsu Xuzhou Economic Development Zone, or the Industrial Park, in Xuzhou, China. The transformer station has a capacity of 700 MW annual

---

## [Table of Contents](#)

electricity output. We believe that this transformer station has sufficient electricity generation capacity to supply our current and future production facilities for the foreseeable future. Although we have contracted for the continuous use of electricity in our production facility, we have minimal control over the costs of electricity. The Xuzhou Electricity Company manages the power grid that provides electricity to the Xuzhou Chemical Industrial Park. The price of electricity is not pre-set and is subject to fluctuation from time to time.

### ***Steam***

Steam supply is important to the production of polysilicon. We have relied upon a local power supplier as our sole source of steam for our production. We experienced shortfalls in the levels of steam at a consistent level of pressure necessary for the production of high quality polysilicon in the start up of our Phase II production facility. As a result, we experienced lower quality trial production runs for polysilicon at the Phase II production facility in June 2008. We intend to secure an assured level of steam production in the future.

### ***Metallurgical Grade Silicon/Silica Fume***

MG-Si, which is silicon of 95% to 99% purity, is one of the primary raw materials used in the production of TCS. We obtain all of our MG-Si from a single supplier, but we believe MG-Si is readily available in the PRC. The price at which MG-Si can be purchased has increased recently as a result of higher energy costs and industry demand.

### ***Others***

The most significant other inputs for the production of polysilicon are water, HCl, nitrogen, calcium oxide and hydrogen.

## **Wafer Production**

### ***Wafer Capacity***

We intend to produce both monocrystalline and multicrystalline ingots and wafers in Xuzhou. We intend to begin constructing our first multicrystalline wafer production facility and monocrystalline wafer production facility in Xuzhou by the end of 2008 and to commence pilot production by the third quarter of 2009. We intend to ramp up these facilities to a combined 0.8 GW production capacity by the end of 2009 and to further expand our wafer production capacity to 1.9 GW by the end of 2010 and to 2.7 GW by the end of 2011. In connection with our expansion to 1.9 GW, we entered into equipment supply contracts to purchase over one half of the wire saws and squarers with the first deliveries expected to commence in late 2008. We intend to build up both our ingot production and wafering capacity concurrently as part of our wafer expansion plan.

Production of wafers can be divided into two main steps:

ingot production, and

wafering.

### ***Production of Ingots***

Monocrystalline ingots and multicrystalline ingots are manufactured with different equipment, with monocrystalline ingots having a single orientation and produce wafers with lower electrical resistance and therefore higher conversion efficiencies. Wafers produced under our tolling arrangements to date are monocrystalline wafers and we plan to develop in-house production of monocrystalline and multicrystalline ingots and wafers.



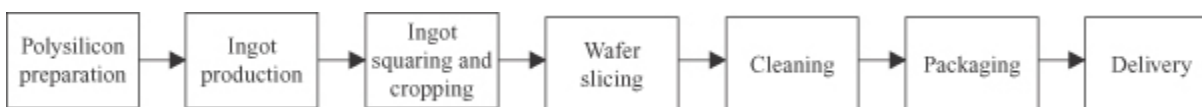
## [Table of Contents](#)

Polysilicon feedstock is prepared with de-ionized water in etching stations. The prepared polysilicon feedstock is then placed in crucibles and each crucible is loaded into a furnace for melting and crystallization. Multicrystalline ingots formed during the crystallization process are large square parcels then cut into smaller blocks with a squarer, a process known as squaring. The resulting ingot is then cropped. Monocrystalline ingots are formed from a single seed crystal which is dipped in molten polysilicon and pulled into a single cylindrical ingot; such ingot is cropped and, then squared. These blocks are then prepared for slicing.

### ***Wafering***

The prepared blocks are sliced into wafers by wire saws. Wafers are then washed and dried at wafer cleaning stations before final inspection and packaging for delivery.

Illustrated below is a diagram of the ingot production and wafering process:



### ***Materials Used in Wafer Production***

**Polysilicon Feedstock.** The main raw material for both monocrystalline and multicrystalline ingot and wafer production is polysilicon feedstock. We supply our tolling manufacturers with the polysilicon we produce. Once our in-house wafer production is operational, we intend to use our own polysilicon to manufacture wafers.

**Crucibles.** A crucible is a container used to hold polysilicon feedstock for melting in the furnace and has to withstand extremely high temperatures. Quartz crucibles used to produce multicrystalline ingots are currently not reusable, as once the ingot is formed, the crucible holding the ingot will be broken to remove the ingot. Quartz crucibles which hold the molten polysilicon used to pull a monocrystalline cylindrical ingot from a seed crystal also cannot be reused.

**Slurry and Wire.** Slurry is used in the wire sawing process. It is a fluid composed of silicon carbide, or SiC, which functions as an abrasive, and polyethylene glycol, or PEG, which acts as a coolant. Wires are used in wire saws to carry the slurry in order to create an abrasive cutting tool.

### ***Tolling Arrangements***

In March 2008, we entered into a tolling arrangement with Huasheng to produce monocrystalline wafers for us. Huasheng has agreed to produce wafers for us at pre-set prices which decline over the length of the contract for delivery from May 2008 to December 2011. Under our tolling agreement, we provide Huasheng with polysilicon we produce and pay a per wafer processing fee for the wafers this manufacturer delivers to us.

### **Equipment**

The major production equipment for polysilicon includes hydrochlorination synthesizers, hydrogenation synthesizers, distillation chambers, reactors, hydroelectrolysis devices, vent gas recovery mechanisms, vent gas washing towers and power supply control systems. For our Phase I production facility, we have purchased key equipment for polysilicon production including our reactors, vent gas recovery mechanisms, washing towers and power control systems primarily from equipment manufacturers in the United States, Europe and Japan. The major equipment for the hydrogenation process and TCS process include: heating units, STC hydrogenation units, transformers and power control systems.



## [Table of Contents](#)

We have close relationships with several of the world's leading equipment manufacturers and work closely with selected equipment manufacturers to develop and build our production lines. In addition, we developed technical specifications for the design of our power supply systems and reactors and have engaged manufacturers to construct the equipment in accordance with our specifications. Our engineers work closely with our equipment suppliers to design our production facilities. Furthermore, to lower costs, we have purchased and will continue to purchase equipment that can be appropriately designed and manufactured from domestic suppliers. Our technical team is responsible for overseeing the installation of our manufacturing lines to ensure that the interaction between the various individual components of the entire production process is optimized. They work together with our equipment suppliers' technical teams on site. Our aggregate capital expenditures for plant and machinery were \$96.0 million and \$249.9 million in the year ended December 31, 2007 and the six months ended June 30, 2008.

Our Phase I production facility has 18 reactors, 17 of which are from an international supplier and one from a domestic supplier. Initially all 18 reactors were to be supplied by the international supplier. Delays in delivery from our international supplier resulted in up to a six-month delay in production at our Phase I production facility. The same international supplier was supposed to supply the 18 reactors for our Phase II production facility. However, delays in delivery by this supplier and early delivery of some domestic reactors intended for our Phase III production facilities have resulted in our using five internationally sourced reactors and 13 domestically sourced reactors for our Phase II production facility. All 18 reactors for our Phase II production facility have been installed. The domestic reactors have operated at efficiency levels similar to those of the international reactors. We entered into an agreement to purchase 144 reactors manufactured by Shanghai Morimatsu. Shanghai Morimatsu is a new PRC-based manufacturer of reactors and wholly-owned subsidiary of Morimatsu Industry Co., Ltd. of Japan, or Morimatsu Japan, a large manufacturer of stainless steel tanks, heat exchangers, pressure vessels and oil tanks. We used the two reactors delivered by Shanghai Morimatsu in our Phase II production facility and determined that such reactors operate at efficiency levels similar to our existing reactors in our Phase I production facility. We also believe that the management support, manufacturing know-how and financial support available from Morimatsu Japan enhance Shanghai Morimatsu's ability to deliver reactors on schedule. Our Phase III production facilities are expected to have an aggregate of 144 reactors, but we have already placed orders for more reactors than currently needed for our Phase III production facility in order to ensure we have sufficient reactors of further polysilicon production expansion. We currently have 30 reactors on site for Phase III and began equipment installation in August 2008.

We have commenced discussions with a number of wafer production equipment suppliers for the key wafer production equipment for our wafer production expansion. We have entered into equipment supply contracts to purchase over one half of the wire saws and squarers for our expansion to 1.9 GW with the first deliveries expected to commence in late 2008.

### **Quality Assurance and Customer Support and Service**

Our quality control consists of three components: incoming inspection through which we ensure the quality of the raw materials that we source from third parties, in-process quality control of our manufacturing processes and output quality control of finished products through inspection and testing. We are in the early stages of implementing our internal finished product quality control. Pilot production is less likely to yield products of comparable quality levels as products produced after commercial production due to shortfalls in inputs or limitations on production with such new production facility.

In order to facilitate our production of polysilicon and ensure both the quality and quantity of the finished products, we have set up a laboratory responsible for the analysis of raw material in-process quality control and finished products and the supervision of environmental pollution and safety. We purchase our laboratory equipment from a combination of domestic and foreign suppliers.

As we have not established any wafer manufacturing capability, we have not implemented our own quality control procedures and generally have our tolling contractors perform this function. Our tolling arrangements provide that we should be indemnified by the tolling manufacturer for any damages relating to wafer quality or delayed delivery at the fault of the tolling manufacturer.

## [Table of Contents](#)

### Sales and Marketing

To date, we have not needed to market our products heavily since we have limited polysilicon output and address a market with extreme shortages and have sold initial polysilicon production to various domestic customers on a spot basis and more recently to JA Solar, Trina Solar, Suntech, CSI, Solarfun, AIDE and Solarcell under our supply contracts. We have sold all of our wafers to two customers, JA Solar and AIDE. We expect to begin selling wafers to Solarcell in September 2008. We have established a worldwide marketing capability through our direct sales team, which is based in China. Each member of our sales team is dedicated to a particular region in the world. Our marketing events include attending industrial conferences and trade fairs, as well as advertising and public relations events. Our sales and marketing team works closely with both our research and development team and production team to coordinate our ongoing supply and demand planning.

### Customers and Markets

We expect the solar industry to be the principal market for our polysilicon and wafers and account for a substantial majority of our polysilicon production volume and wafer sales volume in 2008. We expect that the demand for solar grade polysilicon and wafers will increase with the expected growth of the solar industry. With the completion of our Phase II production facility, we expect to have the ability to commence production and sale of electronic grade polysilicon in the second half of 2008. However, we expect continued high demand and strong pricing for solar grade polysilicon will cause us to delay entry into the electronic grade market until 2009 or later.

We have entered into polysilicon and wafer supply agreements with cell and module manufacturers that provide for aggregate sales of approximately 15.1 GW of wafers and approximately 40,356 MT of polysilicon for aggregate total contract prices of \$21.3 billion (RMB146.2 billion). The contracts generally require customers to make advance payments or provide other financial guarantees or support, have pre-set prices which decline significantly over the length of the contract and have pre-set volumes that increase significantly in the early years of the contract. The contracted amounts are summarized in the table below.

<u>Purchaser</u>	<u>Product and Dates</u>	<u>Volume</u>	<u>Total Contract Price</u>
JA Solar	Polysilicon through 2009 and then wafers through 2015	Polysilicon 3,510 MT Wafers 8.4 GW	\$9.4 billion (RMB64.8 billion)
Trina Solar	Polysilicon through 2009 and then polysilicon and wafers through 2015	Polysilicon 16,926 MT Wafers 2.2 GW	\$4.0 billion (RMB27.2 billion)
Suntech	Polysilicon through 2009 and then polysilicon and wafers through 2012	Polysilicon 9,420 MT Wafers 1.1 GW	\$2.6 billion (RMB17.8 billion)
CSI	Polysilicon through 2009 and then wafers through 2015	Polysilicon 510 MT Wafers 1.8 GW	\$2.2 billion (RMB15.2 billion)
Solarfun	Polysilicon through 2015	Polysilicon 9,990 MT	\$1.1 billion (RMB7.6 billion)
AIDE	Wafers through 2015	Wafers 0.9 GW	\$1.1 billion (RMB7.3 billion)

Solarcell	Wafers through 2015	Wafers 0.7 GW	\$0.9 billion (RMB6.3 billion)
-----------	---------------------	---------------	-----------------------------------

## Table of Contents

Prior to our entry into these supply contracts, we sold all of our polysilicon on the spot market to major Chinese solar manufacturers. We have contracted to sell approximately 90% of our anticipated production from now to the end of 2015 under our current supply agreements after giving effect to our current polysilicon and wafer expansion plans.

In March 2008, we entered into a polysilicon supply agreement with Changzhou Trina Solar Energy Co., Ltd., an onshore subsidiary of Trina Solar Limited, or Trina Solar. In August 2008, we amended such polysilicon supply agreement to deliver polysilicon for the period starting from September 2008 to December 31, 2009 and polysilicon and wafers for the period starting from January 1, 2010 to December 31, 2015. We agreed to supply 1,726 MT of polysilicon from September 2008 to December 31, 2009 at a price that adjusts to the lower of the pre-set price and a variable price based on 120% of the spot market price and pre-set volumes that increase 664% from September 2008 to December 31, 2009. Starting January 1, 2010, we agreed to supply 15,200 MT of polysilicon and 2.2 GW of wafers. This contract has a pre-set price for polysilicon that declines approximately 63% and pre-set volumes that increase 36% from January 1, 2010 to December 31, 2015. This contract has a pre-set price for wafers that declines approximately 45% and pre-set volumes that increase 36% from January 1, 2010 to December 31, 2015. Trina Solar is required to make an advance payment, a portion of which has already been paid and the remainder of which is scheduled to be paid by the end of 2009. If we fail to deliver polysilicon or wafers pursuant to this agreement, we are subject to liquidated damages. On a substantial default, Trina Solar is entitled to terminate the agreement and is entitled to recover (1) the remaining advance payment Trina Solar paid to secure such polysilicon or wafer supply from us and (2) liquidated damages.

In April 2008, we entered into a wafer supply agreement with Jing Ao Solar Co., Ltd., an onshore subsidiary of JA Solar Holdings Co., Ltd., or JA Solar. In August 2008, we amended the delivery schedule and increased the supply volumes under such wafer supply agreement. While no wafers will be delivered from August 2008 to December 31, 2009, additional wafers will be delivered starting from January 1, 2010 to December 31, 2014. This amended contract has a pre-set price for wafers that declines approximately 43% and pre-set volumes that increase 25% from January 1, 2010 to December 31, 2014. Pursuant to this amended contract we agreed to supply 8.4 GW of wafers. In addition, we entered into a polysilicon supply contract with JA Solar Technology Yangzhou Co., Ltd., another onshore subsidiary of JA Solar Holdings Co., Ltd., under which we agreed to provide 3,510 MT of polysilicon for the period starting from August 2008 to December 31, 2009. This contract has a pre-set price for polysilicon which declines approximately 23% and has pre-set volume requirements that increase approximately 932% over the length of the contract. JA Solar is required to make an advance payment, part of which has already been paid and the remainder of which is scheduled to be paid in installments by the end of 2009. If we fail to deliver polysilicon or wafers pursuant to this agreement, JA Solar is entitled to purchase the amount of shortfall in the market and require us to cover any shortfall in pricing. If we commit a material breach of the agreement, JA Solar is entitled to terminate the agreement and be entitled to recover (1) the remaining advance payment JA Solar paid to secure such polysilicon or wafer supply from us and (2) liquidated damages.

In April 2008, we entered into a wafer supply agreement with Jiangsu AIDE Solar Energy Technology Co., Ltd, or AIDE. Pursuant to this contract we agreed to supply 0.9 GW of wafers. This contract has a pre-set price which declines approximately 60% over the length of the contract and has pre-set volumes that increase approximately 1,100% during the first six years of the contract and become steady for the remaining contract term. AIDE is required to make an advance payment, part of which has already been paid and the remainder of which is required to be paid in installments through April 2010. If we fail to deliver wafers pursuant to this agreement, AIDE is entitled to purchase the amount of shortfall in the market and require us to cover any shortfall in pricing. If we commit a material breach of the agreement, AIDE is entitled to terminate the agreement and be entitled to recover (1) the remaining advance payment AIDE paid to secure such wafer supply from us and (2) liquidated damages.

In June 2008, we entered into a polysilicon supply agreement with Jiangsu Linyang Solarfun Co., Ltd., an onshore subsidiary of Solarfun Power Holdings Co., Ltd., or Solarfun. We agreed to supply a total of 9,990 MT of polysilicon from the period starting 2008 to 2015. This contract has a pre-set price which declines

---

## Table of Contents

approximately 77% over the contract period and pre-set volumes that increase 788% in the first four years of the contract and become steady for the remaining contract term. Solarfun is required to make an advance payment, part of which has already been paid and the remainder of which is scheduled to be paid in installments through April 2009. If we fail to deliver polysilicon pursuant to this agreement, Solarfun is entitled to purchase the amount of shortfall in the market and require us to cover any shortfall in pricing. If we commit a material breach of the agreement, Solarfun is entitled to recover (1) the remaining advance payment Solarfun paid to secure such polysilicon supply from us and (2) liquidated damages.

In June 2008, we entered into a wafer supply agreement with Solarcell S.p.A., an offshore subsidiary of Solar Industries AG (owned 80% by Solar Industries AG and 20% by MX Group S.p.A), or Solarcell. Pursuant to this contract, we agreed to supply 0.675 GW of wafers. This contract has a pre-set price which declines approximately 56.4% over the length of the contract and has pre-set volume requirements that increase approximately 80.8% during the first six years of the contract and become steady for the remaining contract term. Solarcell is required to put up a letter of credit and make an advance payment prior to our delivery of wafers under the contract, which is expected in by September 2008. As Solarcell is a young company without substantial operating history and limited assets, it is possible that it may not be able to secure a letter of credit, in which case we may not make any sales under this agreement. If through no fault of Solarcell we fail to deliver wafers pursuant to this agreement, we are allowed a certain period to make up deliveries and if we do not make up such deliveries, Solarcell is entitled to damages limited to the value of the wafers. If we commit a material breach of the agreement, Solarcell is entitled to terminate the agreement and be entitled to recover the remaining advance payment Solarcell has paid.

In August 2008, we entered into a polysilicon and a wafer supply contract with Suzhou CSI Solar Power Technology Co., Ltd., an onshore subsidiary of Canadian Solar Inc., or CSI. We agreed to supply a total of 510 MT of polysilicon for the period from September 2008 to December 31, 2009. This contract has a pre-set price that declines approximately 21% and pre-set volumes that increase 650% over the term of the contract. We agreed to supply 1.8 GW of wafers from the period starting January 1, 2010 to December 31, 2015. This contract has a pre-set price that declines approximately 46% and pre-set volumes that increase 116% over the term of the contract. CSI is required to make an advance payment covering both of these contracts, part of which will be paid in September 2008 and the remainder of which is scheduled to be paid by 2010. If we fail to deliver polysilicon or wafers pursuant to these agreements, CSI is entitled to purchase the amount of shortfall in the market and to require us to cover any shortfall in pricing. If we commit a material breach of any of these agreements, CSI is entitled to terminate the agreement and be entitled to recover (1) the remaining advance payment CSI paid to secure such polysilicon and wafer supply from us and (2) liquidated damages.

In August 2008, we entered into a polysilicon and a wafer supply contract with Wuxi Suntech Power Co., Ltd., an onshore subsidiary of Suntech Power Holdings Co., Ltd., or Suntech. We agreed to supply a total of 1,920 MT of polysilicon for the period starting September 2008 to December 31, 2009. This contract has a pre-set price that declines approximately 26% over the term of the contract and pre-set volumes that increase 1,400% over the term of the contract. We agreed to supply polysilicon and wafers from the period starting January 1, 2010 to December 31, 2012. We agreed to supply a total of 7,500 MT of polysilicon and 1.1 GW of wafers over this three year period. This contract has a pre-set price for polysilicon that declines approximately 43% and pre-set volumes that remain constant over the term of the contract. This contract has a pre-set price for wafers that declines approximately 33% and pre-set volumes that remain constant over the term of the contract. Suntech is required to make an advance payment covering both of these contracts, part of which will be paid in October 2008 and the remainder of which is scheduled to be paid by November 2009. If we fail to deliver polysilicon or wafers pursuant to these agreements, Suntech is entitled to purchase the amount of shortfall in the market and to require us to cover any shortfall in pricing. If we commit a material breach of any of these agreements, Suntech is entitled to terminate the agreement and be entitled to recover (1) the remaining advance payment Suntech paid to secure such polysilicon and wafer supply from us and (2) liquidated damages.

## Research and Development

We believe that the continual development of our technology will be vital to maintaining our long-term competitiveness. Therefore, we intend to continue to invest significant management and financial resources into research and development. Our senior management team spearheads our research and development efforts and sets strategic directions for the advancement of our products and production processes. We intend to dedicate a portion of our revenues to research and development activities. We are considering several projects including additional research and development centers in China and overseas.

Our research and development center employs three personnel who are focused on improving manufacturing processes. We did not account separately for the costs of these three personnel for the year ended December 31, 2007 and the six months ended June 30, 2008, and all related expenses were included in general and administrative expenses. We will separately account for research and development expenses in future periods.

## Intellectual Property

Our intellectual property is an essential element of our business. We rely on patents, copyrights, trademarks, trade secrets and other intellectual property laws, as well as non-competition and confidentiality agreements with our employees, suppliers, business partners and others, to protect our intellectual property rights.

We generally rely on a combination of proprietary process engineering, trade secrets and employee contractual protections, rather than patents, to establish and protect our intellectual property. We believe that most elements of our production processes involve proprietary know-how, technology or data that are not covered by patents or patent applications, including technical processes, equipment designs, algorithms and procedures. We have taken security measures to protect these elements. All of our research and development personnel have entered into confidentiality and proprietary information agreements with us. These agreements address intellectual property protection issues and require our employees to assign to us all of their inventions, designs and technologies that they develop, when primarily utilizing our resources or when performing their duties during their employment. Our supply contracts with our customers also typically include confidentiality undertakings.

We have entered into license agreements with third parties, specifically with Hualu and Xuzhou Southeast for use of their hydrochlorination process techniques. Under the patent license agreement, which has no expiration date, we are entitled to a free license for our 1,500 MT Phase I production facility. We are required to pay a licensing fee of RMB5 million for every further capacity expansion of 1,500 MT. See “Risk Factors–Risks Relating to Our Business–We are currently the only licensee and hold a non-exclusive license to use the intellectual property used in our hydrochlorination process. Any competitor may also be able to license this intellectual property.”

The Siemens reactor process is relatively mature, and we began our polysilicon production design process by hiring Hualu in April 2006 to design our Phase I polysilicon production facility. Although the Institute provided certain warranties regarding the plant operation, it did not license any technology to us nor provide us with indemnities from infringement of the intellectual property rights of others.

Most of our equipment supply contracts with international suppliers include an indemnification provision, under which the supplier undertakes to indemnify us against actions, claims, demands, costs, charges, and expenses arising from or incurred by reason of any infringement or alleged infringement of patent, copyright, trade mark or trade name by the use of the equipment provided by the supplier. However, it is unclear that we will be entitled to such indemnification in the event that we use the equipment supplied by such supplier in



---

## [Table of Contents](#)

conjunction with other equipment not supplied by such supplier. In addition, many of our equipment supply contracts with domestic suppliers do not provide any intellectual property indemnification provisions. See “Risk Factors–Risks Relating to Our Business–Although we are currently strengthening our research and development capability, to date, substantially all of the intellectual property used in our polysilicon production process was developed by third parties. We may be exposed to infringement or misappropriation claims by third parties which, if determined adversely to us, could cause us to pay significant damage awards.”

We have also entered into a trademark lease agreement at no cost with Golden Concord Group for the use of our logo. We may be required to expend significant resources to monitor and protect our intellectual property rights. In addition, litigation may be necessary to enforce these rights. We cannot assure you that we will prevail in any such potential litigation.

## **Competition**

The solar wafer market is highly competitive and the polysilicon market is expected to become increasingly competitive. While we currently do not manufacture wafers, we compete directly with wafer manufacturers for wafer sales. In addition, many solar cell and module manufacturers have or have announced the intention of establishing wafer and/or polysilicon production or affiliate relationships with manufacturers of polysilicon or wafers, including some of our customers and potential customers. We compete with these in-house capabilities, which could limit our ability to expand our sales. Our competitors include polysilicon producers, such as DC Chemical, Hemlock, MEMC, REC, Tokuyama, Wacker, and wafer producers, such as SolarWorld, Glory Silicon, Green Energy, Jinglong, Kyocera, LDK Solar, MEMC, M.Setek, PV Crystalox, REC, ReneSola, Shunda, Sino-American Silicon and SolarWorld. We also compete with producers of upgraded metallurgical silicon such as Dow Corning, Elkem and Becancour Silicon. Many of our current and potential competitors have a longer operating history, better brand recognition, greater resources, larger customer base, better access to polysilicon feedstock and greater economies of scale than we do.

Once the current polysilicon supply shortage has eased, we expect that the key competitive factors will be the ability to control cost and quality. We anticipate that production technology, energy costs and scale will determine the competitive position of the different polysilicon and wafer manufacturers going forward.

## **Environmental Matters**

Our manufacturing processes generate noise, waste water, gaseous wastes and other industrial wastes. Our production facilities are subject to various pollution control regulations with respect to noise and air pollution and the disposal of waste and other hazardous materials. We have adopted the modified Siemens process for our polysilicon production to reduce waste discharge. We process all our waste water and waste gas by various treatments so that they meet the respective national discharge standard. In addition, most of our solid waste can be reused and does not contain poisonous materials. We have established a pollution control system and installed various types of anti-pollution equipment in our facilities to reduce, treat, and where feasible, recycle the wastes generated in our manufacturing process. We are required to undergo the acceptance inspections of environmental protection, work safety and professional health and obtain respective approval with relevant governmental authorities before the manufacturing lines commence full production. We have obtained the pollutant discharge permit, the work safety permit for storage and use of hazardous chemicals and permit for the registration of use of atmospheric pressure containers for the pressure containers we have installed. We passed the environmental protection examination and work safety examination for our Phase I production facility in June 2008 and received the government approval in connection with professional health for Phase I facility in July 2008. However, there can be no assurance that we will pass the necessary examinations and receive the necessary approvals for our Phase II, Phase III and other facilities. In addition, we must obtain the necessary environmental, work safety and professional health approvals for our Phase II production facility. See “Risk Factors–Risks Relating to Our Business–Any failure by us to control the use of, to adequately restrict the discharge, of hazardous substances, or to obtain work safety and professional health approvals could subject us to potentially significant monetary damages and fines or suspensions in any business operations.”

---

## [Table of Contents](#)

We obtained the environmental and work safety approvals for the pilot production of our Phase II production facility on May 21, 2008 and July 30, 2008, respectively. Since the pilot production period of our Phase II production facility expired on August 21, 2008, we must obtain the necessary environmental, work safety and professional health approvals. We currently expect to obtain these approvals by the end of 2008. See “Risk Factors–Risks Relating to Our Business–Any failure by us to control the use or to adequately restrict the discharge of hazardous substances or to obtain work safety and professional health approvals could subject us to potentially significant monetary damages and fines or suspensions in our business operations.”

For our Taixing joint venture, we obtained an approval to commence pilot production from the bureau of work safety in August 2008 and expect to obtain the approval for pilot production from the bureau of environmental protection.

TCS is used to produce polysilicon. It is highly combustible if exposed to moisture in the air. STC is a by-product produced in the polysilicon production process. We acquire TCS from third-parties and produce the balance through the hydrochlorination process. In the future, we also plan to obtain TCS through the Taixing joint venture and through our hydrogenation process and in-house TCS production facility. The STC produced is initially stored in storage tanks on site after each batch of polysilicon is produced and later recycled in subsequent batches resulting in little to no excess STC produced requiring disposal. The polysilicon manufacturing process generates other hazardous by-products. We outsource the treatment of some of our wastes via third party contracts. Our operations are subject to regulation and periodic monitoring by local environmental protection authorities. We have not been subject to any material proceedings or fines for environmental violations. If we fail to comply with present or future environmental laws and regulations, we could be subject to fines, suspension of production or a cessation of operations. See “Risk Factors–Risks Relating to Our Business–Any failure by us to control the use of, or to adequately restrict the discharge of, hazardous substances could subject us to potentially significant monetary damages and fines or suspensions in our business operations.”

## **Employees**

As of June 30, 2008, JZPTD employed 635 employees in China: 361 for key production processes; 104 for auxiliary production processes; 70 for production and construction supply and operations; 46 for finance, internal controls, human resources and administration and IT; 46 for environmental safety and protection and quality control; four for senior level management; one for sales and marketing and three for research and development. As of June 30, 2008, we employed seven employees in management or management support positions in Hong Kong. We plan to hire additional employees, primarily in China, as we expand.

We offer our employees competitive compensation packages and various training programs, as a result, we have generally been able to attract and retain qualified personnel.

As required by PRC regulations, we participate in various employee social security plans that are organized by municipal and provincial governments, including housing, pension, medical insurance and unemployment insurance. We are required under PRC law to make contributions to the employee benefit plans at specified percentages of the salaries, bonuses and certain allowance of our employees, up to a maximum amount specified by the local government from time to time. Members of the retirement plan are entitled to a pension equal to a fixed proportion of the salary prevailing at the member's retirement date. The total amount of contributions we made to employee benefit plans for the year ended December 31, 2007 and the six months ended June 30, 2008 was \$0.4 million and \$0.3 million, respectively. As of June 30, 2008, there were a small number of employees who were not covered under these employee social security plans. These delays are primarily a result of administration delays either on the part of our employees or governmental entities. We may be subject to penalties as a result of our failure to provide such employee social security benefits.

We typically enter into a standard confidentiality and employment agreement with our management and research and development personnel. These contracts involve a covenant that prohibits each of them from engaging in any activities that compete with our business during and, if we continue to pay one third of their total annual compensation, for two years, after the period of their employment with us.





---

## **Table of Contents**

We believe we maintain a good working relationship with our employees, and we have not experienced any labor disputes or any difficulty in recruiting staff for our operations. Our employees are not covered by any collective bargaining agreement.

### **Insurance**

We maintain property insurance, project construction insurance and third party liability insurance with insurance companies covering our inventory, equipment, facilities, buildings and their improvements. These insurance policies cover losses due to fire, earthquake, flood and a wide range of other natural disasters and human accident, as well as loss of profit attributable to such property damage or loss. We have a separate insurance policy covering machinery breakdowns or damages due to design, installation, raw material flows, human errors, centrifugal force and certain other causes, as well as loss of profit attributable to such machinery breakdowns or damages. We also maintain third party liability insurance and employee health insurance. We also maintain business interruption insurance. We also do not have product liability insurance or key-man life insurance. We consider our insurance coverage to be in line with other polysilicon producers in China.

### **Facilities**

Our corporate headquarters and production facilities are located in the Industrial Park. We are a party to a memorandum of understanding with the Xuzhou Economic and Development Committee relating to the land use rights for an aggregate of approximately 247 acres of office and production space in the Xuzhou Economic Development Zone. We have already paid for the land use rights for approximately 92.5 acres of this land and have received land use certificates. These 92.5 acres are sufficient for our Phase I and Phase II production facilities. We are currently in the process of completing the legal procedures for obtaining the appropriate approvals for the transfer of, and to obtain the land use certificates for, a parcel of 80.9 acres in relation to the construction of our Phase III production facilities for us to obtain the land use certificates for such parcel. We expect to receive the land use certificates in the fourth quarter of 2008 provided that we successfully win the public auction in connection with such parcel and duly pay for the grant of the state-owned land use right. See “Risk Factors—Risks Related to Our Business—We do not yet have legal rights to the land on which we are planning on building our Phase III production facilities and if we are unsuccessful in obtaining such rights it could delay our production which could have a material adverse effect on our results of operations”. We expect the price and conditions for the land use rights for the 80.9 acres to be similar to those for the initial 92.5 acres. All land use rights expire 50 years from the date of the land use certificates. We have not identified specific land nor purchased land use rights for our proposed expansion of polysilicon manufacturing capacity to 24,000 MT or our proposed wafer manufacturing facility, although we believe sufficient land will be available for this purpose.

The Industrial Park is easily accessible by highway, railway and water transport, which is convenient for the transportation of our raw materials and finished products. It also provides a complete supply of basic utilities including water, electricity, steam, communication, and pollution control. Our location in the Industrial Park also entitles us to certain favorable treatment in terms of land, tax, mortgage, electricity pricing and municipality services.

We believe that our existing facilities are adequate and suitable to meet our present needs and that additional space can be obtained on commercially reasonable terms to meet our future requirements.

### **Legal Proceedings**

We are currently not a party to any material legal or administrative proceedings and we are not aware of any material legal or administrative proceedings threatened against us. We may from time to time be subject to various legal or administrative proceedings arising in the ordinary course of business.

## PRC GOVERNMENT REGULATION

This section sets forth a summary of the most significant regulations or requirements that affect our business activities in China and our shareholders' right to receive dividends and other distributions from us.

### Renewable Energy Law and Other Government Directives

In February 2005, China enacted its Renewable Energy Law, which became effective on January 1, 2006. The Renewable Energy Law sets forth the national policy to encourage and support the development and use of solar and other renewable energy and its use for on-grid generation.

The law also sets forth the national policy to encourage the installation and use of solar technologies in water-heating systems, heating and cooling systems, photovoltaic systems and other energy utilization systems. In addition, the law provides financial incentives, such as national funding, preferential loans and tax preferences for the development of renewable energy projects.

In January 2006, the NDRC issued two implementing rules relating to the Renewable Energy Law: (1) the Trial Measures on the Administration over the Pricing and Cost Allocation of Renewable Energy Power Generation and (2) the Administrative Regulations Relating to the Renewable Energy Power Generation. These implementing rules, among other things, set forth general policies for the pricing of on-grid power generated by solar and other renewable energy. In addition, the PRC Ministry of Finance issued the Provisional Measures for Administration of Specific Funds for Development of Renewable Energy in June 2006, which provides that the PRC government will establish a fund specifically for the purpose of supporting the development of the renewable energy industry, including the solar energy industry.

China's Ministry of Construction and Ministry of Finance also issued "Implementary Views for Promoting Use of Renewable Energy in Construction" in August 2006, which sought to expand the use of solar energy in residential buildings.

### Environmental Regulations

We use, generate and discharge toxic, volatile or otherwise hazardous chemicals and wastes in our research and development and manufacturing activities. We are subject to a variety of governmental regulations related to the storage, use and disposal of hazardous materials. The major environmental regulations, professional health regulations and work safety regulations applicable to us include the Environmental Protection Law of the PRC, the Safety Production Law of PRC the Law of PRC on the Prevention and Control of Water Pollution, Implementation Rules of the Law of PRC on the Prevention and Control of Water Pollution, the Law of PRC on the Prevention and Control of Air Pollution, the Law of PRC on the Prevention and Control of Solid Waste Pollution, the Law of PRC on the Prevention and Control of Noise Pollution, the Law of PRC on Appraising Environment Impacts, Regulation on Work Safety Permits, Administrative Regulation on the Safety of Hazardous Chemicals, the Administration Regulation on the Levy and Use Discharge Fees, the Regulation of Hazardous Chemicals Safety Management and the PRC Law of Occupational Disease Prevention.

### Status of Our Business in Foreign Investment Industrial Guidance Catalogues

The principal regulation governing foreign ownership of businesses in the solar industry in the PRC is the Foreign Investment Industrial Guidance Catalogue (effective as of December 1, 2007). Under the regulation, the polysilicon manufacturing business falls into the category of encouraged foreign investment industry.

## Tax

### *PRC Enterprise Income Tax*

On March 16, 2007, the National People's Congress approved the draft bill of the PRC Enterprise Income Tax Law, or the new EIT Law, which became effective on January 1, 2008. The Implementation Rule for the PRC Enterprise Income Tax Law or the Implementation Rule was promulgated on December 6, 2007. The new EIT Law adopts a uniform tax rate of 25% for all enterprises (including FIEs) and revokes the tax exemption, reduction and preferential treatments formerly applicable to FIEs. The new EIT Law also provides for transitional measures for enterprises established prior to the promulgation of the new EIT Law. These enterprises are eligible for lower tax rate preferential treatment in accordance with the then prevailing tax laws, up until March 16, 2007, as well as administrative regulations. These enterprises will gradually become subject to the new, unified tax rate over a five-year period from January 1, 2008; enterprises eligible for regular tax reductions or exemptions may continue to enjoy tax preferential treatments after the implementation of the new EIT Law until their preferential treatments expire. The preferential treatment period for enterprises which have not enjoyed any preferential treatments for the reason of not having made any profits, however, shall be deemed as starting from the implementation of the new EIT Law.

In addition, under the new EIT Law, an enterprise established outside of the PRC with "de facto management bodies" within the PRC may be considered a resident enterprise and will normally be subject to the enterprise income tax at the rate of 25% on its global income. The Implementation Rule provides that the term "de facto management bodies" refers to management bodies which have material management and control over all aspects of the business, including without limitation, the production, operation, personnel, finance, and assets of the enterprise. However, it is still unclear if the PRC tax authorities would subsequently determine that, notwithstanding our status as the Cayman Islands holding company of our operating business in the PRC, with administrative headquarters and personnel in Hong Kong, we should be classified as a resident enterprise, whereby our global income will be subject to PRC income tax at a tax rate of 25%. Furthermore the exemption to the 20% withholding tax on dividends distributed by FIEs to their foreign investors under the former tax laws is no longer available. The Implementation Rule provides a 10% statutory dividend withholding rate.

Also, under the new EIT Law, a preferential tax rate of 15% continues to be applicable to high and new technology enterprises and current preferential tax treatments for FIEs would be grandfathered for a period of five years following the effective date of the new EIT Law. The PRC Ministry of Science, Ministry of Finance and State Administration of Tax recently issued the Recognition and Administration Measures for High and New Technology, or the Measures, on April 14, 2008, which have retroactive effect from January 1, 2008. The Measures set forth detailed criteria for the recognition of a high and new technology enterprise. Therefore, whether Jiangsu Zhongneng, our principal operating subsidiary in China, can meet the requirements and be granted the status of a high and new technology enterprise and enjoy a preferential tax rate applicable to high and new technology enterprises is subject to the future implementation of the Measures.

### *PRC Value Added Tax*

Pursuant to the Provisional Regulation of China on VAT, and its implementing rules, all entities and individuals that are engaged in the sale of goods, the provision of repairs and replacement services and the importation of goods in China are generally required to pay value-added tax of 17% of the gross sales proceeds received, less any deductible VAT already paid or borne by the taxpayer. Furthermore, when exporting goods, the exporter is entitled to a portion of or all of the refund of the VAT that it has already paid or borne. Our imported equipment are used for manufacturing export products are exempt from import VAT.

---

## [Table of Contents](#)

### **Foreign Currency Exchange**

Foreign currency exchange in China is primarily governed by the following regulations:

Foreign Exchange Administration Rules (1996), as amended; and

Regulations of Settlement, Sale and Payment of Foreign Exchange (1996).

Under the Foreign Exchange Administration Rules, the Renminbi is freely convertible for routine current account items, including distribution of dividends, payment of interest, trade and service-related foreign exchange transactions. Conversion of Renminbi for most capital account items, such as direct investment, overseas loan, securities investment and repatriation of investment, however, is still subject to the approval of the SAFE.

Under the Regulations of Settlement, Sale and Payment of Foreign Exchange, FIEs may only buy, sell and /or remit foreign currencies at those banks authorized to conduct foreign exchange business complying with certain procedural requirements, such as providing valid commercial documents and, in the case of capital account item transactions, obtaining approval from the SAFE. Capital investments by FIEs outside of China are also subject to limitations, which include approvals by the Ministry of Commerce, the SAFE and the NDRC.

### **Dividend Distribution**

The principal regulations governing distribution of dividends paid by wholly foreign-owned enterprises include:

Wholly Foreign-Owned Enterprise Law (1986), as amended;

Wholly Foreign-Owned Enterprise Law Implementation Rules (1990), as amended; and

Company Law of the People's Republic of China (2005).

Under these regulations, Jiangsu Zhongneng may pay dividends only out of its accumulated profits, if any, determined in accordance with PRC accounting standards and regulations. In addition, Jiangsu Zhongneng is required to set aside a portion of its after-tax profits according to PRC accounting standards and regulations to fund certain reserve funds that cannot be distributed as cash dividends.

### **Circular No. 75**

On October 21, 2005, the SAFE issued Circular No. 75, which became effective as of November 1, 2005. According to Circular No. 75, PRC residents, including both legal persons and natural persons, must register with the relevant local SAFE branches before establishing or controlling any company outside of China with assets or equities interest in PRC companies for the purpose of capital financing. Any such company is referred to as an "offshore special purpose company." Such PRC residents must also file amendments to their registrations if their offshore companies experience capital variation, such as changes in share capital, share transfers, mergers and acquisitions, long-term equity or debt investments or creation of any security interest over any assets located in China or any other material change in share capital.

Moreover, PRC residents who have established or acquired control of offshore companies that have made onshore investments in the PRC before the implementation of this regulation are required to complete the relevant registration procedures with the local SAFE branch by March 31, 2006. Under Circular No. 75, PRC residents are allowed to pay profits to offshore special purpose companies in the form of dividends to transfer shares in liquidation of a company, to decrease capital and take similar activities only after effecting registration pursuant to the registration procedures set forth in such regulation. Failure to comply with the registration procedures may result in restrictions being imposed on the foreign exchange activities of the relevant PRC entity. See “Risk Factors – Risks Relating to Doing Business in China – Recent regulations relating to offshore investment activities by PRC residents may limit our ability to acquire PRC companies and could adversely affect our business, financial condition and results of operations.”

## **Regulations of Overseas Investments and Listings**

The NDRC promulgated a rule in October 2004, or the NDRC Rule, which requires NDRC approvals for overseas investment projects made by PRC entities. The NDRC Rule also provides that approval procedures for overseas investment projects of PRC individuals shall be implemented with reference to this rule.

Regulation No. 10, which became effective on September 8, 2006, includes provisions that purport to require that an offshore SPV formed for purposes of overseas listing of equity interest in PRC companies and controlled directly or indirectly by PRC companies or residential individuals obtain the approval of the CSRC prior to the listing and trading of such SPV's securities on an overseas stock exchange.

On September 21, 2006, the CSRC published on its official website procedures regarding its approval of overseas listings by SPVs. The CSRC approval procedures require the filing of a number of documents with the CSRC and the approval process takes several months to complete.

The application of Regulation No. 10 with respect to overseas listings of SPVs remains unclear with no consensus currently existing among the leading PRC law firms regarding the scope of the applicability of the CSRC approval requirement.

Our PRC counsel, Grandall Legal Group, has advised us that, based on their understanding of the current PRC laws, regulations and rules and the procedures announced on September 21, 2006:

CSRC currently has not issued any definitive rule or interpretation concerning whether offerings like ours under this prospectus shall be subject to this new procedure;

in spite of the above, since our Company is not an offshore special purpose vehicle defined in Regulation No. 10 and we have obtained an approval for our restructuring with the Department of Foreign Trade and Economic Cooperation, Jiangsu Province People's Government, we are not required to submit an application to the CSRC for the approval of this listing and trading of our ADSs on the New York Stock Exchange, unless and until the CSRC issues new rules clearly requiring us to do so; and

the issuance and sale of the ADSs and the listing and trading of the ADSs on the New York Stock Exchange do not conflict with or violate Regulation No. 10.

See "Risk Factors—Risks Relating to Doing Business in China—Our failure to obtain the prior approval of the China Securities Regulatory Commission, or the CSRC, for this offering and the listing and trading of our ADSs on the New York Stock Exchange could have a material adverse effect on our business, operating results, reputation and trading price of our ADSs, and may also create uncertainties for this offering."

## MANAGEMENT

### Directors and Executive Officers

The following table sets forth certain information concerning our directors and executive officers. The business address of Mr. Zhu Gongshan, Mr. Hunter Jiang, Mr. Jason Li and Mr. Zhang Songyi is Suite 3601, Two Exchange Square, Central, Hong Kong, and for each of our other directors and executive officers is 310, Xuzhou Economic Development Zone, North of the National Highway, Xuzhou, Jiangsu Province, China.

<u>Name</u>	<u>Age</u>	<u>Position</u>
Zhu Gongshan	50	Chairman
Hunter Jiang	50	Chief Executive Officer and Director
Jason Li	42	Chief Financial Officer
Chen Wenjie	58	Chief Technology Officer for the Wafer Division
Scott Ma	39	Chief Marketing Officer
Zhu Guomin	54	General Manager of JZPTD
Jiang Wenwu	45	Deputy General Manager in charge of Production of JZPTD
Zhong Zhenwu	36	Manager of Research and Development of JZPTD
Zhang Songyi	53	Director
David Tang	53	Independent Director <sup>(1)</sup>
John Koh	52	Independent Director <sup>(1)</sup>
Otmar Haas	66	Independent Director <sup>(1)</sup>

(1) Appointments effective on the listing date



*Zhu Gongshan* is our chairman. Mr. Zhu Gongshan is our controlling shareholder. He stepped down as our chief executive officer on the appointment of Mr. Hunter Jiang in February 2008. He is currently a vice principal committee member of the Chinese Society for Electrical Engineering. Mr. Zhu Gongshan held the post of general manager of the Taicang Poly Cogeneration Plant from August 1997 to November 2003. From November 1999 to July 2005 and from April 2007 till now, he has been a director of the Golden Concord Holdings Limited. Since July 2006, Mr. Zhu Gongshan has been an executive director of GCL-Poly Energy Holdings Limited, a company listed on the Hong Kong Stock Exchange. He graduated from the Nanjing Electrical Professional School, majoring in electrical automation. Mr. Zhu Gongshan obtained a Ph.D. degree in Business Administration from the Bulacan State University of the Philippines.

*Hunter Jiang* became our president in September 2007, our chief executive officer in February 2008 and a director in July 2008. Prior to joining us, Mr. Hunter Jiang was the chief executive officer of Shanghai Alison Group Co., Ltd., a manufacturer of steel pipe, petrochemicals, and specialty packaging headquartered in Shanghai, from 2005 to 2007. From 1998 to 2005, Mr. Hunter Jiang was the chief executive officer of IPC Corp. China, a wholly owned subsidiary of IPC Corporation Ltd, a company listed on the Mainboard of the Singapore Exchange Limited whose businesses include information technology, property investment and development as well as investment holding. Mr. Hunter Jiang obtained a bachelor's degree in accounting from Shanghai Lixin University of Commerce, a degree in English from the East China Normal University Shanghai and an MBA from Macau University of Science and Technology.

*Jason Li* became our chief financial officer in August 2008. Prior to joining us, he was the chief financial officer of Shunda Holdings Co., Ltd. from August 2007 to June 2008. From March 2007 to August 2007, he was the group assistant vice president in the accounting and financial reporting group for the Asia-Pacific region of ABB Asea Brown Boveri Ltd., or ABB, and from March 2005 to March 2007, he was the vice president of corporate controlling, reporting and assurance. While he was at ABB, Mr. Jason Li was also the Sarbanes-Oxley project manager and the internal controls manager for the North Asia Region. From November 2001 to March 2005, he was the chief financial officer of the Hefei joint venture formed by Delta and Pineland Co., Ltd. Mr. Jason Li spent over seven years at PricewaterhouseCoopers and is a member of both the AICPA and CICPA. Mr. Jason Li received his bachelor's degree in finance from Xiamen University and completed the business management program at IMD in Switzerland.

## Table of Contents

*Chen Wenjie* became our Chief Technology Officer for the wafer division in June 2008. Prior to joining us he was the general manager at Yixing Jintech Solar Energy Co. Ltd., or Jintech Solar, since January 2008. Prior to Jintech Solar, he was vice general manager for Hairan Science and Technology Co., Ltd. from 2004 to 2007. Mr. Chen graduated from the Beijing Polytechnical University with a degree in semiconductors.

*Scott Ma* became our Chief Marketing Officer in May 2008. Prior to joining us he was procurement director at Trina Solar Energy Co., Ltd. from 2007 to 2008. His experience before that includes serving as an APR supply chain director at Avery Dennison from 2005 to 2006, a materials and logistics manager at Texas Instruments (China) Co. Ltd. from 1999 to 2004, and a manager of import and export department at Shenzhen (China) Foreign Trading Development Group from 1990 to 1997. Mr. Scott Ma earned an MBA from Nanjing University Business School and a Ph.D. in Operation Management: Supply Chain Optimization jointly from Hehai University Business School and University of Texas at Dallas School of Management.

*Zhu Guomin* became general manager of JZPTD in March 2006. He received his college degree from Shanghai Electrical College. From 1996 to 2000, he was the factory manager of Nantong Xinxing Cogeneration Plant. From 2000 to 2006, Mr. Zhu Guomin was the general manager for one of GCL-Poly's Cogeneration Plants.

*Jiang Wenwu* became the deputy general manager of JZPTD in June 2007. He has over 20 years of experience working as an engineer. Prior to joining us, he worked at CNPL Fushan Petrochemical as a deputy general manager from 1999 to 2006 and as a project manager until October 2006. From October 2006 to June 2007 he worked as a senior manager within the Golden Concord Group. Mr. Jiang Wenwu obtained a bachelor's degree in chemical engineering from Jiling Chemical Engineering Institute and a Ph.D. in chemical engineering at Dalian University of Technology.

*Zhong Zhenwu* became manager of Research and Development of JZPTD in March 2006. Prior to joining us, he was the senior engineer at Shanghai Jiao Tong University's Department of Physics, from 2004 to 2005, specializing in superconductors and nanostructure research. From 2001 to 2003, he was a senior researcher at The National University of Singapore, Digital Storage Institute specializing in the garnet crystal liquid phase epitaxy growth thick film production. Mr. Zhong Zhenwu obtained his bachelor's degree in applied chemicals from Shandong University, a master's degree from Shandong University and a Ph.D. in crystalline materials from Chinese Academy of Science.

*Zhang Songyi* has been a director since our inception. He currently serves in senior management and advisory capacities in several companies, including acting as the chairman of Mandra Capital, an investment holding company focused on Asia investment opportunities, a senior advisor of Morgan Stanley Asia Limited and a director of SINA Corporation, a company listed on the Nasdaq Stock Market. Prior to founding Mandra Capital, Mr. Zhang Songyi served as a managing director of Asia Merger, Acquisition and Divestiture Group, and the co-head of Asia Resources and Infrastructure Group of Morgan Stanley, and a senior associate of Milbank, Tweed, Hadley & McCloy LLP. Mr. Zhang Songyi obtained a J.D. from Yale University.

*David Tang* will become an independent director upon our listing. Sir David Tang is the founder of Shanghai Tang, the China Clubs, China Tang and the Pacific Cigar Company Ltd. He is a director of First Pacific Company, Ltd. which is listed on the Hong Kong Stock Exchange. He was a director of Tommy Hilfiger Corporation which was listed on the New York Stock Exchange. In addition, he has served on a number of advisory boards, including the Blackstone Group, the Savoy Group of Hotels and British Airways. In Hong Kong, he is the founder and chairman of the Hong Kong Cancer Fund and the president of the Hong Kong Down Syndrome Association. In England, he is a trustee of the Royal Academy of Arts and chairman of the Asia-Pacific Acquisition Committee of the Tate Modern. He was decorated with the Chevalier de l'Ordre des Arts et des Lettres, France in 1995; an Officer of the British Empire in 2007; and conferred by Her Majesty the Queen a Knight Commander of the Order of the British Empire in 2008. Sir David Tang holds an honours degree in philosophy from the University of London, and taught at Peking University in 1983.

---

## [Table of Contents](#)

*John Koh* will become an independent director upon our listing. Mr. John Koh has over 25 years of experience in investment banking and law. From 2002 to 2007, he was a senior advisor to The Goldman Sachs Group. Prior to joining The Goldman Sachs Group, Mr. John Koh spent 18 years as a lawyer at Paul Weiss Rifkind Wharton & Garrison LLP, Milbank, Tweed, Hadley & McCloy LLP, J. Koh & Co, a Singapore law firm founded by himself and the Singapore Attorney General's office. Mr. John Koh has served on government committees in Singapore, most recently as a member of the Economic Review Committee's Services sub-committee on Service Industries. He is also the chairman of the Audit Committee of the Board of Directors of Natsteel Ltd, a publicly traded Singapore conglomerate, and a director of several private companies, such as Mapletree Industrial Fund Ltd. and Mandra Forestry Finance Limited, in which Mandra Resources Limited, a company controlled by Mr. Zhang Songyi and his wife, holds a majority shareholding. He holds a B.A. and an M.A. from the University of Cambridge and obtained an LL.M. from Harvard Law School.

*Otmar Haas* will become an independent director upon our listing. Mr. Otmar Haas has over 30 years of experience in international business development and management. From 2001 to 2008, he has been a senior executive advisor to ProfitNet GmbH. Mr. Otmar Haas also served as the managing director of Inros Lackner Consulting Group GmbH from 2001 to 2003 and as the vice chairman of the executive board of Inros Lackner AG from January to December 2004. He was also a member of numerous professional organizations, including German Asia-Pacific Business Association, German Near and Middle East Association, German Consulting Engineering Association and Transparency International. Mr. Otmar Haas holds a degree in engineering from the Fachhochschule Osnabrück.

### **Composition of Board of Directors**

Our board of directors consists of three directors. Three additional independent directors will join the board upon completion of this offering. A director is not required to hold any shares in our company by way of qualification. Unless disqualified by the chairman, a director may vote with respect to any contract or transaction in which he or she is materially interested provided the nature of the interest is disclosed prior to its consideration. Subject to our memorandum and articles of association the directors may exercise all the powers of our company to borrow money, mortgage its undertaking, property and uncalled capital, and issue debentures or other securities whenever outright or as security for any debt, liability or obligation of our company or of any third party. We intend to have a majority of independent directors serving on our board of directors within one year of this offering.

### **Duties of Directors**

Under Cayman Islands law, our directors have a fiduciary duty to act honestly, in good faith and with a view to our best interests. Our directors also have a duty to exercise the skill they actually possess and such care and diligence that a reasonably prudent person would exercise in comparable circumstances. In fulfilling their duty of care to us, our directors must ensure compliance with our memorandum and articles of association, as amended and restated from time to time. A shareholder has the right to seek damages if a duty owed by our directors is breached.

The functions and powers of our board of directors include, among other things:

convening shareholders' annual general meetings and reporting its work to shareholders at such meetings;

declaring dividends and distributions;

appointing officers and determining the term of office of officers;

subject to our memorandum and articles of association exercising the borrowing powers of our company and mortgaging the property of our company; and

approving the transfer of shares of our company, including the registering of such shares in our share register.

---

## [Table of Contents](#)

### **Terms of Directors and Executive Officers**

Our officers are elected by and serve at the discretion of the board of directors. Our directors are not subject to a term of office and hold office until such time as they are removed from office in accordance with our memorandum and articles of association. A director will be removed from office automatically if, among other things, the director (i) becomes bankrupt or makes any arrangement or composition with his creditors; or (ii) dies or becomes of unsound mind.

### **Committees of the Board of Directors**

Our board of directors will establish an audit committee, a compensation committee and a corporate governance and nominating committee immediately after the closing of this offering.

#### ***Audit Committee***

Our audit committee will initially consist of Mr. John Koh, Sir David Tang and Mr. Otmar Haas, and will be chaired by Mr. John Koh. All of them satisfy the “independence” requirements of Section 303A of the Corporate Governance Rules of the New York Stock Exchange and meet the independence Standards under Rule 10A-3 under the Securities Exchange Act of 1934, as amended. We believe that Mr. John Koh qualifies as an “audit committee financial expert”. The audit committee will oversee our accounting and financial reporting processes and the audits of the financial statements of our company. The audit committee will be responsible for, among other things:

selecting our independent auditors and pre-approving all auditing and non-auditing services permitted to be performed by our independent auditors;

reviewing with our independent auditors any audit problems or difficulties and management’s response to such audit problems or difficulties;

reviewing and approving all proposed related-party transactions, as defined in Item 404 of Regulation S-K under the Securities Act;

discussing the annual audited financial statements with management and our independent auditors;

reviewing major issues as to the adequacy of our internal controls and any special audit steps adopted in light of material control deficiencies;

annually reviewing and reassessing the adequacy of our audit committee charter;

such other matters that are specifically delegated to our audit committee by our board of directors from time to time;

meeting separately and periodically with management and our internal and independent auditors; and

reporting regularly to the full board of directors.

### ***Compensation Committee***

Our compensation committee will initially consist of Sir David Tang, Mr. Zhu Gongshan, Mr. Otmar Haas and Mr. John Koh, and will be chaired by Sir David Tang. Sir David Tang satisfies the “independence” requirements of Section 303A of the Corporate Governance Rules of the New York Stock Exchange. Our compensation committee assists the board in reviewing and approving the compensation structure of our directors and executive officers, including all forms of compensation to be provided to our directors and executive officers. Members of the compensation committee are not prohibited from direct involvement in determining their own compensation. Our chief executive officer may not be present at any committee meeting during which his compensation is deliberated. The compensation committee will be responsible for, among other things:

approving and overseeing the compensation package for our executive officers;

reviewing and making recommendations to the board with respect to the compensation of our directors;

reviewing and approving corporate goals and objectives relevant to the compensation of our chief executive officer, evaluating the performance of our chief executive officer in light of those goals and objectives, and setting the compensation level of our chief executive officer based on this evaluation; and

reviewing periodically and making recommendations to the board regarding any long-term incentive compensation or equity plans, programs or similar arrangements, annual bonuses, employee pension and welfare benefit plans.

### ***Corporate Governance and Nominating Committee***

Upon completion of this offering, our corporate governance and nominating committee will consist of Mr. Otmar Haas, Mr. Zhu Gongshan, Sir David Tang and Mr. John Koh, and will be chaired by Mr. Otmar Haas. Mr. Otmar Haas satisfies the “independence” requirements of Section 303A of the Corporate Governance Rules of the New York Stock Exchange. The corporate governance and nominating committee will assist the board of directors in identifying individuals qualified to become our directors and in determining the composition of the board and its committees. The corporate governance and nominating committee will be responsible for, among other things:

identifying and recommending to the board nominees for election or re-election to the board, or for appointment to fill any vacancy;

reviewing annually with the board the current composition of the board in light of the characteristics of independence, age, skills, experience and availability of service to us;

identifying and recommending to the board the directors to serve as members of the board’s committees;

advising the board periodically with respect to significant developments in the law and practice of corporate governance as well as our compliance with applicable laws and regulations, and making recommendations to the board on all matters of corporate governance and on any corrective action to be taken; and

monitoring compliance with our code of business conduct and ethics, including reviewing the adequacy and effectiveness of our procedures to ensure proper compliance.

### **Interested Transactions**

Unless disqualified by the chairman, a director may vote in respect of any contract or transaction in which he or she is interested, provided that the nature of the interest of any directors in such contract or transaction is disclosed by him or her at or prior to its consideration and any vote on that matter.

### **Remuneration and Borrowing**

The directors may determine remuneration to be paid to the directors. The compensation committee will assist the directors in reviewing and approving the compensation structure for the directors. Subject to our memorandum and articles of association, the directors may exercise all the powers of our company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, and to issue debentures or other securities whether outright or as security for any debt obligations of our company or of any third party.

### **Qualification**

There is no shareholding qualification for directors.



## [Table of Contents](#)

### Employment Agreements

We have entered into an employment agreement with each of our executive officers. The terms of the employment agreements are substantially similar for each executive officer, except as noted below. We may terminate an executive officer's employment for cause, at any time, without notice or remuneration, for certain acts of the officer, including, but not limited to, a serious criminal act, willful misconduct to our detriment or a failure to perform agreed duties. Furthermore, either we or an executive officer may terminate employment at any time without cause upon advance written notice to the other party.

Each executive officer has agreed to hold, both during and after the termination of his or her employment agreement, in strict confidence and not to use, except as required in the performance of his or her duties in connection with the employment or as compelled by law, any of our or our customers' confidential information or trade secrets. Each executive officer also agrees to comply with all material applicable laws and regulations related to his or her responsibilities at our company as well as all material written corporate and business policies and procedures of our company.

Each executive officer has agreed to be bound by non-competition restrictions during the term of his or her employment and, for so long as our company continues to pay at least one third of the executive officer's total annual compensation, for two years following the termination of such employment agreement. Specifically, each executive officer has agreed not to (i) assume employment with or provide services as a director for any of our competitors who operate in a restricted area; (ii) solicit or seek any business orders from our customers; or (iii) seek directly or indirectly, to solicit the services of any of our employees.

### Compensation of Directors and Executive Officers

For the year ended December 31, 2007 and the six months ended June 30, 2008, our aggregate payments of cash to directors or executive officers was \$0.2 million and \$0.3 million, respectively. On February 29, 2008, our directors and executive officers received options under our 2007 share incentive plan. See "2007 Share Incentive Plan."

### 2007 Share Incentive Plan

We adopted a share incentive plan in August 2007, or the 2007 Plan, to attract and retain the best available personnel for positions of substantial responsibility, provide additional incentives to employees, directors and consultants and promote the success of our business. We have granted 5,000,000 options to officers, directors and employees to purchase 50,000,000 ordinary shares under the 2007 Plan, the maximum number of shares which may be granted under the 2007 Plan. Each option has a term of ten years, and has an exercise price of \$0.50 per share. Each option is exercisable into 10 ordinary shares. The options vest over a four year period with 25% of the options vesting upon each of six months, 18 months, 30 months and 42 months after this offering. The following table summarizes, as of June 30, 2008, our outstanding options under the 2007 Plan.

<u>Name</u>	<u>Underlying Outstanding Options</u>	<u>Exercise Price (\$/ Share)</u>	<u>Grant Date</u>	<u>Expiration Date</u>
Zhu Gongshan	534,000	0.50	February 29, 2008	March 1, 2018
Zhu Guomin	270,000	0.50	February 29, 2008	March 1, 2018
Hunter Jiang	230,000	0.50	February 29, 2008	March 1, 2018

Jiang Wenwu	190,000	0.50	February 29, 2008	March 1, 2018
Other employees as a group	2,856,000	0.50	February 29, 2008	March 1, 2018
Consultants as a group	<u>760,000</u>	0.50	February 29, 2008	March 1, 2018
Total	<u><u>5,000,000</u></u>			

## 2008 Restricted Share Compensation Plan

Our Board of Directors adopted the 2008 Restricted Share Compensation Plan, or the 2008 Plan, in July 2008. The 2008 Plan is integral to our compensation strategies and programs to help recruit, motivate, and retain directors, employees and independent contractors. The 2008 Plan provides for grants of restricted stock. The 2008 Plan will be administered by our compensation committee. Subject to the terms of the 2008 Plan, the compensation committee is authorized to select persons eligible to receive awards and to determine the amount, timing and other terms of the awards to be granted. The compensation committee is authorized to interpret the 2008 Plan and any award agreements issued under the 2008 Plan.

The maximum number of shares available for grant under the 2008 Plan is 15,000,000 shares. The shares awarded or acquired upon the exercise of awards under the 2008 Plan may be authorized but unissued shares, authorized and issued shares reacquired and held as treasury shares, or any combination. If any award granted under the 2008 Plan expires, terminates, or is forfeited or canceled, the shares subject to such award become available for the grant of new awards under the 2008 Plan. In addition, shares tendered or withheld to satisfy the exercise price of an award, if any, shall again be available for the grant of new awards under the 2008 Plan.

Our directors, employees and independent contractors and those of any of our subsidiaries and affiliates who are designated by the compensation committee are eligible to receive awards under the 2008 Plan. Persons receiving awards will enter into individual award agreements with us that will contain the terms and conditions of the award established by the compensation committee.

*Award Grants.* The compensation committee is authorized to grant awards of restricted stock. A grant of restricted stock is an award of shares which may not be sold or disposed of prior to the end of a restricted period specified in the award agreement. The compensation committee may set additional restrictions on restricted stock as it may deem advisable or appropriate in the individual award agreements. A recipient of restricted stock generally has the right to vote the shares. During the restricted period, recipients holding shares of restricted stock are entitled to receive all dividends and other distributions paid with respect to such shares, unless otherwise determined by the compensation committee. However, dividends and other distributions with respect to restricted stock that are paid in shares will be held by us subject to the same restrictions that apply to the restricted shares.

In addition, the compensation committee may stipulate in the relevant award agreement that restricted stock awards be subject to the achievement of performance goals as may be determined by the compensation committee. The performance goals may be based on such factors including, but not limited to: (a) revenue, (b) earnings per share, (c) net income per share, (d) share price, (e) pre-tax profits, (f) net earnings, (g) net income, (h) operating income, (i) cash flow, (j) earnings before interest, taxes, depreciation and amortization, (k) sales, (l) total stockholder return relative to assets, (m) total stockholder return relative to peers, (n) financial returns (including, without limitation, return on assets, return on equity and return on investment), (o) cost reduction targets, (p) customer satisfaction, (q) customer growth, (r) gross margin, (s) revenue growth, or (t) any combination of the foregoing, or such other criteria as the compensation committee may determine. The compensation committee may determine performance goals in respect of our performance, any of our subsidiaries or affiliates or any combination thereof on either a consolidated, business unit or divisional level. Performance goals may be absolute or relative and may be expressed in terms of a progression within a specified range.

*Tax Withholding; Other Terms of Awards.* The compensation committee or the Board may condition any payment relating to an award on the withholding of taxes and may provide that a portion of any shares to be distributed will be withheld (or previously acquired shares or other property be surrendered) to satisfy withholding and other tax obligations. Awards granted under the 2008 Plan generally may not be pledged or otherwise encumbered and are not transferable except by will or by the laws of descent and distribution, or to a designated beneficiary upon the participant's death, except that the compensation committee may, in its discretion, permit transfers for other purposes.

*Amendment and Termination.* Our Board may amend, suspend or terminate the 2008 Plan or any part thereof, at any time and for any reason, subject to any stockholder approval required by law or the rules of the New York Stock Exchange. Unless earlier terminated by the Board, the 2008 Plan will terminate ten years after adoption by the Board. The termination (or early termination) of the 2008 Plan will not affect any awards granted prior to the termination (or early termination) of the 2008 Plan.

## PRINCIPAL AND SELLING SHAREHOLDERS

The table below sets forth information with respect to the beneficial ownership, within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, of our ordinary shares, as of the date of this prospectus, including ordinary shares to be issued upon conversion of our convertible redeemable preferred shares and Tranche B Floating Rate Secured Convertible Bonds, and with respect to the shares beneficially owned after this offering, as adjusted to reflect (a) the sale of our ADSs offered in this offering, (b) the issuance of 268,537,970 ordinary shares as partial consideration, assuming the initial offering price of the ADSs exceeds \$            per ADS, for the purchase of the 36% interest in JZPTD, our operating subsidiary, and (c) certain share transfers by Happy Genius identified under “Related Party Transactions–Acquisition of 36% JZPTD Onshore Equity Interest”, all of which will be completed concurrently with the closing of this offering for:

each person or entity who we know beneficially owns more than 5% of our ordinary shares;

each selling shareholder;

each of our directors and executive officers; and

all of our directors and executive officers as a group.

This table assumes the underwriters will exercise their option to purchase            ADSs from the selling shareholders to cover over-allotments in full.

Name of Beneficial Owner	Shares Beneficially Owned Prior to this Offering <sup>(1)(2)</sup>		Shares Being Sold in this Offering		Shares Beneficially Owned After this Offering <sup>(1)(3)</sup>	
	Number	Percent	Number	Percent	Number	Percent
<b>Directors and Executive Officers:</b>						
Zhu Gongshan <sup>(4)</sup>	604,403,810	59.1 %	–	–	747,816,510	%
Hunter Jiang	–	–	–	–	–	–
Li Zhuocheng	–	–	–	–	–	–
Scott Ma	–	–	–	–	–	–

Chen Wenjie	—	—	—	—	—	—
Zhang Songyi <sup>(5)</sup>	142,018,370	13.9	%		%	%
Zhu Guoming	—	—	—	—	—	—
Jiang Wenwu	—	—	—	—	—	—
Zhong Zhenwu	—	—	—	—	—	—
David Tang**	—	—	—	—	—	—
John Koh**	—	—	—	—	—	—
Otmar Haas**	—	—	—	—	—	—
All directors and executive officers as a group	—	—	—	—	—	—
<b>Other Principal and Selling Shareholders:</b>						
TB Silicon Limited <sup>(6)</sup>	51,786,000	5.1	%		%	%
Deutsche Bank AG <sup>(7)</sup>	31,723,680	3.1	%		%	%
Guinness Mahon & Co. Limited <sup>(8)</sup>	16,583,330	1.6	%		%	%
Wang Qiang <sup>(9)</sup>	14,372,580	1.4	%		%	%
D. E. Shaw Composite Investments Asia 5 (Cayman) Ltd. and D. E. Shaw Composite Portfolios, L.L.C. <sup>(10)</sup>	9,950,030	*		*		*
New Horizon Melody Investment Ltd. <sup>(11)</sup>	8,291,670	*		*		*
Chan Marc <sup>(12)</sup>	6,000,000	*		*		*

Li Feng and Liu Ping <sup>(13)</sup>	4,422,220	*	*	*
Wang Chunlin and Chan Hiulai <sup>(14)</sup>	2,729,330	*	*	*
Cheng Zaizhong <sup>(15)</sup>	3,333,000	*	*	*
Dong Xuanming <sup>(16)</sup>	3,000,000	*	*	*
Frank Lin <sup>(17)</sup>	1,667,000	*	*	*
Yu Baodong <sup>(18)</sup>	2,300,690	*	*	*
Chang Tsongzung <sup>(19)</sup>	1,667,000	*	*	*
Zhang Yuhong <sup>(20)</sup>	829,170	*	*	*
Fung Kakeung <sup>(21)</sup>	—	*	*	*

## Table of Contents

- 
- \* Less than one percent.
- \*\* Appointment effective upon completion of this offering.
- (1) Beneficial ownership is determined in accordance with Rule 13d-3 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended, and includes voting or investment power with respect to the securities. The share numbers and percentages listed in the first column of the table reflect the share number and percentage held by each director, executive officer and principal shareholder plus ordinary shares to be issued on conversion of our convertible redeemable preferred shares and Tranche B Floating Rate Secured Convertible Bonds.
- (2) For each person included in this table, percentage ownership prior to this offering and percentage of the ordinary shares being sold in this offering are calculated by dividing the number of shares beneficially owned or being sold by such person by the sum of (i) 1,022,183,400, being the number of ordinary shares outstanding as of the date of this prospectus plus ordinary shares to be issued on conversion of our convertible redeemable preferred shares and Tranche B Floating Rate Secured Convertible Bonds, and (ii) the number of ordinary shares underlying share options held by such person or group that are exercisable within 60 days after the date of this prospectus. Percentage ownership after this offering is calculated by dividing the number of shares beneficially owned by such person or group by the sum of (i) , being the number of ordinary shares outstanding immediately after the completion of this offering, and (ii) the number of ordinary shares underlying share options held by such person or group that are exercisable within 60 days after the date of this prospectus, assuming that the underwriters do not exercise their option to purchase additional ADSs in the offering.
- (3) For each person included in this column, ownership after this offering gives effect to the issuance of 268,537,970 shares in connection with the purchase of the 36% interest in JZPTD and the subsequent transfers described under “Related Party Transactions–Acquisition of 36% JZPTD Onshore Equity Interests.”
- (4) Represents ordinary shares held by Happy Genius. Happy Genius is 100% beneficially owned by Mr. Zhu Gongshan. Mr. Zhu Gongshan’s business address is Suite 3601, Two Exchange Square, Central, Hong Kong. Prior to completion of this offering, a portion of these shares or an interest in Happy Genius may be transferred to Mr. Zhu Gongshan’s family trust currently beneficially owned by Mr. Zhu Gongshan.
- (5) Represents 130,018,370 ordinary shares held by Mandra Materials Limited and 12,000,000 ordinary shares held by Mandra Esop Limited, both of which are indirectly wholly-owned by Mr. Zhang Songyi and his wife. Mr. Zhang Songyi’s business address is 10th Floor, Fung House, 19-20 Connaught Road, Central, Hong Kong.
- (6) Includes 4,167,000 ordinary shares issuable to TB ZN Silicon Limited, or TBZS, on conversion of our convertible redeemable preferred shares on completion of this offering. TB Silicon Limited is beneficially owned by Trustbridge Partners I, L.P., which is controlled by TB Partners GP1, L.P., its general partner, which is controlled by TB Partners GP Limited, its general partner. TB ZN Silicon Limited is beneficially owned by Trustbridge Partners II, L.P., which is controlled by TB Partners GP2, L.P., its general partner, which is controlled by TB Partners GP Limited, its general partner. The business address of TB Partners GP Limited is Walkers SPV Limited, Walker House, 87 Mary Street, George Town, Grand Cayman, KY1-9002, Cayman Islands.
- (7) Includes 27,183,400 ordinary shares issuable on conversion of our Tranche B Floating Rate Secured Convertible Bonds due 2009 at the closing of this offering. Economic interest in 4,553,220 ordinary shares, 2,242,630 ordinary shares and 6,795,850 ordinary shares are subject to total return swap arrangements between Deutsche Bank AG and Stark Master Fund, Ltd., Stark Asia Master Fund, Ltd. and Centar Investments (Asia), Ltd, respectively. These three funds are managed by Stark Investments (Hong Kong) Limited. The business address of Stark Master Fund Ltd. is Stark Offshore Management LLC, 3600 South Lake Drive, St. Francis, WI 53523, United States. The business address of Stark Asia Master Fund Ltd. is Stark Asia Management, LLC, 3600 South Lake Drive, St. Francis, WI 53523, United States. The business address of Centar Investments (Asia) Ltd. is Centar Investments (Asia) LLC, 3600 South Lake Drive, St. Francis, WI 53523, United States. This figure also includes economic interest in 1,658,370 ordinary shares pursuant to an option transaction entered into by Deutsche Bank AG and a counterparty. The business address of Deutsche Bank AG is One Raffles Quay, #18-00 South Tower, Singapore 048583. Deutsche Bank AG is an affiliate of Deutsche Bank Securities Inc., a registered broker dealer.



## Table of Contents

- (8) Guinness Mahon & Co. Limited is beneficially owned by Investec Bank (UK) Limited. The principal business address of Investec Bank (UK) Limited is 2 Gresham Street, London, EC2V 7QP, United Kingdom. Guinness Mahon & Co. Limited is an affiliate of Investec Securities (US) LLC, a registered broker dealer.
- (9) Represents ordinary shares held by Greenrich Investments Ltd., which is beneficially owned by Mr. Wang Qiang . The business address of Mr. Wang Qiang is 2<sup>nd</sup> Floor, Abbott Building, Road Town, Tortola, British Virgin Islands.
- (10) Represents (i) 8,291,660 ordinary shares held by D. E. Shaw Composite Investments Asia 5 (Cayman) Ltd. and (ii) 1,658,370 ordinary shares that may be acquired by D. E. Shaw Composite Portfolios, L.L.C. pursuant to an option transaction entered into by D. E. Shaw Composite Portfolios, L.L.C. with a counterparty. D. E. Shaw Composite Investments Asia 5 (Cayman) Ltd. disclaims beneficial ownership of the ordinary shares held by D. E. Shaw Composite Portfolios, L.L.C., except to the extent of any pecuniary interest of D. E. Shaw Composite Investments Asia 5 (Cayman) Ltd. therein. D. E. Shaw Composite Investments Asia 5 (Cayman) Ltd. is beneficially owned by D. E. Shaw Composite Portfolios, L.L.C., a Delaware limited liability company. The managing member of D. E. Shaw Composite Portfolios, L.L.C. is D. E. Shaw & Co., L.L.C., a Delaware limited liability company. The business address of D. E. Shaw Composite Investments Asia 5 (Cayman), Ltd. is Walkers SPV Limited, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands. The business address of D. E. Shaw Composite Portfolios, L.L.C. is 120 West 45<sup>th</sup> Street, 39<sup>th</sup> Floor, New York, NY 10036, United States. D. E. Shaw Composite Investments Asia 5 (Cayman) Ltd. and D. E. Shaw Composite Portfolios, L.L.C. are affiliates of D. E. Shaw Securities, L.L.C., a registered broker-dealer.
- (11) New Horizon Melody Investment Ltd., or New Horizon Melody, is beneficially owned by New Horizon Capital, L.P., which is controlled by New Horizon Capital Partners Ltd. Dr. Jianming Yu exercises the investment authority for New Horizon Melody. New Horizon Capital Partners Ltd. is an exempted limited liability company organized in the Cayman Islands. The principal business address of New Horizon Capital Partners Ltd. is Unit 3328, 33/F, China Merchants Tower, Nos. 168-200 Connaught Road Central, Hong Kong.
- (12) Represents 6,000,000 ordinary shares held by Amplewood Resources Limited, which is beneficially owned by Mr. Chan Marc. The business address of Mr. Chan Marc is Unit 21E, 21/F, United Centre, 95 Queensway, Admiralty, Hong Kong.
- (13) Represents 4,422,220 ordinary shares held by Success Central Investments Limited, which is beneficially owned by Mr. Li Feng and Ms. Liu Ping. The business address of Mr. Li Feng and Ms. Liu Ping is 2<sup>nd</sup> Floor, Abbott Building, Road Town, Tortola, British Virgin Islands.
- (14) Represents 2,729,330 ordinary shares held by Successful Lane Limited, which is beneficially owned by Mr. Wang Chunlin and Ms. Chan Hiulai. The business address of Mr. Wang Chunlin and Ms. Chan Hiulai is Sea Meadow House, Blackburne Highway, P.O. Box 116, Road Town, Tortola, British Virgin Islands.
- (15) Represents 3,333,000 ordinary shares held by Thornton Asset Management Service Centre Limited, which is beneficially owned by Mr. Cheng Zaizhong and Ms. Chim Chuishan. The business address of Mr. Cheng Zaizhong and Ms. Chim Chuisan is Unit 2201, 22<sup>nd</sup> Floor, Worldwide House Central, Hong Kong.
- (16) Represents 3,000,000 ordinary shares held by Charm Mind International Ltd., which is beneficially owned by Mr. Dong Xuanming. The business address of Mr. Dong Xuanming is P.O. Box 957 Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands.
- (17) The business address of Mr. Frank Lin is 99 Puming Lu, Block 33, Apt. 1501, Pudong, Shanghai, People' s Republic of China.
- (18) Represents 1,592,000 ordinary shares held by Joy Big Holdings Limited and 708,690 ordinary shares held by Bonus Billion Group Limited, which are each beneficially owned by Mr. Yu Baodong, who is an executive director and vice-president of GCL-Poly. He began his employment with GCL-Poly in November 2006. The business address of Mr. Yu Baodong is P.O. Box 957 Offshore Incorporation Centre, Road Town, Tortola, British Virgin Islands.



## Table of Contents

- (19) Represents 1,667,000 ordinary shares held by Mr. Chang Tsongzung. In addition, 410,000 ordinary shares are expected to be transferred to TZ Holdings Limited, or TZ Holdings, in connection with the closing of this offering by Happy Genius from proceeds of the 36% equity interest in JZPTD. TZ Holdings is beneficially owned by Mr. Chang Tsongzung, who is the brother of Mr. Zhang Songyi, one of our directors. TZ Holdings is one of our affiliates as Mr. Zhu Gongshan is one of its two directors. The business address of Mr. Chang Tsongzung is A1, 46-48 Kadoorie Avenue, Kowloon, Hong Kong.
- (20) Represents 829,170 ordinary shares held by Asia Bright International Limited, or Asia Bright. Asia Bright is beneficially owned by Ms. Zhang Yuhong. The business address of Asia Bright International Limited is Suite 2003, 20/F, Queen' s Place, 74 Queen' s Road Central, Central, Hong Kong.
- (21) 14,590,000 ordinary shares are expected to be transferred to Top Plenty Limited, or Top Plenty, in connection with the closing of this offering by Happy Genius from part of the purchase price of the 36% equity interest in JZPTD. Top Plenty is beneficially owned by Mr. Fung Kakeung, who is the general manager of the finance group of Golden Concord Holdings Limited. He began his employment with Golden Concord Holdings Limited in September 2004. The business address of Mr. Fung Kakeung is Suite 3601, Two Exchange Square, Central, Hong Kong.

Except as indicated, each of the selling shareholders named above has represented to us that it is not a broker-dealer or an affiliate of a broker-dealer. Each of the selling shareholders that is identified as affiliated with a registered broker dealer represents that it purchased the ordinary shares being sold by it in the ordinary course of business and that at the time of the purchase, the selling shareholder had no agreements or understandings, directly or indirectly, with any person to distribute the securities.

Immediately upon the completion this offering, we will use \$240.6 million of the proceeds from this offering, together with \$446.9 million aggregate principal amount of the 2008 Convertible Bonds and 268,537,970 of our ordinary shares, to purchase from Happy Genius and Moonchu the 36% equity interest in JZPTD they hold through Sun Wave and Greatest Joy. Happy Genius in turn will use the cash it will receive from us to redeem 35% of the aggregate outstanding amount of the exchangeable bonds. The purchase price and the form of consideration were established through negotiations involving the sellers, our shareholders and holders of the exchangeable bonds issued by Happy Genius and were approved by our shareholders in July 2008. In addition, Happy Genius agreed to cause 12,634,490 ordinary shares to be transferred to TB Silicon Limited, 1,105,540 ordinary shares to be transferred to TB ZN Silicon Limited and 3,316,620 ordinary shares to be transferred to Balderton Capital III, L.P. from the ordinary shares to be issued by us to Happy Genius in connection with the acquisition of the 36% equity interest in JZPTD at the closing of this offering. See “Related Party Transactions – Acquisition of 36% JZPTD Onshore Equity Interests.”

Happy Genius intends to use the 2008 Convertible Bonds it receives from us to exchange for 65% of the aggregate outstanding amount of the exchangeable bonds to the extent that certain conditions to exchange are satisfied. For a description of the 2008 Convertible Bonds, see “Description of Share Capital – Ownership of Our Business and Securities Issuances – 2008 Convertible Bonds” and “Description of Share Capital – Registration Rights.” The holders of our 2008 Convertible Bonds will hold an aggregate of % of our total outstanding ordinary shares on an as-converted basis immediately upon the completion of this offering.

None of our shareholders has different voting rights from other shareholders after the closing of this offering. We are not aware of any arrangement that may, at a subsequent date, result in a change of control of our company.

## RELATED PARTY TRANSACTIONS

### Share Transfer Agreement with Prior Onshore Shareholders Regarding JSJST

Pursuant to a share purchase agreement dated June 6, 2007 between JZPTD, Nanjing Linyang and Lianyungang Suyuan, JZPTD transferred 100% of its shareholding in JSJST, a wholly owned subsidiary of JZPTD, to Nanjing Linyang and Lianyungang Suyuan, minority shareholders of JZPTD. Under this agreement, JZPTD transferred 70% of JSJST to Nanjing Linyang for the purchase price of RMB69.0 million (\$9.0 million) and 30% of JSJST to Lianyungang Suyuan for the purchase price of RMB29.6 million (\$3.9 million). At the time of the transfer, the buyers were equity investors in JZPTD.

The share purchase agreement also provided the framework under which JZPTD would supply to JSJST a minimum of 50 MT of polysilicon in 2007, 700 MT in 2008 and 1,200 MT in 2009 in accordance with definitive purchase agreements to be negotiated. The purchase price for such polysilicon is to be determined quarterly and equal to 97% of the average market price for the comparable product during the preceding quarter. The share purchase agreement provided that other detailed provisions related to the sale were to be set out in the relevant definitive sales agreement to be entered by JSJST and JZPTD.

No definitive purchase agreements implementing the framework provisions in the share purchase agreement were entered into until June 2008, although for the year ended December 31, 2007 and the period from January 1, 2008 to June 10, 2008, JZPTD entered into six and 22 purchase orders with JSJST, respectively. Pursuant to these purchase orders, JZPTD supplied JSJST a total of 27 MT of polysilicon at an average price (net of VAT) of RMB1,884 (\$255) per kilogram with a total sales amount of \$6.9 million for the year ended December 31, 2007 and a total of 61 MT of polysilicon at an average price, net of VAT, of RMB2,302 (\$326) per kilogram with a total sales amount of \$19.9 million for the period from January 1, 2008 to June 10, 2008. JSJST ceased to be a related party on June 10, 2008 upon the completion of the acquisition by entities affiliated with Mr. Zhu Gongshan and Moonchu of the 36% of JZPTD that we currently do not own. In June 2008, we entered into a polysilicon supply agreement with Solarfun, another onshore subsidiary of Solarfun Power Holdings Limited, the parent company of JSJST, which replaces the obligation under the framework agreement. See “Business – Customers and Markets.”

### Transactions with Affiliated Companies

JZPTD withdrew balances held in a Chinese bank and made a short-term advance of RMB130 million (\$16.8 million) to Shanghai Creative, a company whose principal shareholder was also a Director of JZPTD, on December 31, 2006. The advance was fully repaid on January 1, 2007.

JZPTD paid handling fees to Shanghai Creative of \$0.4 million for the year ended December 31, 2007 for acquisition of machinery and equipment on behalf of Jiangsu Zhongneng. As of December 31, 2006 and 2007 and June 30, 2008, outstanding amounts of \$36.9 million, \$4.1 million and \$0, deposited with Shanghai Creative, respectively, were included in deposits for acquisition of machinery and equipment. Shanghai Creative shared its expertise in international equipment purchases that assisted us in developing our production facilities.

During the period from March 7, 2006 to December 13, 2006, JZPTD paid a consultancy fee of \$1.5 million to Shanghai Creative. Under the consultancy agreement between us and Shanghai Creative, Shanghai Creative provided us with assistance in the procurement of polysilicon production technology, including the import and sourcing of equipment and technical support by overseas experts.

Shanghai Creative has paid certain administrative expenses on behalf of JZPTD as advances. As of December 31, 2007 and June 30, 2008, the outstanding balance was \$0.8 million and \$0.4 million, respectively.

During the year ended December 31, 2007, JZPTD made a short-term advance of \$0.1 million to Xuzhou Economic Development Zone Electricity Company Limited, a company controlled by Mr. Zhu Gongshan. As of December 31, 2007, the outstanding amount of this advance was \$0.1 million, which was fully repaid in March 2008.



For the continued operation for our Phase II production facility which began pilot production in June 2008, we began purchasing steam at market rates from affiliates of Mr. Zhu Gongshan, our chairman, in order to assist the start up of such facility. For our Phase II production facility and for future production expansions we may continue to purchase steam from affiliates of Mr. Zhu Gongshan at market rates given the experience of power plants under his control in providing power and associated steam at cost efficient levels. In addition, we may evaluate the economics of producing steam internally or seeking other sources.

#### **Loans and other Amounts Due to Affiliated Companies**

In September 2007, amounts due for the acquisition of JZPTD of \$13.8 million and \$2.6 million was paid to Guotai and Beijing Zhongneng, respectively, companies under the common control of Mr. Zhu Gongshan, our chairman.

Golden Concord Holdings (Cayman) Limited, whose principal shareholder is Mr. Zhu Gongshan, has paid certain administrative expenses on our behalf in the past, including other corporate expenses of \$0.5 million, payroll expenses of \$0.2 million, travel expenses of \$0.2 million and other expenses of \$0.1 million. As of December 31, 2007, there was no outstanding reimbursement balance due to Golden Concord Holdings (Cayman) Limited for such expense payments.

We paid management fees of \$1.4 million and \$0.8 million in the year ended December 31, 2007 and for the six months ended June 30, 2008, respectively, to Golden Concord (Hong Kong) Holdings Limited, whose principal shareholder is Mr. Zhu Gongshan. Such management fees included payroll of \$0.7 million, property management fees of \$0.3 million and other fees of \$0.4 million in the year ended December 31, 2007 and payroll of \$0.4 million, property management fees of \$0.1 million and other fees of \$0.3 million for the six months ended June 30, 2008. The Golden Concord Group provides us with management services and office facilities in Hong Kong. On a monthly basis, the Golden Concord Group charges us a management fee of an agreed allocation percentage to share the expenses incurred by the Golden Concord Group's offices in Hong Kong. Golden Concord (Hong Kong) Holdings Limited has also paid certain expenses on our behalf in the past that we have subsequently reimbursed, including payroll of \$0.1 million. The outstanding balances as of December 31, 2006, December 31, 2007 and June 30, 2008 were \$0, approximately \$0.2 million and \$0.8 million respectively.

We have borrowed funds from Taicang Harbour Golden Concord Electric-Power Generation Co., Ltd., or Taicang Electric, a company of which Mr. Zhu Gongshan is a shareholder, to fund a portion of the construction of the production facilities. These borrowings bear interest at an average rate of 6.49% and mature in November 2008. As of December 31, 2007, the outstanding principal amount payable to Taicang Electric was \$13.8 million. We repaid the entire loan amount of \$14.3 million in January 2008. During the year ended December 31, 2007 and the six month period ended June 30, 2008, interest paid or payable to Taicang Electric amounted to \$0.1 million and \$0.1 million, respectively.

In September 2007, JZPTD repaid the amount payable of \$12.3 million to Guotai for the purchase of JSJST.

In June 2008, we issued a promissory note to Happy Genius, our controlling shareholder. The note was unsecured, interest-free and repayable at the earlier of the listing date and June 20, 2009. We are required to pay the costs incurred by Happy Genius in connection with the negotiation, preparation and execution of the promissory note. As of June 30, 2008, the outstanding balance was \$15.0 million.

In June 2008, we borrowed funds from Zibo Baokai Trading Company Limited, a minority shareholder of our Taixing joint venture. The advance was unsecured, interest-free and repayable on demand. As of June 30, 2008, the outstanding balance was \$1.3 million.

## **Shanghai Office Rental**

JZPTD rents office space from Shanghai Yueyuan Machinery Company Limited, a company affiliated with Mr. Zhu Gongshan, our chairman, at an annual rental of RMB798,000 (\$0.1 million). We believe that the rental is on arm's-length terms. At December 31, 2007 and June 30, 2008, the outstanding balance owed by JZPTD was \$0.1 million and \$0, respectively.

## **Sales to a Minority Shareholder of JZPTD**

In the year ended December 31, 2007, sales by JZPTD to Hebei Jinglong, one of its minority shareholders, amounted to \$0.6 million. As at December 31, 2007, JZPTD received a sales advance of \$0.1 million from Hebei Jinglong. The advance has been included under accrued expenses and other current liabilities. Hebei Jinglong ceased to be a related party on June 10, 2008 upon the completion of the acquisition by entities affiliated with Mr. Zhu Gongshan and Moonchu of the 36% of JZPTD that we currently do not own.

## **Onshore Loan Guarantees**

A portion of JZPTD's onshore loans are guaranteed by entities that at the time of such loans were shareholders of JZPTD, including certain companies otherwise affiliated with us and prior onshore shareholders. Although we have made no payments in connection with these guarantees and have not agreed to make any payment, we cannot assure you that the guarantors on these onshore loan facilities will not request fees in connection with these guarantees or otherwise demand payment from us in connection with their obligations pursuant to these guarantees.

## **Acquisition of 36% JZPTD Onshore Equity Interests**

In December 2007 Sun Wave and Greatest Joy, entities owned by Mr. Zhu Gongshan and Moonchu, agreed to acquire 20% and 16% of JZPTD, respectively, from the remaining minority shareholders, for an aggregate purchase price of \$430.5 million. These purchases were completed in early May and early June 2008. Concurrently with the closing of this offering, we will acquire Sun Wave and Greatest Joy, which hold the remaining 36% of JZPTD. As a result, JZPTD will become our wholly-owned indirect subsidiary.

In May and June 2008, to raise sufficient funds to pay the final amounts in partial satisfaction of the obligation to purchase the 36% of JZPTD that is not owned by us, Happy Genius, our controlling shareholder wholly-owned by Mr. Zhu Gongshan, issued \$550 million exchangeable bonds to certain investors. Happy Genius, together with Moonchu, holds such interest through Sun Wave and Greatest Joy.

Immediately upon the completion this offering, we will use \$240.6 million of the proceeds from this offering, together with \$446.9 million aggregate principal amount of the 2008 Convertible Bonds and 268,537,970 of our ordinary shares, to purchase from Happy Genius and Moonchu the 36% equity interest in JZPTD they hold through Sun Wave and Greatest Joy. Happy Genius in turn will use the cash it will receive from us to redeem 35% of the aggregate outstanding amount of the exchangeable bonds. The purchase price and form of consideration were established through negotiations involving the sellers, our shareholders and holders of the exchangeable bonds issued by Happy Genius and were approved by our shareholders in July 2008. The cash portion of the consideration was determined to allow Happy Genius to have sufficient cash to pay the redemption amount required on a qualified initial public offering to redeem its outstanding exchangeable bonds. The convertible bond portion of the consideration and its related terms were negotiated with the holders of the exchangeable bonds issued by Happy Genius to provide a value to such holders equal to \$558.2 million, which is fair value of the 2008 Convertible Bonds. The number of shares issued as part of the purchase price will be reduced in the event that the initial public offering price in this offering is below \$ per ADS. The number will be reduced by the percentage the initial public offering price is below such price. The aggregate value of the cash, the 2008 Convertible Bonds and the 268,537,970 ordinary shares valued at the mid-point of the range of the estimated initial public offering price to be paid for the 36% interest in JZPTD will be \$ . From the ordinary shares to be issued to Happy Genius, it has agreed to cause 12,634,490 ordinary shares to be transferred

---

## [Table of Contents](#)

to TB Silicon Limited, 1,105,540 ordinary shares to be transferred to TB ZN Silicon Limited and 3,316,620 ordinary shares to be transferred to Balderton Capital III, L.P. from the ordinary shares to the issued in connection with the acquisition of the 36% equity interest in JZPTD at the closing of this offering. The number of shares transferred by Happy Genius to TB Silicon Limited, TB ZN Silicon Limited and Balderton Capital III, L.P. will be reduced proportionately to any reduction in the number issued as part of the purchase price for the JZPTD interest. These shares are consent fees in connection with earlier rounds of financing for Happy Genius.

Happy Genius intends to use the 2008 Convertible Bonds it receives from us to exchange for 65% of the aggregate principal amount of the exchangeable bonds to the extent that certain conditions to exchange are satisfied. For a description of the 2008 Convertible Bonds, see “Description of Share Capital – Ownership of Our Business and Securities Issuances – 2008 Convertible Bonds” and “Description of Share Capital – Registration Rights.” The holders of our 2008 Convertible Bonds will hold an aggregate of                      % of our total outstanding ordinary shares on an as-converted basis immediately upon the completion of this offering.



## DESCRIPTION OF SHARE CAPITAL

Set forth below is information concerning our share capital and a brief summary of the material provisions of our memorandum and articles of association and of the material applicable laws of the Cayman Islands.

We were incorporated in the Cayman Islands on May 9, 2007 under the Companies Law (2004 Second Revision) Cap. 22 of the Cayman Islands, or Companies Law. As of the date hereof, our authorized share capital is 100,050,000,000 shares divided into 100,000,000,000 ordinary shares and 50,000,000 Series A Convertible preferred shares, or the preferred shares.

Upon the closing of this offering, we will adopt an amended and restated memorandum and articles of association, which will replace the current memorandum and articles of association in its entirety. The following are summaries of material provisions of our proposed amended and restated memorandum and articles of association and the Companies Law insofar as they relate to the material terms of our ordinary shares that we expect will become effective upon the closing of this offering.

### Ordinary Shares

Our ordinary shares are divided into 100,000,000,000 ordinary shares, of which 978,333,000 are issued and outstanding as of June 30, 2008. All ordinary shares have the same voting and other rights. All of our outstanding ordinary shares are fully paid and non-assessable. Certificates representing the ordinary shares are issued in registered form. Our shareholders who are nonresidents of the Cayman Islands may freely hold and vote their shares. None of our ordinary shares are held by residents of the Cayman Islands.

### Preferred Shares

Our preferred shares are divided into 50,000,000 preferred shares, of which 16,667,000 are issued and outstanding as of June 30, 2008. All outstanding preferred shares will convert automatically into ordinary shares immediately on the closing of this offering or on the election of all holders of the preferred shares.

### Meetings

An annual general meeting and any extraordinary general meeting shall be called by not less than five days notice in writing. Notice of every general meeting shall be given to all our members other than such as, under the provisions of the articles of association or the terms of issue of the ordinary shares they hold, are not entitled to receive such notices from us, and also to our auditors for the time being.

Notwithstanding that a meeting is called by shorter notice than that mentioned above, it shall be deemed to have been duly called, if it is so agreed (i) in the case of a meeting called as an annual general meeting, by all our members entitled to attend and vote at the meeting; or (ii) in the case of any other meeting, by a majority of the members having a right to attend and vote at the meeting, being a majority together holding not less than 75% in nominal value of the ordinary shares giving that right.

No business shall be transacted at any general meeting unless a quorum is present at the commencement of business.

Two of our members present in person or by proxy representing (i) each holder of preferred shares, and (ii) in excess of 50% of the total issued voting shares in our company shall be a quorum.

The quorum for a separate general meeting of the holders of a separate class of our shares is described in “Modification of Rights” below.

## **Voting Rights Attaching to the Shares**

At any general meeting every holder of ordinary shares who is present in person or by proxy (or, in the case of a shareholder being a corporation, by its duly authorized representative) shall have one vote, and on a poll every holder of ordinary shares present in person or by proxy (or, in the case of a member being a corporation, by its duly appointed representative) shall have one vote for each ordinary share of which such shareholder is the holder.

No shareholder shall be entitled to vote in respect of any share unless such shareholder is registered as our shareholder at the applicable record date for that meeting and all calls due by such member to us have been paid.

If a recognized clearing house (or its nominee(s)) is our member it may authorize such person or persons as it thinks fit to act as its representative(s) at any meeting or at any meeting of any class of members, provided that, if more than one person is so authorized, the authorization shall specify the number and class of shares in respect of which each such person is so authorized. A person authorized pursuant to this provision is entitled to exercise the same powers on behalf of the recognized clearing house (or its nominee(s)) as if such person was the registered holder of our shares held by that clearing house (or its nominee(s)) including the right to vote individually on a show of hands.

## **Protection of minorities and shareholders' suits**

It can be expected that the Cayman Islands courts will ordinarily follow English case law precedents (particularly the rule in the case of *Foss v. Harbottle* and the exceptions thereto) which permit a minority member to commence a representative action against or derivative actions in the name of a company to challenge:

- (i) an act which is ultra vires of the company or illegal;
- (ii) an act which constitutes a fraud against the minority and the wrongdoers are themselves in control of the company; and
- (iii) an irregularity in the passing of a resolution the passage of which requires a qualified (or special) majority which has not been obtained.

Where a company (not being a bank) is one which has a share capital divided into shares, the court may, on the application of members thereof holding not less than one-fifth of the shares of the company in issue, appoint an inspector to examine the affairs of the company and, at the direction of the court, to report thereon.

Moreover, any member of a company may petition the court which may make a winding up order if the court is of the opinion that it is just and equitable that the company should be wound up.

In general, claims against a company by its members must be based on the general laws of contract or tort applicable in the Cayman Islands or be based on potential violation of their individual rights as members as established by a company's memorandum and articles of association.

## **Pre-emption Rights**

There are no pre-emption rights applicable to the issue of new ordinary shares under either Cayman Islands law.

## **Procedures on liquidation**

A resolution that our company be wound up by the court or be wound up voluntarily is a special resolution.

## **Table of Contents**

Subject to any special rights, privileges or restrictions as to the distribution of available surplus assets on liquidation for the time being attached to any class or classes of shares:

- (i) if we are wound up and the assets available for distribution amongst our shareholders are more than sufficient to repay the whole of the capital paid up at the commencement of the winding up, then the excess will be distributed pari passu amongst such members in proportion to the amount paid up on the shares held by them; and
- (ii) if we are wound up and the assets available for distribution among the shareholders as such are insufficient to repay the whole of the paid-up capital, such assets will be distributed so that, as nearly as may be, the losses shall be borne by the members in proportion to the capital paid up, on the shares held by them.

In the event that we are wound up (whether the liquidation is voluntary or compelled by the court) the liquidator may, with the sanction of a special resolution and any other sanction required by the Cayman Companies Law divide among the members in specie or kind the whole or any part of our assets whether the assets shall consist of property of one kind or shall consist of properties of different kinds and the liquidator may, for such purpose, set such value as he deems fair upon any one or more class or classes of property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members and the members within each class. The liquidator may, with the like sanction, vest any part of the assets in trustees upon such trusts for the benefit of members as the liquidator shall think fit, but so that no member shall be compelled to accept any shares or other property upon which there is a liability.

### **Calls on Shares and Forfeiture of Shares**

Our board of directors may from time to time make calls upon shareholders for any amounts unpaid on their shares. The shares that have been called upon and remain unpaid on the specified time are subject to forfeiture.

### **Issue of Redeemable Shares**

Subject to the Companies Law and our memorandum and articles of association, the directors shall not issue redeemable shares without the sanction of an ordinary resolution.

### **Variation of Rights of Shares**

Any amendment to or changes in the rights, privileges, preferences or powers of, or restrictions provide for the benefit of holders of the preferred shares shall require, inter alia, prior written approval of all holders of preferred shares.

### **Inspection of Books and Records**

Holders of our ordinary shares will have no general right under Cayman Islands law to inspect or obtain copies of our list of shareholders or our corporate records. However, we will provide our shareholders with annual audited financial statements.

### **Ownership of Our Business and Securities Issuances**

In March 2006, our operating subsidiary in China, JZPTD, was formed as a limited liability company in China by Guotai, Suyuan, Xuzhou Suyuan, Nanjing Linyang and Hebei Jinglong. At JZPTD's inception, Guotai, Suyuan, Beijing Zhongneng, Xuzhou Suyuan, Nanjing Linyang and Hebei Jinglong originally held 55%, 15%, 10%, 10%, 5% and 5%, respectively, of JZPTD. Guotai and Beijing Zhongneng were originally owned by Mr. Zhu Gongshan, who later became our controlling shareholder, chairman and chief executive officer.

## [Table of Contents](#)

In November 2006, GCL HK was formed as a limited liability company in Hong Kong. Mr. Zhang Songyi owned a controlling interest in GCL HK through Happy Genius. GCL HK agreed to purchase 64% of JZPTD from Guotai and Beijing Zhongneng on November 29, 2006 and completed the purchase on December 13, 2006. In May 2007, our company was formed in the Cayman Islands and held by Mr. Zhang Songyi through Happy Genius.

From December 2006 to April 2007, Mr. Zhang Songyi sold shares of Happy Genius to various individuals and institutional investors aggregating approximately 10% of the outstanding equity interests in Happy Genius, a substantial majority of the proceeds of which were downstreamed through Happy Genius and GCL HK to JZPTD to finance our Phase I production facility and provide working capital. On August 10, 2007, Mr. Zhang Songyi agreed to sell the remaining shares of Happy Genius held by him, after completion of the reorganization discussed below, to Boulina, a company owned by Mr. Zhu Gongshan. On August 21, 2007, as part of the reorganization, the shareholders of Happy Genius exchanged approximately 25% of the ownership interest of Happy Genius for approximately 25% of our Company. Also, Happy Genius exchanged all the ownership interest in GCL HK for approximately 75% of our shares. In September 2007, the previously agreed transfer of ownership of Happy Genius was completed from Mr. Zhang Songyi to Boulina. As a result of these transactions, Mr. Zhu Gongshan became the indirect holder of all the outstanding shares of Happy Genius, which owned approximately 75% of our ordinary shares, Mr. Zhang Songyi became the indirect owner of approximately 15% of our ordinary shares and other shareholders became the owners of approximately 10% of our shares. We owned 64% of the equity in JZPTD indirectly through GCL HK.

Pursuant to agreements entered into in December 2007, Sun Wave and Greatest Joy acquired 20% and 16% of JZPTD, respectively, from our remaining PRC shareholders for \$430.5 million in early May and early June 2008. As consideration for our acquisition of Sun Wave and Greatest Joy, we intend to: (1) pay \$240.6 million to entities affiliated with Mr. Zhu Gongshan, in cash using a portion of the proceeds from the offering which will be used to partially redeem the exchangeable bonds issued by Happy Genius; (2) issue the 2008 Convertible Bonds to entities affiliated with Mr. Zhu Gongshan in the aggregate principal amount of \$446.9 million; and (3) issue 268,537,970 of our shares to entities affiliated with Mr. Zhu Gongshan and Moonchu. See “Related Party Transactions–Acquisition of 36% JZPTD Onshore Equity Interests”.

The following is a summary of our securities issuances since our inception.

### ***Ordinary Shares***

On May 9, 2007, we issued one ordinary share to Happy Genius in connection with our incorporation at par. On June 13, 2007, we completed a 100 to one share split.

On August 21, 2007, we issued 769,309 ordinary shares, 225,591 ordinary shares and 5,000 ordinary shares to Happy Genius, Mandra Materials and Positive Rise, respectively, at par.

On February 21, 2008, we completed a 100 to one share split.

On February 25, 2008, we repurchased and cancelled 5,000,000 ordinary shares.

On July 18, 2008, we completed a 10 to one share split.

### ***Series A Convertible Redeemable Preferred Shares***

On August 29, 2007, we redesignated 16,667 ordinary shares held by Happy Genius into the same number of Series A Convertible Redeemable Preferred Shares, which Happy Genius immediately transferred to certain institutional investors.

On February 21, 2008, we completed a 100 to one share split of the Series A Convertible Preferred Shares.

On July 18, 2008 we completed a 10 to one share split of the Series A Convertible Preferred Shares.

***Tranche A Floating Rate Secured Redeemable Bonds due 2009 and Tranche B Floating Rate Secured Convertible Bonds due 2009***

On September 10, 2007, we issued floating rate redeemable bonds and floating rate convertible bonds, or together, the floating rate bonds, in the aggregate principal amount of \$60.0 million at an issue price equal to their principal amount. The Tranche A Floating Rate Secured Redeemable Bonds in the principal amount of \$20.0 million are required to be redeemed at their principal amount upon the completion of this offering. The Tranche B Floating Rate Secured Convertible Bonds with the principal amount of \$40.0 million are required to be converted into ordinary shares equal to 2.732% of our ordinary shares prior to the offering upon the completion of this offering. If our market capitalization at conversion is less than \$2.56 billion based on 64% ownership of JZPTD, we must pay the holders of the convertible portion of our floating rate bonds 2.732% of the difference between \$2.56 billion and our market capitalization prior to the conversion and the offering. The net proceeds from these bonds were used to (1) deposit \$4.2 million into an interest reserve account, (2) pay the \$17.0 million balance of the purchase price owed to the acquisition of 64% of our equity interests in JZPTD and (3) make an equity contribution of \$28.0 million to the increased registered capital of JZPTD.

***Employee Share Options***

We adopted the 2007 Plan in August 2007. As of February 29, 2008, we granted options to purchase all 50,000,000 ordinary shares subject to the 2007 Plan to directors, employees and consultants. See “Management–2007 Share Incentive Plan.”

We adopted the 2008 Restricted Share Plan in July 2008. Pursuant to such plan we can issue up to 15,000,000 restricted shares to directors, employees, consultants and anyone deemed eligible by the senior management under guideline set forth by the compensation committee.

***2008 Convertible Bonds***

In connection with our acquisition of Sun Wave and Greatest Joy, we will issue the \$446.9 million principal amount of 2008 Convertible Bonds to Happy Genius. Such 2008 Convertible Bonds will be used together with cash received in such acquisition by Happy Genius to partially redeem the \$550 million principal amount of exchangeable bonds issued by Happy Genius and will therefore be held as of the closing of this offering by current holders of such exchangeable bonds. The 2008 Convertible Bonds will be convertible into our ADSs representing ordinary shares at a conversion price equivalent to the initial public offering price per ADS in this offering. The 2008 Convertible Bonds will become convertible by the bondholders at six months, nine months and 12 months subsequent to the closing of this offering with respect to 50%, 25% and 25% of the original principal amount of such convertible bonds, respectively. The 2008 Convertible Bonds will pay interest semi-annually in arrears at 3% per annum. If not converted, they will mature 18 months after the closing of this offering. Any dividends or other capital distributions to holders of ordinary shares and ADSs are payable to the holders of the 2008 Convertible Bonds on an as converted basis. The 2008 Convertible Bonds will benefit from standard covenants as well as a negative pledge covenant applicable to us and our offshore subsidiaries and a covenant that our consolidated net debt will not exceed 4.0 times our consolidated earnings before interest, tax, depreciation and amortization for the first three consecutive quarters following this offering and 3.75 times our consolidated earnings before interest, tax, depreciation and amortization for the second three consecutive quarters following this offering. We will agree to repurchase the 2008 Convertible Bonds at the option of the holders at a premium on certain fundamental events, including change of control. The holders of the 2008 Convertible Bonds and ordinary shares or ADSs issued on conversion will have rights to cause the registration of sales of the ordinary shares or ADSs issued on conversion of the 2008 Convertible Bonds. The holders of our 2008 Convertible Bonds will hold an aggregate of % of our total outstanding ordinary shares on an as-converted basis immediately upon the completion of this offering. See “Description of Share Capital–Registration Rights” and “Related Party Transactions–Acquisition of 36% JZPTD Onshore Equity Interests.”

## **Differences in Corporate Law**

The Companies Law is modeled after that of the United Kingdom but does not follow recent United Kingdom statutory enactments. In addition, the Companies Law differs from laws applicable to the United States corporations and their shareholders. Set forth below is a summary of the significant differences between the provisions of the Companies Law applicable to us and the laws applicable to the companies incorporated in the United States and their shareholders.

### ***Mergers and Similar Arrangements***

Cayman Islands law does not provide for mergers as that expression is understood under United States corporate law. However, there are statutory provisions that facilitate the reconstruction and amalgamation of companies. Reconstructions and amalgamations are governed by specific statutory provisions under the Cayman Companies Law whereby such arrangements may be approved by a majority in number representing 75% in value of members or creditors, depending on the circumstances, as are present at a meeting called for such purpose and thereafter sanctioned by the courts. While a dissenting member would have the right to express to the court his view that the transaction for which approval is being sought would not provide the members with a fair value for their shares, nonetheless the courts are unlikely to disapprove the transaction on that ground alone in the absence of evidence of fraud or bad faith on behalf of management. If the transaction were approved and consummated the dissenting member would have no rights comparable to the appraisal rights (i.e. the right to receive payment in cash for the judicially determined value of their shares) ordinarily available, for example, to dissenting members of a United States corporation.

Where an offer is made by a company for the shares of another company and, within four months of the offer, the holders of not less than 90% of the shares which are the subject of the offer accept, the offeror may at any time within two months after the expiration of the said four months, by notice require the dissenting members to transfer their shares on the terms of the offer. A dissenting member may apply to the court of the Cayman Islands within one month of the notice objecting to the transfer. The burden is on the dissenting member to show that the court should exercise its discretion, which it will be unlikely to do unless there is evidence of fraud or bad faith or collusion as between the offeror and the holders of the shares who have accepted the offer as a means of unfairly forcing out minority members.

If the arrangement and reconstruction or takeover offer is thus approved or accepted, the dissenting shareholders are unlikely to have any rights comparable to appraisal rights, which would otherwise ordinarily be available to dissenting shareholders of United States corporations, providing rights to receive payment in cash for the judicially determined value of the shares.

### ***Indemnification of Directors and Executive Officers and Limitation of Liability***

Cayman Islands law does not limit the extent to which a company's articles of association may provide for indemnification of officers and directors, except to the extent any such provision may be held by the Cayman Islands courts to be contrary to public policy, such as to provide indemnification against civil fraud or the consequences of committing a crime. Our amended and restated memorandum and articles of association permit indemnification of officers and directors for losses, damages, charges and expenses incurred in their capacities as such unless such losses or damages arise from willful neglect or default of such directors or officers. This standard of conduct is generally the same as permitted under the Delaware General Corporation Law for a Delaware corporation.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers or persons controlling us under the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable as a matter of United States law.

### ***Anti-takeover Provisions in the Amended and Restated Memorandum and Articles of Association***

Subject to the Companies law, our company can adopt a wide range of defensive measures, such as staggered boards, blank check preferred shares, removal of directors only for cause and provisions that restrict the rights of shareholders to call meetings, act by written consent and submit shareholder proposals. Our amended memorandum and articles of incorporation provide for, among others, a staggered board, blank check preferred stock and provisions that restrict the rights of shareholders to call shareholders' meetings and eliminate their right to act by written consent.

### ***Directors' Fiduciary Duties***

Under Delaware corporate law, a director of a Delaware corporation has a fiduciary duty to the corporation and its shareholders. This duty has two components: the duty of care and the duty of loyalty. The duty of care requires that a director act in good faith, with the care that an ordinarily prudent person would exercise under similar circumstances. Under this duty, a director must inform himself of, and disclose to shareholders, all material information reasonably available regarding a significant transaction. The duty of loyalty requires that a director act in a manner he reasonably believes to be in the best interests of the corporation. He must not use his corporate position for personal gain or advantage. This duty prohibits self-dealing by a director and mandates that the best interest of the corporation and its shareholders take precedence over any interest possessed by a director, officer or controlling shareholder and not shared by the shareholders generally. In general, actions of a director are presumed to have been made on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the corporation. However, this presumption may be rebutted by evidence of a breach of one of the fiduciary duties. Should such evidence be presented concerning a transaction by a director, a director must prove the procedural fairness of the transaction, and that the transaction was of fair value to the corporation.

Under Cayman Islands law, at common law, members of a board of directors owe a fiduciary duty to the company to act in good faith in their dealings with or on behalf of the company and exercise their powers and fulfill the duties of their office honestly. This duty has four essential elements:

a duty to act in good faith in the best interests of the company;

a duty not to personally profit from opportunities that arise from the office of director;

a duty to avoid conflicts of interest; and

a duty to exercise powers for the purpose for which such powers were intended.

In general, the Companies Law imposes various duties on officers of a company with respect to certain matters of management and administration of the company. The Companies Law contains provisions, which impose default fines on persons who fail to satisfy those requirements. However, in many circumstances, an individual is only liable if he knowingly is guilty of the default or knowingly and willfully authorizes or permits the default.

### ***Shareholder Action by Written Consent***



Under the Delaware General Corporation Law, a corporation may eliminate the right of shareholders to act by written consent by amendment to its certificate of incorporation. The Companies Law allows a special resolution to be passed in writing if signed by all the shareholders and authorized by the articles of association, which ours do.

### ***Shareholder Proposals***

Under the Delaware General Corporation Law, a shareholder has the right to put any proposal before the annual meeting of shareholders, provided it complies with the notice provisions in the governing documents. A special meeting may be called by the board of directors or any other person authorized to do so in the governing documents, but shareholders may be precluded from calling special meetings.

---

## **Table of Contents**

The Companies Law does not provide shareholders any right to bring business before a meeting or requisition a general meeting. However, these rights may be provided in articles of association. Our amended and restated articles of association allow our shareholders holding not less than 75% of our paid-up voting share capital to requisition a shareholder's meeting. As an exempted Cayman Islands company, we are not obliged by law to call shareholders' annual general meetings. However, our amended and restated articles of association require us to call such meetings unless otherwise determined by the shareholders by way of an ordinary resolution.

### ***Cumulative Voting***

Under the Delaware General Corporation Law, cumulative voting for elections of directors is not permitted unless the corporation's certificate of incorporation specifically provides for it. Cumulative voting potentially facilitates the representation of minority shareholders on a board of directors since it permits the minority shareholder to cast all the votes to which the shareholder is entitled on a single director, which increases the shareholder's voting power with respect to electing such director. While there is nothing under the Companies Law which specifically prohibits or restricts the creation of cumulative voting rights for the election of directors of a Company, our amended and restated articles of association do not provide for cumulative voting.

### ***Removal of Directors***

Under the Delaware General Corporation Law, a director of a corporation with a classified board may be removed only for cause with the approval of a majority of the outstanding shares entitled to vote, unless the certificate of incorporation provides otherwise. Under our amended and restated articles of association, directors may be removed, by way of ordinary resolution of the shareholders and by the affirmative vote of the group of shareholders entitled to designate such director.

### ***Transactions with Interested Shareholders***

The Delaware General Corporation Law contains a business combination statute applicable to Delaware public corporations whereby, unless the corporation has specifically elected not to be governed by such statute by amendment to its certificate of incorporation, it is prohibited from engaging in certain business combinations with an "interested shareholder" for three years following the date that such person becomes an interested shareholder. An interested shareholder generally is a person or group who or which owns or owned 15% or more of the target's outstanding voting stock within the past three years. This has the effect of limiting the ability of a potential acquirer to make a two-tiered bid for the target in which all shareholders would not be treated equally. The statute does not apply if, among other things, prior to the date on which such shareholder becomes an interested shareholder, the board of directors approves either the business combination or the transaction which resulted in the person becoming an interested shareholder. This encourages any potential acquirer of a Delaware public corporation to negotiate the terms of any acquisition transaction with the target's board of directors.

A Cayman company may enter into some business transactions with significant shareholders, including asset sales, in which a significant shareholder receives, or could receive, a financial benefit that is greater than that received, or to be received, by other shareholders with prior approval from the board of directors but without prior approval from the shareholders.

### ***Sale of Assets***

Contrary to the general practice in most corporations incorporated in the United States, the Companies Law does not require that shareholders approve sales of all or substantially all of a company's assets. However pursuant to our memorandum and articles of association, inter alia, prior consent from holders of preferred shares is required for any sale of whole or substantial part of the business of the Company.

### ***Dissolution; Winding up***

Under the Delaware General Corporation Law, unless the board of directors approves the proposal to dissolve, dissolution must be approved by shareholders holding 100% of the total voting power of the corporation. If the dissolution is approved by the board of directors, it must be approved by a simple majority of the corporation's outstanding shares; or if so provided in its certificate of incorporation, a supermajority of shareholders. Under the Companies Law of the Cayman Islands and our amended and restated articles of association, our company may be dissolved, liquidated or wound up by, inter alia, prior written approval of the holders of the preferred shares.

### ***Variation of Rights of Shares***

Under the Delaware General Corporation Law, a corporation may vary the rights of a class of shares with the approval of a majority of the outstanding shares of such class, unless the certificate of incorporation provides otherwise. As permitted by Cayman Islands law, our amended and restated articles of association provides that, if our share capital is divided into more than one class of shares, we may vary the rights attached to any class only with the vote at a class meeting of holders of the shares of such class.

### ***Amendment of Governing Documents***

Under the Delaware General Corporation Law, a corporation's governing documents may be amended with the approval of a majority of the outstanding shares entitled to vote, unless the certificate of incorporation provides otherwise. As permitted by the Companies Law, our amended and restated memorandum and articles of association may only be amended with, inter alia, a special resolution of the Company.

### ***Rights of Non-resident or Foreign Shareholders***

There are no limitations imposed by our amended and restated memorandum and articles of association on the rights of non-resident or foreign shareholders to hold or exercise voting rights on our shares. In addition, there are no provisions in our amended and restated memorandum and articles of association governing the ownership threshold above which shareholder ownership must be disclosed.

## **Registration Rights**

Pursuant to an investors' rights agreement dated August 29, 2007 which was amended on September 7, 2007, or the August 2007 agreement, a registration rights agreement dated September 10, 2007, or the September 2007 agreement, and a registration rights agreement dated June 5, 2008, or the June 2008 agreement, we have granted certain registration rights with respect to our shares to holders of registrable securities including holders of our convertible redeemable preferred shares, holders of 202,758,000 of our ordinary shares and holders of convertible debt. Pursuant to a registration rights agreement to be entered into at the closing of this offering, or the August 2008 agreement, we will grant holders of the 2008 Convertible Bonds registration rights with respect to shares to be issued on conversion. Set forth below is a description of the registration rights granted under these agreements.

### ***Demand Registration Rights***

At any time after six months following the closing of our initial public offering, holders of at least 25% of registrable securities (in the case of the August 2007 agreement and the September 2007 agreement) have the right to demand that we file a registration statement covering the offer and sale of their securities. However, we are not obligated to effect more than two such demand registrations. We have the ability to defer the filing of a registration statement not more than once in any 12 month period for up to 120 days if we furnish to holders of the registrable securities a certificate signed by our president or chief executive officer (in the case of the August 2007 agreement) or a director of the company (in the case of the September 2007 agreement) stating that the board of directors has determined that it would be seriously detrimental to us or our shareholders for a registration statement to be filed at such time.

---

## [Table of Contents](#)

### ***Piggyback Registration Rights***

If we propose to file a registration statement with respect to an offering of securities of our company, then we must offer each holder of registrable securities the opportunity to include their shares in the registration statement. Such requests for registrations are not counted as demand registrations.

### ***Form F-3 Registration Rights***

Upon our company becoming eligible for Form F-3 (and, in the case of the August 2007 agreement, upon the request of holders of at least 25% of registrable securities), holders of the registrable securities have the right to request that we file a registration statement on Form F-3 so long as the aggregate amount of securities to be sold under the registration statement is no less than \$4 million (in the case of the August 2007 agreement) or \$1 million (in the case of the September 2007 agreement). Such requests for registration are not counted as demand registrations.

### ***Shelf Registration***

The August 2008 agreement requires that we: (1) file within 60 days of this offering and (2) maintain the effectiveness beginning six months after the closing of this offering, a shelf registration statement that will allow public resales of shares in the form of ADSs issued on conversion of the 2008 Convertible Bonds. If we are unable to achieve effectiveness by the date six months after the closing of this offering or are unable to maintain effectiveness, we will be required to pay monetary penalties to the holders of the 2008 Convertible Bonds or registrable securities. Pursuant to our lock-up agreement, we will need consent from the representatives of the underwriters to file a registration statement prior to 180 days following the date of this prospectus.

### ***Expenses of Registration***

We will pay all expenses relating to any demand or piggyback registration, whether or not such registrations become effective; however, shareholders shall bear the expense of any broker's commission or underwriter's discount or commission relating to registration and sale of their shares.

### ***Expiration of Registration Rights***

All registration rights pursuant to the August 2007 agreement and the September 2007 agreement expire three years after the closing of this offering. The registration rights pursuant to the August 2008 agreement expire when shares in the form of ADSs issued on conversion can be freely sold without a registration statement, which we expect will be no later than one year after the closing of this offering.

### **Modification of Rights**

Except with respect to share capital (as described below) and the location of the registered office, alterations to our memorandum and articles of association may only be made by special resolution.

Subject to the Companies Law of the Cayman Islands, all or any of the special rights attached to shares or any class (unless otherwise provided for by the terms of issue of the shares of that class) may be varied, modified or abrogated either with the consent in writing of the holders of not less than three-fourths in nominal value of the issued shares of that class or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class. The provisions of the Articles of Association relating to general meetings shall apply mutatis mutandis to every such separate general meeting, but so that the quorum for the purposes of any such separate general meeting other than an adjourned meeting shall be a person or persons together holding (or represented by proxy) on the date of the relevant meeting not less than fifty percent in nominal value of the issued shares of that class, every holder of shares of the class shall be entitled on a poll to one vote for every such share held by such holder and that any holder of shares of that class present in person or by proxy may demand a poll.



---

## **Table of Contents**

The special rights conferred upon the holders of any class of shares shall not, unless otherwise expressly provided in the rights attaching to or the terms of issue of such shares, be deemed to be varied by the creation or issue of further shares ranking pari passu therewith.

### **Alteration of Capital**

We may from time to time by ordinary resolution:

increase our capital by such sum, to be divided into shares of such amounts, as the resolution shall prescribe;

consolidate and divide all or any of our share capital into shares of larger amount than our existing shares;

cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled subject to the provisions of the Companies Law; and

sub-divide our shares or any of them into shares of smaller amount than is fixed by the Memorandum of Association, subject nevertheless to the Companies Law.

We may, by special resolution, subject to any confirmation or consent required by the Companies Law, reduce our share capital, share premium account or any capital redemption reserve in any manner authorized by law.

### **Transfer of Shares**

Subject to the restrictions of the articles of association as may be applicable, any of our shareholders may transfer all or any of his or her shares by an instrument of transfer in the form prescribed by our memorandum and articles of association.

Our directors may decline to register any transfer of any share unless the instrument of transfer is lodged with us accompanied by the certificate for the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

### **Share Repurchase**

We are empowered by the Companies Law and the articles of association to purchase our own shares subject to certain restrictions. Our directors may only exercise this power on our behalf, subject to the Companies Law, our memorandum and articles of association and to any applicable requirements imposed from time to time by the New York Stock Exchange, the U.S. Securities and Exchange Commission, or the SEC, or by any other recognized stock exchange.

### **Dividends**

Subject to the Companies Law and our memorandum and articles of association, in a general meeting of the shareholders of our Company we may declare dividends but no dividends shall exceed the amount recommended by our directors. Dividends may be declared and paid out of our profits, realized or unrealized, or from any reserve set aside from profits which our directors determine is no longer needed.

With the sanction of an ordinary resolution, dividends may also be declared out of the share premium account or any other fund or account which can be authorized for this purpose in accordance with the Companies Law.

Our directors may also pay any dividend which is payable on any shares half-yearly or on any other dates, whenever our profits, in the opinion of the directors, justifies such payment.

---

## [Table of Contents](#)

Our directors may deduct from any dividend or distributions payable to any shareholder all sums of money (if any) presently payable by him to us on account of calls, installments or otherwise.

No dividend or other monies payable by us on or in respect of any share shall bear interest against us.

Subject to our memorandum and articles of association, with the sanction of an ordinary resolution (or, with regarding to a dividend payable in respect of a class of shares, an ordinary resolution passed at a class meeting) the directors may determine that (i) the persons entitled to participate in the dividend shall have a right of election to accept shares of our company credited as fully paid up in satisfaction of all or (if the directors so specify or permit) part of their dividend entitlement or (ii) a dividend shall be satisfied in whole or specified part by an issue of shares of our company credited as fully paid up, subject to a right of election on the part of persons entitled to participate in the dividend to receive their dividend entitlement wholly or (if the directors so permit) partly in cash. In either event, the directors may determine all questions concerning the right of election, notification thereof to shareholders, the basis and terms of issue of shares of our company and otherwise.

Any dividend interest or other sum payable in cash to the holder of shares may be paid by cheque or draft sent by mail addressed to the holder at his address, or addressed to such person and at such addresses as the holder may direct. Every such check or warrant shall, unless the holder or joint holders otherwise direct, be made payable to the order of the holder or, in the case of joint holders, to the order of the holder whose name stands first on the register in respect of such shares, and shall be sent at his or their risk and payment of the check or warrant by the bank on which it is drawn shall constitute a good discharge to us.

Any dividend unclaimed after a period of six years from the date of declaration of such dividend may be forfeited by our board of directors and, if so forfeited, shall revert to us.

Subject to our memorandum and articles of association, with the sanction of an ordinary resolution, the directors may determine that a dividend shall be paid wholly or partly by the distribution of specific assets (which may consist of the shares or securities of any other company) and may settle all questions concerning such distribution. Without limiting the generality of the foregoing, the directors may fix the value of such specific assets, may determine that cash payment shall be made to some shareholders in lieu of specific assets and may vest any such specific assets in trustees on such terms as the directors think fit.

### **Board of Directors**

We are managed by a board of directors which may consist of up to seven members. Our board of directors currently consists of three members and another three members have agreed to join the board of directors upon the closing of this offering. An appointment of a director may be in terms that the director shall automatically retire at the next or a subsequent annual general meeting.

Meetings of the board of directors may be convened at any time deemed necessary by any members of the board of directors in accordance with our memorandum and articles of association.

A meeting of the board of directors shall be competent to make lawful and binding decisions if any two members of the board of directors (or either 3 or 4 directors in accordance with our memorandum and articles of association) are present or represented. At any meeting of the directors, each director, be it by his presence or by his alternate, is entitled to one vote.

Questions arising at a meeting of the board of directors are required to be decided by simple majority votes of the members of the board of directors present or represented at the meeting. In the case of a tie vote, the resolution shall fail. Our board of directors may also pass resolutions without a meeting by unanimous written consent.



## DESCRIPTION OF AMERICAN DEPOSITARY SHARES

### American Depositary Shares

The Bank of New York Mellon, as depositary, will register and deliver American Depositary Shares, also referred to as ADSs. Each ADS will represent four shares (or a right to receive four shares) deposited with the principal the China office of Hong Kong and Shanghai Banking Corp., as custodian for the depositary. Each ADS will also represent other securities, cash or other property which may be held by the depositary. The depositary's corporate trust office at which the ADSs will be administered is located at 101 Barclay Street, New York, New York 10286. The Bank of New York Mellon's principal executive office is located at One Wall Street, New York, New York 10286.

You may hold ADSs either (A) directly (i) by having an American Depositary Receipt, also referred to as an ADR, which is a certificate evidencing a specific number of ADSs, registered in your name, or (ii) by having ADSs registered in your name in the Direct Registration System, or (B) indirectly by holding a security entitlement in ADSs through your broker or other financial institution. If you hold ADSs directly, you are an ADS registered holder. This description assumes you are an ADS registered holder. If you hold the ADSs indirectly, you must rely on the procedures of your broker or other financial institution to assert the rights of ADS registered holders described in this section. You should consult with your broker or financial institution to find out what those procedures are.

The Direct Registration System, or DRS, is a system administered by DTC pursuant to which the depositary may register the ownership of uncertificated ADSs, which ownership shall be evidenced by periodic statements sent by the depositary to the registered holders of uncertificated ADSs.

As an ADS registered holder, we will not treat you as one of our shareholders and you will not have shareholder rights. The laws of the Cayman Islands govern shareholder rights. The depositary will be the holder of the shares underlying your ADSs. As a registered holder of ADSs, you will have ADS registered holder rights. A deposit agreement among us, the depositary and you, as an ADS registered holder, and all other persons indirectly holding ADSs sets out ADS registered holder rights as well as the rights and obligations of the depositary. New York law governs the deposit agreement and the ADSs.

The following is a summary of the material provisions of the deposit agreement. For more complete information, you should read the entire deposit agreement and the form of ADR. Directions on how to obtain copies of those documents are provided in "Where You Can Find More Information".

### Dividends and Other Distributions

#### *How will you receive dividends and other distributions on the shares?*

The depositary has agreed to pay to ADS registered holders the cash dividends or other distributions it or the custodian receives on shares or other deposited securities, after deducting its fees and expenses. You will receive these distributions in proportion to the number of shares your ADSs represent.

**Cash.** The depositary will convert any cash dividend or other cash distribution we pay on the shares into U.S. dollars, if it can do so on a reasonable basis and can transfer the U.S. dollars to the United States. If that is not possible or if any government approval is needed and cannot be obtained, the deposit agreement allows the depositary to distribute the foreign currency only to those ADS registered holders to whom it is possible to do so. It will hold the foreign currency it cannot convert for the account of the ADS registered holders who have not been paid. It will not invest the foreign currency and it will not be liable for any interest.

Before making a distribution, any withholding taxes, or other governmental charges that must be paid will be deducted. See “Taxation – Material United States Tax Considerations – Information Reporting and Back Up Withholding”. It will distribute only whole U.S. dollars and cents and will

---

## [Table of Contents](#)

round fractional cents to the nearest whole cent. *If the exchange rates fluctuate during a time when the depositary cannot convert the foreign currency, you may lose some or all of the value of the distribution.*

**Shares.** The depositary may distribute additional ADSs representing any shares we distribute as a dividend or free distribution. The depositary will only distribute whole ADSs. It will sell shares which would require it to deliver a fractional ADS and distribute the net proceeds in the same way as it does with cash. If the depositary does not distribute additional ADSs, the outstanding ADSs will also represent the new shares. The depositary may sell a portion of the distributed shares sufficient to pay its fees and expenses in connection with that distribution.

**Rights to purchase additional shares.** If we offer holders of our securities any rights to subscribe for additional shares or any other rights, the depositary may make these rights available to ADS registered holders. If the depositary decides it is not legal and practical to make the rights available but that it is practical to sell the rights, the depositary will use reasonable efforts to sell the rights and distribute the proceeds in the same way as it does with cash. The depositary will allow rights that are not distributed or sold to lapse. *In that case, you will receive no value for them.*

If the depositary makes rights available to ADS registered holders, it will exercise the rights and purchase the shares on your behalf. The depositary will then deposit the shares and deliver ADSs to the persons entitled to them. It will only exercise rights if you pay it the exercise price and any other charges the rights require you to pay.

U.S. securities laws may restrict transfers and cancellation of the ADSs represented by shares purchased upon exercise of rights. For example, you may not be able to trade these ADSs freely in the United States. In this case, the depositary may deliver restricted depositary shares that have the same terms as the ADSs described in this section except for changes needed to put the necessary restrictions in place.

**Other Distributions.** The depositary will send to ADS registered holders anything else we distribute on deposited securities by any means it thinks is legal, fair and practical. If it cannot make the distribution in that way, the depositary has a choice. It may decide to sell what we distributed and distribute the net proceeds, in the same way as it does with cash. Or, it may decide to hold what we distributed, in which case ADSs will also represent the newly distributed property. However, the depositary is not required to distribute any securities (other than ADSs) to ADS registered holders unless it receives satisfactory evidence from us that it is legal to make that distribution. The depositary may sell a portion of the distributed securities or property sufficient to pay its fees and expenses in connection with that distribution.

The depositary is not responsible if it decides that it is unlawful or impractical to make a distribution available to any ADS registered holders. We have no obligation to register ADSs, shares, rights or other securities under the Securities Act. We also have no obligation to take any other action to permit the distribution of ADSs, shares, rights or anything else to ADS holders. *This means that you may not receive the distributions we make on our shares or any value for them if it is illegal or impractical for us to make them available to you.*

## **Deposit, Withdrawal and Cancellation**

### ***How are ADSs issued?***

The depositary will deliver ADSs if you or your broker deposit shares or evidence of rights to receive shares with the custodian. Upon payment of its fees and expenses and of any taxes or charges, such as stamp taxes or stock transfer taxes or fees, the depositary will register

the appropriate number of ADSs in the names you request and will deliver the ADSs to or upon the order of the person or persons that made the deposit.

***How can ADS holders withdraw the deposited securities?***

You may surrender your ADSs at the depositary's corporate trust office. Upon payment of its fees and expenses and of any taxes or charges, such as stamp taxes or stock transfer taxes or fees, the depositary will deliver the shares and any other deposited securities underlying the ADSs to the ADS registered holder or a person the ADS registered holder designates at the office of the custodian. Or, at your request, risk and expense, the depositary will deliver the deposited securities at its corporate trust office, if feasible.

***How do ADS holders interchange between certificated ADSs and uncertificated ADSs?***

You may surrender your ADR to the depositary for the purpose of exchanging your ADR for uncertificated ADSs. The depositary will cancel that ADR and will send to the ADS registered holder a statement confirming that the ADS registered holder is the registered holder of uncertificated ADSs. Alternatively, upon receipt by the depositary of a proper instruction from a registered holder of uncertificated ADSs requesting the exchange of uncertificated ADSs for certificated ADSs, the depositary will execute and deliver to the ADS registered holder an ADR evidencing those ADSs.

**Voting Rights**

***How do you vote?***

ADS registered holders may instruct the depositary to vote the number of deposited shares their ADSs represent. The depositary will notify ADS registered holders of shareholders' meetings and arrange to deliver our voting materials to them if we ask it to. Those materials will describe the matters to be voted on and explain how ADS registered holders may instruct the depositary how to vote. For instructions to be valid, they must reach the depositary by a date set by the depositary.

*Otherwise, you won't be able to exercise your right to vote unless you withdraw the shares. However, you may not know about the meeting enough in advance to withdraw the shares.*

The depositary will try, as far as practical, subject to the laws of the Cayman Islands and of our articles of association or similar documents, to vote or to have its agents vote the shares or other deposited securities as instructed by ADS registered holders. The depositary will only vote or attempt to vote as instructed.

We can not assure you that you will receive the voting materials in time to ensure that you can instruct the depositary to vote your shares. In addition, the depositary and its agents are not responsible for failing to carry out voting instructions or for the manner of carrying out voting instructions. *This means that you may not be able to exercise your right to vote and there may be nothing you can do if your shares are not voted as you requested.*

In order to give you a reasonable opportunity to instruct the depositary as to the exercise of voting rights relating to your shares, if we request the depositary to act, we agree to give the depositary notice of any such meeting and details concerning the matters to be voted upon at least 45 days in advance of the meeting date.

## [Table of Contents](#)

### Fees and Expenses

<b>Persons depositing or withdrawing shares must pay:</b>	<b>For:</b>
\$5.00 (or less) per 100 ADSs (or portion of 100 ADSs)	Issuance of ADSs, including issuances resulting from a distribution of shares or rights or other property
	Cancellation of ADSs for the purpose of withdrawal, including if the deposit agreement terminates
\$.02 (or less) per ADS	Any cash distribution to ADS registered holders
A fee equivalent to the fee that would be payable if securities distributed to you had been shares and the shares had been deposited for issuance of ADSs	Distribution of securities distributed to holders of deposited securities which are distributed by the depositary to ADS registered holders
\$.02 (or less) per ADSs per calendar year	Depository services
Registration or transfer fees	Transfer and registration of shares on our share register to or from the name of the depositary or its agent when you deposit or withdraw shares
Expenses of the depositary	Cable, telex and facsimile transmissions (when expressly provided in the deposit agreement)
	converting foreign currency to U.S. dollars
Taxes and other governmental charges the depositary or the custodian have to pay on any ADS or share underlying an ADS, for example, stock transfer taxes, stamp duty or withholding taxes	As necessary
Any charges incurred by the depositary or its agents for servicing the deposited securities	As necessary

The Bank of New York Mellon, as depositary, has agreed to reimburse us for expenses we incur that are related to establishment and maintenance of the ADS program, including investor relations expenses and stock market application and listing fees. There are limits on the amount of expenses for which the depositary will reimburse us, but the amount of reimbursement available to us is not related to the amount of fees the depositary collects from investors.

The depositary collects its fees for delivery and surrender of ADSs directly from investors depositing shares or surrendering ADSs for the purpose of withdrawal or from intermediaries acting for them. The depositary collects fees for making distributions to investors by deducting those fees from the amounts distributed or by selling a portion of distributable property to pay the fees. The depositary may collect its annual fee for depository services by deduction from cash distributions or by directly billing investors or by charging the book-entry system accounts of participants acting for them. The depositary may generally refuse to provide fee-attracting services until its fees for those services are paid.

## **Payment of Taxes**

You will be responsible for any taxes or other governmental charges payable on your ADSs or on the deposited securities represented by any of your ADSs. The depositary may refuse to register any transfer of your ADSs or allow you to withdraw the deposited securities represented by your ADSs until such taxes or other charges are paid. It may apply payments owed to you or sell deposited securities represented by your ADSs

## [Table of Contents](#)

to pay any taxes owed and you will remain liable for any deficiency. If the depositary sells deposited securities, it will, if appropriate, reduce the number of ADSs to reflect the sale and pay to ADS registered holders any proceeds, or send to ADS registered holders any property, remaining after it has paid the taxes.

### Reclassifications, Recapitalizations and Mergers

If we:	Then:
Change the nominal or par value of our shares	The cash, shares or other securities received by the depositary will become deposited securities. Each ADS will automatically represent its equal share of the new deposited securities.
Reclassify, split up or consolidate any of the deposited securities	
Distribute securities on the shares that are not distributed to you	The depositary may, and will if we ask it to, distribute some or all of the cash, shares or other securities it received. It may also deliver new ADRs or ask you to surrender your outstanding ADRs in exchange for new ADRs identifying the new deposited securities.
Recapitalize, reorganize, merge, liquidate, sell all or substantially all of our assets, or take any similar action	

### Amendment and Termination

#### *How may the deposit agreement be amended?*

We may agree with the depositary to amend the deposit agreement and the ADRs without your consent for any reason. If an amendment adds or increases fees or charges, except for taxes and other governmental charges or expenses of the depositary for registration fees, facsimile costs, delivery charges or similar items, or prejudices a substantial right of ADS registered holders, it will not become effective for outstanding ADSs until 30 days after the depositary notifies ADS registered holders of the amendment. *At the time an amendment becomes effective, you are considered, by continuing to hold your ADSs, to agree to the amendment and to be bound by the ADRs and the deposit agreement as amended.*

#### *How may the deposit agreement be terminated?*

The depositary will terminate the deposit agreement at our direction by mailing notices of termination to the ADS registered holders then outstanding at least 30 days prior to the date fixed in such notice for such termination. The depositary may also terminate the deposit agreement by mailing notice of termination to us and the ADS registered holders if 60 days have passed since the depositary told us it wants to resign but a successor depositary has not been appointed and accepted its appointment.

After termination, the depositary and its agents will do the following under the deposit agreement but nothing else: collect distributions on the deposited securities, sell rights and other property, and deliver shares and other deposited securities upon cancellation of ADSs. Six months or more after termination, the depositary may sell any remaining deposited securities by public or private sale. After that, the depositary will hold the money it received on the sale, as well as any other cash it is holding under the deposit agreement for the pro rata benefit of the ADS registered holders that have not surrendered their ADSs. It will not invest the money and has no liability for interest. The depositary's only obligations will be to account for the money and other cash. After termination our only obligations will be to indemnify the depositary and to pay fees and expenses of the depositary that we agreed to pay.



## **Limitations on Obligations and Liability**

### ***Limits on our Obligations and the Obligations of the Depositary; Limits on Liability to Holders of ADSs***

The deposit agreement expressly limits our obligations and the obligations of the depositary. It also limits our liability and the liability of the depositary. We and the depositary:

are only obligated to take the actions specifically set forth in the deposit agreement without negligence or bad faith;

are not liable if we are or it is prevented or delayed by law or circumstances beyond our control from performing our or its obligations under the deposit agreement;

are not liable if we or it exercises discretion permitted under the deposit agreement;

are not liable for the inability of any holder of ADSs to benefit from any distribution on deposited securities that is not made available to holders of ADSs under the terms of the deposit agreement, or for any special, consequential or punitive damages for any breach of the terms of the deposit agreement;

have no obligation to become involved in a lawsuit or other proceeding related to the ADSs or the deposit agreement on your behalf or on behalf of any other person;

may rely upon any documents we or the depositary believe in good faith to be genuine and to have been signed or presented by the proper person.

In the deposit agreement, we and the depositary agree to indemnify each other under certain circumstances.

## **Requirements for Depositary Actions**

Before the depositary will deliver or register a transfer of an ADS, make a distribution on an ADS, or permit withdrawal of shares, the depositary may require:

payment of stock transfer or other taxes or other governmental charges and transfer or registration fees charged by third parties for the transfer of any shares or other deposited securities;

satisfactory proof of the identity and genuineness of any signature or other information it deems necessary; and

compliance with regulations it may establish, from time to time, consistent with the deposit agreement, including presentation of transfer documents.

The depositary may refuse to deliver ADSs or register transfers of ADSs generally when the transfer books of the depositary or our transfer books are closed or at any time if the depositary or we think it advisable to do so.

### **Your Right to Receive the Shares Underlying your ADRs**

ADS registered holders have the right to cancel their ADSs and withdraw the underlying shares at any time except:

When temporary delays arise because: (i) the depositary has closed its transfer books or we have closed our transfer books; (ii) the transfer of shares is blocked to permit voting at a shareholders' meeting; or (iii) we are paying a dividend on our shares.

When you owe money to pay fees, taxes and similar charges.

When it is necessary to prohibit withdrawals in order to comply with any laws or governmental regulations that apply to ADSs or to the withdrawal of shares or other deposited securities.

This right of withdrawal may not be limited by any other provision of the deposit agreement.

### **Pre-release of ADSs**

The deposit agreement permits the depositary to deliver ADSs before deposit of the underlying shares. This is called a pre-release of the ADSs. The depositary may also deliver shares upon cancellation of pre-released ADSs (even if the ADSs are canceled before the pre-release transaction has been closed out). A pre-release is closed out as soon as the underlying shares are delivered to the depositary. The depositary may receive ADSs instead of shares to close out a pre-release. The depositary may pre-release ADSs only under the following conditions: (1) before or at the time of the pre-release, the person to whom the pre-release is being made represents to the depositary in writing that it or its customer owns the shares or ADSs to be deposited; (2) the pre-release is fully collateralized with cash or other collateral that the depositary considers appropriate; and (3) the depositary must be able to close out the pre-release on not more than five business days' notice. In addition, the number of shares not deposited but represented by ADSs outstanding at any time as a result of pre-release will not normally exceed 30% of the shares deposited, although the depositary may disregard the limit from time to time, if it thinks it is appropriate to do so.

### **Direct Registration System**

In the Deposit Agreement, all parties to the Deposit Agreement acknowledge that the DRS and Profile Modification System, or Profile, will apply to uncertificated ADSs upon acceptance thereof to DRS by DTC. DRS is the system administered by DTC pursuant to which the depositary may register the ownership of uncertificated ADSs, which ownership shall be evidenced by periodic statements sent by the depositary to the registered holders of uncertificated ADSs. Profile is a required feature of DRS which allows a DTC participant, claiming to act on behalf of a registered holder of ADSs, to direct the depositary to register a transfer of those ADSs to DTC or its nominee and to deliver those ADSs to the DTC account of that DTC participant without receipt by the depositary of prior authorization from the ADS registered holder to register that transfer.

In connection with and in accordance with the arrangements and procedures relating to DRS/Profile, the parties to the Deposit Agreement understand that the depositary will not verify, determine or otherwise ascertain that the DTC participant which is claiming to be acting on behalf of an ADS registered holder in requesting registration of transfer and delivery described in the paragraph above has the actual authority to act on behalf of the ADS registered holder (notwithstanding any requirements under the Uniform Commercial Code). In the Deposit Agreement, the parties agree that the depositary's reliance on and compliance with instructions received by the depositary through the DRS/Profile System and in accordance with the Deposit Agreement, shall not constitute negligence or bad faith on the part of the Depositary.

### **Shareholder communications; inspection of register of holders of ADSs**

The depositary will make available for your inspection at its office all communications that it receives from us as a holder of deposited securities that we make generally available to holders of deposited securities. The depositary will send you copies of those communications if we ask it to. You have a right to inspect the register of holders of ADSs, but not for the purpose of contacting those holders about a matter unrelated to our business or the ADSs.

## SHARES ELIGIBLE FOR FUTURE SALE

Upon completion of this offering, we will have outstanding ADSs representing approximately % of our ordinary shares issued and outstanding. All of the ADSs sold in this offering will be freely transferable by persons other than our “affiliates” without restriction or further registration under the Securities Act. Sales of substantial amounts of our ADSs in the public market could adversely affect prevailing market prices of our ADSs. Prior to this offering, there has been no public market for our ordinary shares or the ADSs, and while our ADSs have been approved for listing on the New York Stock Exchange, we cannot assure you that a regular trading market will not develop in the ADSs. We do not expect that a trading market will develop for our ordinary shares not represented by the ADSs.

### Lock-Up Agreements

Each of the selling shareholders, our directors, executive officers and % of our other holders and beneficial owners of our ordinary shares (other than the holders of the exchangeable bonds issued by Happy Genius who will receive our 2008 Convertible Bonds concurrently with the closing of this offering, who will be restricted as set forth in the following paragraph) has agreed, subject to some exceptions, not to transfer or dispose of, directly or indirectly, any of our ordinary shares or ADSs or any securities convertible into or exchangeable or exercisable for our ordinary shares or ADSs, for a period of 180 days after the date this prospectus becomes effective. After the expiration of the 180-day period, the ordinary shares or ADSs held by the selling shareholders, our directors, executive officers and our existing holders and beneficial owners of our ordinary shares may be sold subject to the restrictions under Rule 144 under the Securities Act or by means of registered public offerings.

In addition, holders and owners of economic and beneficial interests of the 2008 Convertible Bonds, in exchange for exchangeable bonds of Happy Genius concurrently with the closing of this offering, are expected to agree with the underwriters, subject to certain exceptions, not to sell, transfer or dispose of, directly or indirectly, any of the 2008 Convertible Bonds or enter into certain hedging transactions with respect to the 2008 Convertible Bonds for a period of 130 days following the date of this prospectus. The hedging transactions that are restricted include any swap or other arrangement that would have the same consequences as a sale or contract to sell the 2008 Convertible Bonds and any arrangement that involves the sale or short sale of the ADSs or the ordinary shares for the purpose of hedging the ownership of the 2008 Convertible Bonds. Pursuant to this agreement, the holders are allowed to conduct hedging activities in specified limited amounts in the event that the ADSs are traded above 130% of the initial public offering price for specified periods. Holders are also generally allowed to conduct hedging transactions in greater amounts commencing after the first 30 days after the offering.

Each of the 180-day and 130-day periods are subject to adjustment under certain circumstances. If (1) during the last 17 days of the 180-day or 130-day restricted period, as the case may be, we issue an earnings release or material news or a material event relating to us occurs; or (2) prior to the expiration of the 180-day or 130-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day or 130-day period, as the case may be, the restrictions will continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

The Bank of New York Mellon has agreed that it will assist us in ensuring that deposits are not made for 180 days after the date of this prospectus.

### Rule 144

In general, under Rule 144, a person who has beneficially owned the ordinary shares, whether in the form of restricted ADSs or otherwise, for a minimum of six months and who is not, and for three months prior to the sale of those ADSs has not been, one of our affiliates is free to sell those ADSs immediately following this offering without complying with the volume, manner-of-sale, public notice and other limitations contained in Rule 144, provided that current public information about us is available.

---

## [Table of Contents](#)

On the other hand, an affiliate of us who has beneficially owned restricted ADSs for at least six months would be entitled to sell, within any three-month period, a number of ADSs or ordinary shares that does not exceed the greater of:

one percent of the then outstanding ordinary shares, in the form of ADSs or otherwise, which will equal approximately ordinary shares immediately after this offering; or

the average weekly reported trading volume of our ADSs on the New York Stock Exchange during the four calendar weeks preceding a sale by such person.

Sales made by affiliate of us under Rule 144 are also subject to certain manner-of-sale provisions, notice requirements, and the availability of current public information about us.

### **Rule 701**

In general, under Rule 701, any of our employees, directors, officers, or consultants who purchase ADSs from us in connection with a compensatory stock or option plan or other written agreement before the effective date of this offering is entitled to sell these ADSs 180 days after the effective date of this offering in reliance on Rule 144. Rule 701 provides that affiliates may sell their Rule 701 ADSs under Rule 144 without having to comply with the holding period and notice filing requirements of Rule 144, and that non-affiliates may sell those ADSs in reliance on Rule 144 without having to comply with the holding period, public information, volume limitation or notice filing requirements under Rule 144.

### **Registration Rights**

Upon completion of this offering, certain holders of our ordinary shares or their transferees will be entitled to request that we register their shares under the Securities Act, following the expiration of the lock-up agreements described above. See “Description of Share Capital–Registration Rights.”

## TAXATION

*The following summary of the material Cayman Islands, PRC and United States federal tax consequences of an investment in the ordinary shares or ADSs is based upon laws and relevant interpretations thereof in effect as of the date of this prospectus, all of which are subject to change. This summary does not deal with all possible tax consequences relating to an investment in the shares or ADSs, such as the tax consequences under U.S. state, local and other tax laws. To the extent that the discussion relates to matters of Cayman Islands tax law, it represents the opinion of Appleby, our Cayman Islands counsel, and to the extent that the discussion relates to matters of PRC tax law, it represents the opinion of Grandall Legal Group, our PRC counsel.*

### **Cayman Islands Taxation**

The Cayman Islands currently levies no taxes on individuals or corporations based upon profits, income, gains or appreciation and there is no taxation in the nature of inheritance tax or estate duty. There are no other taxes likely to be material to us levied by the Government of the Cayman Islands except for stamp duties which may be applicable, from time to time, on certain instruments executed in, or brought within the jurisdiction of the Cayman Islands. The Cayman Islands is not a party to any double tax treaties. There are no exchange control regulations or currency restrictions in effect in the Cayman Islands.

### **People's Republic of China Taxation**

In 2007, the PRC government promulgated the new EIT Law and the relevant implementation rules, which became effective on January 1, 2008. Under the new EIT Law and its implementation rules, all domestic and foreign invested companies that are considered PRC resident enterprises are subject to a uniform enterprise income tax at the rate of 25% and dividends from PRC resident enterprises to their foreign shareholders are subject to a withholding tax at a rate of 10%. Under the new EIT Law, enterprises organized under the laws of jurisdictions outside China with their “de facto management bodies” located within China may be considered PRC resident enterprises and therefore subject to PRC enterprise income tax at the rate of 25% on their worldwide income. Under the implementation rules of the PRC Income Tax Law, “de facto management bodies” is defined as the bodies that have material and overall management and control over the business, personnel, accounts and properties of the enterprise. It is unclear whether we and our Hong Kong subsidiary would be considered PRC resident enterprises under the new EIT Law. If we and our Hong Kong subsidiary are not considered PRC resident enterprises under the new EIT Law, then because JZPTD is owned directly by our Hong Kong subsidiary and Hong Kong has an arrangement with the PRC under which the tax rate for income from dividends paid by a PRC resident enterprise is 5%, dividends paid by JZPTD to our Hong Kong subsidiary will be subject to a 5% withholding tax. If, however, we and our Hong Kong subsidiary were considered PRC resident enterprises, we and our Hong Kong subsidiary would be subject to the PRC enterprise income tax at the rate of 25% on our worldwide income. Dividend income received from JZPTD, however, would be exempt from PRC tax since such income is exempted under the new EIT Law as dividend income paid to a PRC resident recipient. Dividends distributed to our foreign investors by us, as a PRC resident enterprise, would be subject to the 10% PRC withholding tax. There will be no capital gains tax payable in the PRC in connection with sales of the ordinary shares or ADSs by persons who are not PRC residents.

### **Material United States Federal Tax Considerations**

This section describes the material United States federal tax consequences of the acquisition, ownership and disposition of our shares or ADSs. It applies to U.S. holders (as defined below) that hold the shares or ADSs as capital assets and that have the U.S. dollar as their functional currency. This discussion is based on the tax laws of the United States as in effect on the date of this prospectus and on U.S. Treasury regulations in effect or, in some cases, proposed, as of the date of this prospectus, as well as judicial and administrative interpretations thereof available on or before such date. All of the foregoing authorities are subject to change, which change

---

## [Table of Contents](#)

could apply retroactively and could affect the tax consequences described below. This section does not apply to you if you are a member of a special class of holders subject to special rules, including:

a bank;

a dealer in securities or currencies;

a broker dealer;

a trader in securities that elects to use a mark-to-market method of accounting for your securities holdings;

a tax-exempt organization;

an insurance company;

a person liable for alternative minimum tax;

a person that actually or constructively owns 10% or more of our voting stock;

a person who acquired ADSs or ordinary shares pursuant to the exercise of any employee stock options or otherwise as compensation;

a person that holds shares or ADSs that are a hedge or that are hedged against currency risks or as part of a straddle or a conversion transaction;

a person holding ADSs or ordinary shares through partnerships or other pass-through entities; or

a U.S. holder (as defined below) whose functional currency is not the U.S. dollar.

This section is based on the Internal Revenue Code of 1986, as amended, its legislative history, existing and proposed regulations, published rulings and court decisions, all as currently in effect. These laws are subject to change, possibly on a retroactive basis. In addition, this section is based in part upon the representations of the depositary and the assumption that each obligation in the deposit agreement and any related agreement will be performed in accordance with its terms.

You are a “U.S. holder” if you are a beneficial owner of shares or ADSs and you are:

a citizen or resident of the United States;

a domestic corporation;

an estate whose income is subject to United States federal income tax regardless of its source; or

a trust if (1) a United States court can exercise primary supervision over the trust’s administration and one or more United States persons are authorized to control all substantial decisions of the trust or (2) you have a valid election in effect under applicable U.S. Treasury regulations to be treated as a U.S. person.

A “non-U.S. holder” is a beneficial owner of shares or ADSs that is not a United States person for United States federal income tax purposes.

If you are a partner in a partnership or other entity taxable as a partnership for U.S. federal income tax purposes that holds ADSs or ordinary shares, your tax treatment depends on your status and the activities of the partnership.

*You should consult your own tax advisor regarding the United States federal, state and local tax consequences of owning and disposing of the shares or ADSs in your particular circumstances, as well as regarding the state and local and foreign tax consequences to you of the purchase, ownership and disposition of ADSs or ordinary shares.*



---

## [Table of Contents](#)

The discussion below assumes that the representations contained in the deposit agreement are true and that the obligations in the deposit agreement and any related agreement will be complied with in accordance with their terms. In general, and taking into account the earlier assumptions, for United States federal income tax purposes, if you hold ADRs evidencing ADSs, you will be treated as the owner of the shares represented by those ADRs. Exchange of shares for ADRs, and ADRs for shares, generally will not be subject to United States federal income tax.

### ***Taxation of Dividends***

Subject to the passive foreign investment company (“PFIC”) rules discussed below, a U.S. holder generally will be required to treat distributions received with respect to the shares or ADSs as dividend income to the extent of our earnings and profits (computed using U.S. federal income tax principles), with the excess treated as a non-taxable return of capital to the extent of the holder’s adjusted tax basis in the shares or ADSs and, thereafter, as capital gain. We do not intend to calculate our earnings and profits under United States federal income tax principles. Therefore, a U.S. holder should expect that a distribution will generally be treated as a dividend even if that distribution would otherwise be treated as a non-taxable return of capital or as capital gain under the rules described above. Dividends will not be eligible for the dividends received deduction allowable to corporations. Dividends will constitute income from sources outside the United States for foreign tax credit limitation purposes.

Current tax law provides for a maximum 15% U.S. tax rate on the dividend income of an individual U.S. holder with respect to dividends paid by a domestic corporation or “qualified foreign corporation” if certain holding period requirements are met. A qualified foreign corporation generally includes a foreign corporation (other than a PFIC) if (i) its ordinary shares or ADSs, as applicable, are readily tradable on an established securities market in the United States or (ii) it is eligible for benefits under a comprehensive United States income tax treaty. Our ADSs are expected to be readily traded on the New York Stock Exchange. As a result, assuming we are not treated as a PFIC, we should be treated as a qualified foreign corporation with respect to dividends paid on our ordinary shares and, therefore, dividends paid to an individual U.S. holder with respect to ordinary shares on which the requisite holding period is satisfied should be taxed at a maximum federal tax rate of 15%. The maximum 15% federal tax rate is scheduled to expire for taxable years commencing after December 31, 2010.

Dividends will constitute income from sources outside the United States for foreign tax credit limitation purposes. If the dividends qualify for the reduced rate of taxation (as discussed above), the amount of the dividend taken into account for purposes of calculating the foreign tax credit limitation will in general be limited to the gross amount of the dividend, multiplied by the reduced rate divided by the highest rate of tax normally applicable to dividends. The limitation on foreign taxes eligible for credit is calculated separately with respect to specific classes of income. For this purpose, dividends distributed by us with respect to the ADSs or ordinary shares generally will constitute “passive category income” but could, in the case of certain U.S. holders, constitute “general category income.” If PRC withholding taxes apply to dividends paid to you with respect to the ADSs or ordinary shares (see “–Peoples Republic of China Taxation”), you may be able to obtain a reduced rate of PRC withholding taxes under the income tax treaty between the United States and the PRC if certain requirements are met. In addition, subject to certain conditions and limitations, PRC withholding taxes on dividends may be treated as foreign taxes eligible for credit against your U.S. federal income tax liability. U.S. holders should consult their own tax advisors regarding the creditability of any PRC tax.

***Non-U.S. Holders.*** If you are a non-U.S. holder, dividends paid to you in respect of the shares or ADSs will not be subject to United States federal income tax unless the dividends are effectively connected with your conduct of a trade or business within the United States, and the dividends are attributable to a permanent establishment that you maintain in the United States if that is required by an applicable income tax treaty as a condition for subjecting you to United States taxation on a net income basis. In such cases you will be taxed in the same manner as a U.S. holder. If you are a corporate non-U.S. holder, effectively connected dividends may,

---

## [Table of Contents](#)

under certain circumstances, be subject to an additional branch profits tax at a 30% rate or at a lower rate if you are eligible for the benefits of an income tax treaty that provides for a lower rate.

### ***Taxation of Capital Gains***

***U.S. Holders.*** Subject to the PFIC rules discussed below, if you are a U.S. holder and you sell or otherwise dispose of your shares or ADSs, you will recognize capital gain or loss for United States federal income tax purposes equal to the difference between the U.S. dollar value of the amount that you realize and your tax basis, determined in U.S. dollars, in your shares or ADSs. Capital gain of a non-corporate U.S. holder that is recognized before January 1, 2011 is generally taxed at a maximum rate of 15% where the holder has a holding period greater than one year. The gain or loss will generally be income or loss from sources within the United States for foreign tax credit limitation purposes. Your ability to deduct capital losses is subject to limitations.

***Non-U.S. Holders.*** If you are a non-U.S. holder, you will not be subject to United States federal income tax on gain recognized on the sale or other disposition of your shares or ADSs unless:

the gain is effectively connected with your conduct of a trade or business in the United States and is attributable to a permanent establishment that you maintain in the United States if that is required by an applicable income tax treaty as a condition for subjecting you to United States taxation on a net income basis; or

if you are an individual, you are present in the United States for 183 or more days in the taxable year of the sale and certain other conditions exist.

If you are a corporate non-U.S. holder, effectively connected gains that you recognize, under certain circumstances, may also be subject to an additional branch profits tax at a 30% rate or at a lower rate if you are eligible for the benefits of an income tax treaty that provides for a lower rate.

***PFIC Rules.*** We believe that shares and ADSs should not be treated as stock of a PFIC for United States federal income tax purposes for the tax year ending December 31, 2008 or for the foreseeable future, but this conclusion is a factual determination that is made annually and thus may be subject to change. Our expectation for our current taxable year ending December 31, 2008 is based in part on our estimates of the value of our assets, as determined by our current plans, expectations and projections regarding the value and nature of our assets and the sources and nature of our income, and the expected price of the ADSs and our ordinary shares following this offering. Our actual PFIC status for the taxable year ending December 31, 2008 will not be determinable until the close of the taxable year ending December 31, 2008 and, accordingly, there is no guarantee that we will not be a PFIC for 2008 or any future taxable year. However, the determination as to whether a foreign corporation is a PFIC is a complex determination that is based on all of the relevant facts and circumstances and that depends on the classification of various assets and income under the rules that apply in determining whether a foreign corporation is a PFIC. It is unclear how some of these rules apply to us, particularly in light of our having been in a development-stage. Further, this determination must be tested annually and a change in our circumstances or our business plan may result in our engaging in activities that could cause us to become a PFIC. Accordingly, there can be no assurance that we will not be classified as a PFIC for the current taxable year or any future taxable year.

In general, if you are a U.S. holder, we will be a PFIC with respect to you if for any taxable year in which you held your shares or ADSs:

at least 75% of our gross income for the taxable year is passive income; or

at least 50% of the value, determined on the basis of a quarterly average, of our assets is attributable to assets that produce or are held for the production of passive income.

Passive income generally includes dividends, interest, royalties, and rents (not including certain rents and royalties derived in the active conduct of a trade or business annuities), and gains from assets that produce

---

## [Table of Contents](#)

passive income. If a foreign corporation owns directly or indirectly at least 25% by value of the stock of another corporation, the foreign corporation is treated for purposes of the PFIC tests as owning its proportionate share of the assets of the other corporation, and as receiving directly its proportionate share of the other corporation's income.

If we are treated as a PFIC, and you are a U.S. holder that does not make a mark-to-market election, as described below, you will be subject to special rules with respect to any "excess distribution" that you receive and any gain you realize from a sale or other disposition (including a pledge) of the ADSs or ordinary shares, unless you make a "mark-to-market" election as discussed below. Generally, any distributions to you during a single taxable year that are greater than 125% of the average annual distributions received by you in respect of the shares or ADSs during the three preceding taxable years or, if shorter, your holding period for the shares or ADSs will be treated as excess distributions.

Under these rules:

the gain or excess distribution will be allocated ratably over your holding period for the shares or ADSs;

the amount allocated to the taxable year in which you realized the gain or excess distribution will be taxed as ordinary income;

the amount allocated to each prior year, with certain exceptions, will be taxed at the highest tax rate in effect for that year; and

the interest charge generally applicable to underpayments of tax will be imposed in respect of the tax attributable to each such year.

Special rules apply for calculating the amount of the foreign tax credit with respect to excess distributions by a PFIC. Furthermore, the tax liability for amounts allocated to years prior to the year of disposition or "excess distribution" cannot be offset by any net operating losses for such years, and gains (but not losses) realized on the sale of the ADSs or ordinary shares cannot be treated as capital, even if you hold the ADSs or ordinary shares as capital assets.

Alternatively if you own shares or ADSs in a PFIC that are treated as "marketable stock" (as defined below), you may make a mark-to-market election. If you make this election, you will not be subject to the PFIC rules described above. Instead, in general, you will include as ordinary income each year the excess, if any, of the fair market value of your shares or ADSs at the end of the taxable year over your adjusted basis in your shares or ADSs. These amounts of ordinary income will not be eligible for the favorable tax rates applicable to qualified dividend income or long-term capital gains. You will also be allowed to take an ordinary loss in respect of the excess, if any, of the adjusted basis of your shares or ADSs over their fair market value at the end of the taxable year (but only to the extent of the net amount of previously included income as a result of the mark-to-market election). Your basis in the shares or ADSs will be adjusted to reflect any such income or loss amounts. Your gain, if any, recognized upon the sale of your shares or ADSs will be taxed as ordinary income.

The mark-to-market election is available only for "marketable stock," which is stock that is traded in other than de minimus quantities on at least 15 days during each calendar quarter ("regularly traded") on a qualified exchange or other market, as defined in applicable U.S. Treasury regulations. We expect that the ADSs will be listed on the New York Stock Exchange and, consequently, if you are a U.S. holder of ADSs and the ADSs are regularly traded on the New York Stock Exchange, the mark-to-market election would be available to you were we to be or become a PFIC.

U.S. holders of shares in a PFIC may avoid taxation under the rules described above by making a “qualified electing fund” election to include its share of the corporation’s income on a current basis, or a “deemed sale” election once the corporation no longer qualifies as a PFIC. However, you can make a qualified electing fund

---

## [Table of Contents](#)

election with respect to your ADSs or ordinary shares only if we agree to furnish you annually with certain tax information, and we do not presently intend to prepare or provide such information.

In addition, notwithstanding any election you make with regard to the shares or ADSs, dividends that you receive from us will not constitute qualified dividend income to you if we are a PFIC either in the taxable year of the distribution or the preceding taxable year. Dividends that you receive that do not constitute qualified dividend income are not eligible for taxation at the 15% maximum rate applicable to qualified dividend income. Instead, you must include the gross amount of any such dividend paid by us out of our accumulated earnings and profits (as determined for United States federal income tax purposes) in your gross income, and it will be subject to tax at rates applicable to ordinary income.

If you own shares or ADSs during any year that we are a PFIC, you must file Internal Revenue Service Form 8621 regarding distributions received on the ADSs or ordinary shares and any gain realized on the disposition of the ADSs or ordinary shares.

You are urged to consult your tax advisor regarding the application of the PFIC rules to your investment in ADSs or ordinary shares.

### ***Information Reporting and Backup Withholding***

Information reporting to the United States Internal Revenue Service generally will be required with respect to payments on the ADSs or ordinary shares and proceeds of the sale of the ADSs or ordinary shares paid to holders that are United States taxpayers, other than corporations and other exempt recipients. A 28% “backup” withholding tax may apply to those payments if such a holder fails to provide a taxpayer identification number to the paying agent and to certify that no loss of exemption from backup withholding has occurred. Holders that are not subject to United States taxation may be required to comply with applicable certification procedures to establish that they are not United States taxpayers in order to avoid the application of such information reporting requirements and backup withholding. The amounts withheld under the backup withholding rules are not an additional tax and may be refunded, or credited against the holder’s United States federal income tax liability, if any, provided the required information is furnished to the United States Internal Revenue Service.

THE ABOVE DISCUSSION IS A GENERAL SUMMARY. IT DOES NOT COVER ALL TAX MATTERS THAT MAY BE OF IMPORTANCE TO A PARTICULAR INVESTOR. EACH PROSPECTIVE INVESTOR IS STRONGLY URGED TO CONSULT ITS OWN TAX ADVISOR ABOUT THE TAX CONSEQUENCES TO IT OF AN INVESTMENT IN THE ADSs OR ORDINARY SHARES.

### ***Material Estate and Gift Tax Considerations***

ADSs or ordinary shares owned by an individual U.S. Holder at the time of death will be included in the individual U.S. Holder’s gross estate for United States federal estate tax purposes. In addition, a U.S. Holder may be subject to tax on a transfer of the ADSs or ordinary shares by gift for United States federal gift tax purposes.

## UNDERWRITING

Under the terms and conditions contained in an underwriting agreement dated the date of this prospectus, the underwriters named below, for whom Morgan Stanley & Co. International plc and Credit Suisse Securities (USA) LLC are acting as representatives, have severally agreed to purchase, and we and the selling shareholders have agreed to sell to them, severally, the number of ADSs indicated below:

<u>Name</u>	<u>Number of ADSs</u>
Morgan Stanley & Co. International plc.	
Credit Suisse Securities (USA) LLC	
HSBC Securities (USA) Inc.	
Cowen and Company, LLC	
Piper Jaffray & Co.	
Total	

The underwriters are offering the ADSs subject to their acceptance of the ADSs from us and subject to prior sale. The underwriting agreement provides that the obligations of the underwriters to pay for and accept delivery of the ADSs offered by this prospectus are subject to the approval of certain legal matters by their counsel and to certain other conditions. The underwriters are obligated, severally and not jointly, to take and pay for all of the ADSs offered by this prospectus if any such ADSs are taken. However, the underwriters are not required to take or pay for the ADSs covered by the underwriters' over-allotment option to purchase additional ADSs described below.

The underwriters initially propose to offer part of the ADSs directly to the public at the public offering price listed on the cover page of this prospectus and part to certain dealers at a price that represents a concession not in excess of \$            per ADS under the public offering price. Any underwriter may allow, and such dealer may reallow, a concession not in excess of \$            per ADS to other underwriters or to certain dealers. After the initial public offering, the representatives may change the public offering price and concession and discount to broker/dealers.

The selling shareholders have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to an aggregate of            additional ADSs at the public offering price listed on the cover page of this prospectus, less underwriting discounts and commissions. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with the offering of the ADSs offered by this prospectus. To the extent the option is exercised, each underwriter will become obligated, subject to certain conditions, to purchase about the same percentage of the additional ADSs as the number listed next to the underwriter's name in the preceding table bears to the total number of ADSs listed next to the names of all underwriters in the preceding table.

If the underwriters' option is exercised in full, the total price to the public of all the ADSs sold would be \$            million, the total underwriting discounts and commissions would be \$            million, the net proceeds to us would be \$            (after deducting the estimated offering expenses payable by us), and the net proceeds to the selling shareholders would be \$            million. We will not receive any of the proceeds from the sale of the ADSs by the selling shareholders.



## [Table of Contents](#)

The following table shows the per ADS and total public offering price, underwriting discounts and commissions to be paid by us and the selling shareholders, and proceeds before expenses to us. These amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase additional ADSs.

	<u>Per ADS</u>	<u>Without Exercise of Option to Purchase Additional ADSs</u>	<u>With Full Exercise of Option to Purchase Additional ADSs</u>
Public offering price	\$	\$	\$

Underwriting discounts and commissions to be paid by us

Proceeds, before expenses, to us

Proceeds, before expenses, to selling shareholders

The estimated offering expenses payable by us, exclusive of the underwriting discounts and commissions, are approximately \$ million.

The underwriters have informed us and the selling shareholders that they do not intend sales to discretionary accounts to exceed 5% of the total number of ADSs offered by them.

Our ADSs have been approved for listing on the New York Stock Exchange under the symbol "GCL."

The offering is being conducted in accordance with the applicable provisions of Rule 2720 of the NASD Conduct Rules of The Financial Industry Regulatory Authority because an affiliate of Morgan Stanley & Co. International plc, one of the underwriters, owns 10% or more of our ordinary shares. Rule 2720(c) requires, among other things, that the price at which an equity issue is to be distributed to the public be established at a price no higher than that recommended by a "qualified independent underwriter," as defined by the Financial Industry Regulatory Authority Conduct Rules. Accordingly, HSBC Securities (USA) Inc. is serving in that capacity and has performed due diligence investigations and reviewed and participated in the preparation of the registration statement of which this prospectus forms a part. HSBC Securities (USA) Inc. is not entitled to any compensation in its capacity as the qualified independent underwriter.

We have agreed that, without the prior written consent of the representatives on behalf of the underwriters, we will not, for a period of 180 days after the date of this prospectus:

offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any ADSs, ordinary shares or any securities convertible into or exercisable or exchangeable for such ADSs or ordinary shares, or enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the ADSs or ordinary shares, whether any such transaction described above is to be settled by delivery of ordinary shares or ADSs or such other securities, in cash or otherwise; or

publicly disclose the intention to make any such offer, pledge, sale or disposition, or enter into any such transaction, swap, hedge or other arrangement.

The restrictions described in the preceding paragraph do not apply to:

- (a) the sale of ordinary shares or ADSs to the underwriters;
- (b) the issuance of ordinary shares or ADSs upon the exercise of warrant or the conversion of a security outstanding on the date of this prospectus to which the underwriters have given prior written consent;
- (c) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of Ordinary Shares, provided that such plan does not provide for the transfer of Ordinary Shares during the 180 day restricted period; or

## Table of Contents

- (d) the issuance of ordinary shares in connection with the acquisition of, or a joint venture with, another company if the aggregate number of ordinary shares issued in such transactions, taken together, does not exceed 2% of the aggregate number of ordinary shares represented by ADSs in the offering, provided that in the case of any issuance pursuant to clause (d), (i) each distributee or grantee shall enter into a written agreement substantially in the form of Exhibit I hereto and (ii) no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership of Ordinary Shares; provided that in the case of any issuance pursuant to clause (d), (i) each distributee or grantee will enter into a lock-up agreement with the same restrictions and (ii) no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership of Ordinary Shares, will be required or will be voluntarily made during the lock-up period.

We are obligated to file a registration statement for resales of ADSs issued on conversion of our 2008 Convertible Bonds within 60 days of the closing of this offering. The registration statement will allow such sales only after six months from the closing of this offering. We intend to ask the representatives of the underwriters for their agreement to file such registration statement as an exception to the lock-up.

Each of the selling shareholders, our directors, executive officers and % of our other existing holders or beneficial owners of our ordinary shares, not including holders of the exchangeable bonds issued by Happy Genius, who have entered into separate lock-up agreements discussed below, have agreed that, without the prior written consent of the representatives on behalf of the underwriters, it will not, for a period of 180 days after the date of this prospectus:

offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any ADSs, ordinary shares or any securities convertible into or exercisable or exchangeable for such ADSs or ordinary shares, or enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the ADSs or ordinary shares, whether any such transaction described above is to be settled by delivery of ordinary shares or ADSs or such other securities, in cash or otherwise; or

publicly disclose the intention to make any such offer, pledge, sale or disposition, or enter into any such transaction, swap, hedge or other arrangement.

The restrictions described in the preceding paragraphs do not apply to:

- (a) transactions relating to the ADSs, ordinary shares or other securities acquired in open market transactions after the completion of this offering, provided that no filing under Section 16(a) of the Exchange Act will be required or will be voluntarily made in connection with subsequent sales of ADSs, ordinary shares or other securities acquired in such transactions;
- (b) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of ADSs or ordinary shares, provided that such plan does not provide for the transfer of ADSs or ordinary shares during the 180-day restricted period;
- (c) transfers of ADSs or ordinary shares as a bona fide gift; or
- (d) distributions of ADSs or ordinary shares to any partners, members or affiliates,

provided that in the case of any transfer or distribution pursuant to (c), (d) or (e) above, (i) each donee or distributee will sign and deliver a lock up agreement with the same restrictions and (ii) no filing under Section 16(a) of the Exchange Act, reporting a reduction in beneficial ownership of ordinary shares, will be required or will be voluntarily made during the lock-up period.

---

## Table of Contents

In addition, each of the selling shareholders, our directors, executive officers and all of our other existing shareholders or beneficial owners of our ordinary shares have agreed that, without the prior written consent of the representatives on behalf of the underwriters, it will not, for a period of 180 days after the date of this prospectus, make any demand for, or exercise any right with respect to, the registration of any ADSs, ordinary shares or any securities convertible into or exercisable or exchangeable for ADSs or ordinary shares.

In addition, we have agreed not to facilitate any conversion or exchange of ordinary shares into ADSs for 180 days after the date of this prospectus without prior written consent of the representatives. The Bank of New York Mellon has agreed that it will assist us in ensuring that deposits are not made for 180 days after the date of this prospectus.

Holders and owners of economic or beneficial interests of exchangeable bonds issued by Happy Genius that will receive our 2008 Convertible Bonds concurrently with the closing of this offering have agreed that, without the prior written consent of the representatives on behalf of the underwriters, it will not, for a period of 130 days after the date of this prospectus:

offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, the 2008 Convertible Bonds;

enter into a swap or other arrangement that would have the same consequences as the point above or the effect of transferring another party any of the economic consequences of ownership of ADSs or ordinary shares, for the purpose of hedging economic or beneficial ownership in, or holdings of, the 2008 Convertible Bonds;

enter into any arrangement that involves any sale or short sale of the ADSs or the ordinary shares for the purpose of hedging the beneficial ownership in, or holdings of, the 2008 Convertible Bonds (the second and third points above are collectively referred to as hedging transactions) whether any such transaction described in the first, second or third points is to be settled by delivery of the 2008 Convertible Bonds, in cash or otherwise; or

publicly disclose the intention to make any such offer, pledge, sale or disposition, or enter into any such transaction, swap, hedge or other arrangement,

The restrictions described in the preceding paragraph do not apply to:

- (a) transactions relating to the ADSs purchased in open market transactions not through any hedging transaction after the completion of the IPO;
- (b) the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of ADSs or ordinary shares, provided that such plan does not provide for the transfer of ADSs, ordinary shares or the economic consequences of ownership of the ADSs or ordinary shares during the 130-day period;
- (c) transfers of ADSs or ordinary shares as a bona fide gift;
- (d) transfers or distributions of ADSs or ordinary shares to any partners, members or affiliates;
- (e) hedging transactions that are conducted to strictly comply with the following requirements:

- (1) if the (A) the underwriters shall have exercised their over-allotment option in relation to this offering, and (B) the weighted average price of the ADSs on each of seven or more trading days in a period of ten consecutive trading days during the first month of trading of ADSs on the New York Stock Exchange shall have exceeded 130% of the initial public offering price ((A) and (B) together are referred to as a triggering event);
  - (i) hedging transactions may be conducted during such first month involving not exceeding 11.25% of the ordinary shares into which the 2008 Convertible Bonds are convertible provided that at the time of a hedging transaction the trading price of the ADSs is at least 130% of the initial public offering price;

---

## Table of Contents

- (ii) during the period from the 31<sup>st</sup> day after the first trading date and the 63<sup>rd</sup> day after the first trading date, hedging transactions may be undertaken involving not exceeding 18.75% of the ordinary shares into which the 2008 Convertible Bonds are convertible plus any unused portion of the 11.25% provided above;
  - (iii) during the period from the 64<sup>th</sup> day after the first trading date and the 96<sup>th</sup> day after the first trading date, hedging transactions may be undertaken involving not exceeding 22.5% of the ordinary shares into which the 2008 Convertible Bonds are convertible plus any unused portion of the 18.75% and 11.25% provided above; and
  - (iv) after the 96<sup>th</sup> day after the first trading date there are no restrictions on hedging transactions;
- (2) if no triggering event occurs during the first trading month;
- (i) during the period from the 31<sup>st</sup> day after the first trading date and the 63<sup>rd</sup> day after the first trading date, hedging transactions may be undertaken involving not exceeding 25% of the ordinary shares into which the 2008 Convertible Bonds are convertible;
  - (ii) during the period from the 64<sup>th</sup> day after the first trading date and the 96<sup>th</sup> day after the first trading date, hedging transactions may be undertaken involving not exceeding 25% of the ordinary shares into which the 2008 Convertible Bonds are convertible plus any unused portion of the 25% provided above; and
  - (iii) after the 96<sup>th</sup> day after the first trading date there are no restrictions on hedging transactions,
- (f) offers, pledges, sales, contracts to sell, sales of any options or contracts to purchase, purchases of any options or contracts to sell, grants of any options, rights or warrants to purchase, lending, or otherwise transfers or disposes of the 2008 Convertible Bonds; or
  - (g) sales or purchases of the ADSs in the ordinary course of business at the instruction of its clients in compliance with relevant laws and regulations.

Notwithstanding the above, in the case of any transfer or distribution pursuant to clause (c), (d) or (f), each donee, distributee or transferee (i) shall not have engaged in or entered into any hedging transaction at or prior to the effectiveness time of such transfer or distribution, and (ii) shall sign and deliver to the representatives of the underwriters a lock up agreement with substantially the same terms described above.

Notwithstanding any to the contrary above, each holder of exchangeable bonds issued by Happy Genius is permitted to enter into credit default swaps, interest rate swaps, or other similar arrangements with respect to the 2008 Convertible Bonds that do not directly or indirectly involve the hedging of any of the exchangeable bondholders' economic or beneficial ownership in the equity component of the 2008 Convertible Bonds so long as such holder receives, orally or otherwise, confirmation from the counterparty of such arrangement prior to entering into such arrangement that the counterparty shall not sell or short sell any of the ADSs and/or the ordinary shares or enter into a

transaction that will result in another party selling or short selling the ADSs or ordinary shares to manage its exposure or otherwise. In the event that such counterparty does not provide such confirmation, such bondholder agrees not to enter into such arrangement.

Each of the 180-day and 130-day restricted periods described in the preceding paragraphs will be extended if:

during the last 17 days of the 180-day or 130-day restricted period, as the case may be, we issue an earnings release or material news or a material event relating to our company occurs; or

prior to the expiration of the 180-day or 130-day restricted period, as the case may be, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day or 130-day restricted period, as the case may be.

---

## [Table of Contents](#)

In each of the above cases, the restrictions described in the preceding paragraph will continue to apply until the expiration of the 18-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

In order to facilitate the offering of the ADSs, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the ADSs. Specifically, the underwriters may sell more ADSs than they are obligated to purchase under the underwriting agreement, creating a short position in the ADSs for their own account. A short sale is covered if the short position is no greater than the number of ADSs available for purchase by the underwriters under their over-allotment option. The underwriters can close out a covered short sale by exercising their over-allotment option or purchasing ADSs in the open market. In determining the source of ADSs to close out a covered short sale, the underwriters will consider, among other things, the open-market price of ADSs compared to the price available under their over-allotment option. The underwriters may also sell ADSs in excess of their over-allotment option, creating a naked short position. The underwriters must close out any naked short position by purchasing ADSs in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the ADS in the open market after pricing that could adversely affect investors who purchase in this offering. As an additional means of facilitating this offering, the underwriters may bid for, and purchase, ADSs in the open market to stabilize the price of the ADSs. The underwriting syndicate may also reclaim selling concessions allowed to an underwriter or a dealer for distributing the ADSs in the offering, if the syndicate repurchases previously distributed ADSs to cover syndicate short position in stabilization transactions or otherwise. Any of these activities may raise or maintain the market price of the ADS above independent market levels. The underwriters are not required to engage in these activities and may end any of these activities at any time.

We, the selling shareholders and the underwriters have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act.

A prospectus in electronic format may be made available on the websites maintained by one or more underwriters. The representative may agree to allocate a number of ADSs to underwriters for sale to their online brokerage account holders. Internet distributions will be allocated by the representative to underwriters that may make Internet distributions on the same basis as other allocations. In addition, ADSs may be sold by the underwriters to securities dealers who resell ADSs to online brokerage account holders. Other than the prospectus in electronic format, the information on any underwriter's or selling shareholder's website and any information contained in any other website maintained by any underwriter or selling shareholder is not part of the prospectus or the registration statement of which this prospectus forms a part, has not been approved and/or endorsed by us or any underwriter or selling shareholder in its capacity as underwriter or selling shareholder and should not be relied upon by investors.

Some of the underwriters are expected to make offers and sales both inside and outside the United States through their respective selling agents. Any offers or sales in the United States will be conducted by broker-dealers registered with the SEC. We and the selling shareholders have been advised by the underwriters that Morgan Stanley & Co. International plc expects to make offers and sales in the United States through its registered broker-dealer affiliate in the United States, Morgan Stanley & Co. Incorporated.

The address of Morgan Stanley & Co. International plc is 25 Cabot Square, Canary Wharf, London E14 4QA, United Kingdom. The address of Credit Suisse Securities (USA) LLC is Eleven Madison Avenue, New York, NY 10010-3629, United States. The address of HSBC Securities (USA) Inc. is 452 Fifth Avenue, New York, NY 10018, United States. The address of Cowen and Company, LLC is 1221 Avenue of the Americas, New York, NY 10020, United States. The address of Piper Jaffray & Co. is 800 Nicollet Mall, Suite 800, Minneapolis, MN 55402, United States.



## **Other Relationships**

Some of the underwriters and their affiliates have engaged in, and may in the future engage in, investment banking, commercial banking and other commercial dealings in the ordinary course of business with us. An affiliate of Credit Suisse Securities (USA) LLC, or the CS affiliate, purchased US\$50 million aggregate principal amount of the exchangeable bonds issued by Happy Genius in connection with the purchase of 36% of equity interest in JZPTD interest through Sun Wave, a portion of which is subject to hedging arrangements. Happy Genius intends to use the 2008 Convertible Bonds it will receive from us in conjunction with the completion of the offering to exchange for 65% of the aggregate outstanding amount of the exchangeable bonds to the extent that certain conditions to exchange are satisfied. For a description of the 2008 Convertible Bonds, see “Description of Share Capital – Ownership of Our Business and Securities Issuances – 2008 Convertible Bonds.” As a result of this and part of the use of proceeds from this offering being used to pay Happy Genius for 36% of JZPTD, the CS affiliate will receive indirectly a portion of the proceeds of this offering through the redemption of 35% of the exchangeable bonds by Happy Genius and will be a holder of our 2008 Convertible Bonds. After the CS affiliate exchanges the remaining exchangeable bonds it holds, after the redemption of 35% of such exchangeable bonds, for the 2008 Convertible Bonds, and subsequently elects to convert all of the 2008 Convertible Bonds it holds to our ordinary shares, it will become an owner of our ordinary shares.

## **Selling Restrictions**

No action has been taken in any jurisdiction (except in the United States) that would permit a public offering of the ADSs, or the possession, circulation or distribution of this prospectus or any other material relating to us or the ADSs in any jurisdiction where action for that purpose is required. Accordingly, the ADSs may not be offered or sold, directly or indirectly, and neither this prospectus nor any other offering material relating to the ADSs may be distributed or published, in or from any jurisdiction except under circumstances that will result in compliance with the applicable laws and regulations thereof.

### ***Cayman Islands***

This prospectus does not constitute an invitation or offer to the public in the Cayman Islands of the ADSs, whether by way of sale or subscription. The underwriters have not offered or sold, and will not offer or sell, directly or indirectly, any ADSs in the Cayman Islands.

### ***European Economic Area***

In relation to each member state of the European Economic Area which has implemented the Prospectus Directive, which we refer to as a Relevant Member State, with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State, which we refer to as the Relevant Implementation Date, no offer of ADSs has been made and or will be made to the public in that Relevant Member State prior to the publication of a prospectus in relation to the ADSs which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that, with effect from and including the Relevant Implementation Date, an offer of ADSs may be made to the public in that Relevant Member State at any time: (a) to legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities; (b) to any legal entity which has two or more of (i) an average of at least 250 employees during the last financial year; (ii) a total balance sheet of more than 43,000,000; and (iii) an annual net turnover of more than 50,000,000, as shown in its last annual or consolidated accounts; (c) to fewer than 100 natural or legal persons (other than qualified investors as defined in the Prospectus Directive) subject to obtaining the prior consent of the representative of the underwriters; or (d) in any other circumstances which do not require the publication by us of a prospectus pursuant to Article 3 of the Prospectus Directive. For the purposes of this provision, the expression an “offer of ADSs to the public” in relation to any ADSs in any

---

## **Table of Contents**

Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the ADSs to be offered so as to enable an investor to decide to purchase or subscribe for the ADSs, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State and the expression “Prospectus Directive” means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

### ***United Kingdom***

No offer of ADSs has been made or will be made to the public in the United Kingdom within the meaning of Section 102B of the Financial Services and Markets Act 2000, as amended, or FSMA, except to legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities or otherwise in circumstances which do not require the publication by us of a prospectus pursuant to the Prospectus Rules of the Financial Services Authority, or FSA. Each underwriter: (i) has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of Section 21 of FSMA) received by it in connection with the issue or sale of any ADS in circumstances in which Section 21 of FSMA does not apply to us; and (ii) has complied with, and will comply with all applicable provisions of FSMA with respect to anything done by it in relation to the ADSs in, from or otherwise involving the United Kingdom. The foregoing shall apply in addition to the restrictions set out under the heading “European Economic Area” above.

### ***Hong Kong***

The ADSs may not be offered or sold by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), (ii) to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a “prospectus” within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), and no advertisement, invitation or document relating to the ADSs may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to ADSs which are or are intended to be disposed of only to persons outside Hong Kong or only to “professional investors” within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

### ***Japan***

The ADSs have not been and will not be registered under the Financial Instruments and Exchange Law of Japan, or the Financial Instruments and Exchange Law, and ADSs will not be offered or sold, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to any exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

### ***Singapore***

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the ADSs may not be circulated or distributed, nor may the ADSs be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities

## [Table of Contents](#)

and Futures Act, Chapter 289 of Singapore (the “SFA”), (ii) to a relevant person pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA. Each of the following relevant persons specified in Section 275 of the SFA which has subscribed or purchased the ADSs, namely a person who is:

- (a) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or
- (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary is an accredited investor,

should note that shares, debentures and units of shares and debentures of that corporation or the beneficiaries’ rights and interest in that trust shall not be transferable for 6 months after that corporation or that trust has acquired the ADSs under Section 275 of the SFA except:

- (i) to an institutional investor under Section 274 of the SFA or to a relevant person, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions, specified in Section 275 of the SFA;
- (ii) where no consideration is given for the transfer; or
- (iii) by operation of law.

### ***People’s Republic of China***

This prospectus may not be circulated or distributed in the PRC and the ADSs may not be offered or sold to any person for re-offering or resale, directly or indirectly, to any resident of the PRC except pursuant to applicable laws and regulations of the PRC. For the purpose of this paragraph, PRC does not include Taiwan and the special administrative regions of Hong Kong and Macau.

### ***Republic of China***

The ADSs may not be offered or sold, directly or indirectly, in the Republic of China.

## **Pricing of the Offering**

Prior to this offering, there was no public market for our ordinary shares or ADSs. The initial public offering price will be determined by negotiations between us and the representatives. Among the factors to be considered in determining the initial public offering price will be our future prospects and those of our industry in general, our sales, earnings and certain other financial and operating information in recent periods, and the price-earnings ratios, price-sales ratios, market prices of securities, and certain financial and operating information of companies engaged in activities similar to ours. The estimated initial public offering price range set forth on the cover page of this preliminary prospectus is subject to change as a result of market conditions and other factors.

## **Directed Share Program**

At our request, the underwriters have reserved for sale, at the initial public offering price, up to an aggregate of                      ADSs, to certain of our directors, officers, employees or their friends and families, business associates and other persons associated with us who have expressed an interest in purchasing our ADSs in this offering. The number of ADSs available for sale to the general public will be reduced to the extent that these persons purchase such reserved ADSs. Any reserved ADSs that are not purchased will be offered by the underwriters to the general public on the same basis as the other ADSs offered by this prospectus.

## LEGAL MATTERS

The validity under New York law of the ADSs offered hereby will be passed upon for us by Milbank, Tweed, Hadley & McCloy LLP. Certain legal matters relating to this offering as to United States federal and New York law will be passed upon for the underwriters by Simpson Thacher & Bartlett LLP. The validity of the issuance of the ordinary shares under Cayman Islands law will be passed upon for us by Appleby. Certain legal matters as to PRC law will be passed upon for us by Grandall Legal Group and for the underwriters by Jun He Law Offices.

## EXPERTS

The consolidated financial statements of Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. (Predecessor) for the period from March 7, 2006 to December 13, 2006, and the consolidated financial statements of GCL Silicon Technology Holdings Inc. (Successor) as of December 31, 2006 and December 31, 2007, and for the period from November 13, 2006 to December 31, 2006 and the year ended December 31, 2007 and the related financial statement schedule included in this prospectus have been audited by Deloitte Touche Tohmatsu, an independent registered public accounting firm, as stated in their report appearing herein and have been so included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing. The offices of Deloitte Touche Tohmatsu are located at 35<sup>th</sup> Floor, One Pacific Place, 88 Queensway, Hong Kong.

The statements included in this prospectus under the caption “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and notes to our audited consolidated financial statements beginning on page F-1, to the extent they relate to the determination of the fair values of our ordinary shares, preferred shares, warrants and stock options, have been reviewed and confirmed by Jones Lang Lasalle Sallmans Limited, an independent third-party valuation firm, as expert on such matters, and are included in this prospectus in reliance upon such review and confirmation. The offices of Jones Lang LaSalle Sallmans Limited are located at 22/F, Siu On Centre, 188 Lockhart Road, Wan Chai, Hong Kong.

## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form F-1 (No. 333-152425) under the Securities Act with respect to underlying ordinary shares represented by the ADSs. We have also filed with the SEC a related registration statement on F-6 to register the ADSs. This prospectus does not contain all of the information in the registration statements and their exhibits. We have omitted certain portions of these registration statements from this prospectus in accordance with the rules and regulations of the SEC. You should read the registration statement on Form F-1 and its exhibits and schedules for further information with respect to us and our ADSs.

Upon completion of this offering, we will become subject to the periodic reporting and other informational requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, applicable to a foreign private issuer. In accordance with these requirements, we will file annual reports on Form 20-F within six months of our fiscal year end and we will submit other reports and information under cover of Form 6-K with the SEC. These reports and other information can be inspected and copied at the public reference room at the SEC. The public reference facilities maintained by the SEC are located at 100 F. Street, N.E., Washington, D.C. 20549. You can also obtain copies, upon payment of a prescribed fee, of such material from the public reference room and the regional offices, or by calling or writing to the SEC. You can call the SEC at 1-800-SEC-0330 for additional information, or visit their website at <http://www.sec.gov>. As a foreign private issuer, we are exempt under the Exchange Act from, among other things, the rules prescribing the furnishing and content of proxy statements and annual reports to shareholders and requiring reporting of insider purchases and sales, as well as Section 16 short swing profit reporting for our officers and directors and for holders of more than 10% of our ordinary shares.

---

## [Table of Contents](#)

We intend to provide to our shareholders proxy statements and annual reports prepared in accordance with applicable laws. Our annual reports will contain audited consolidated financial statements following the end of each fiscal year, and we will make available semi-annual reports containing unaudited summary consolidated financial information.

---

[Table of Contents](#)

**GCL SILICON TECHNOLOGY HOLDINGS INC.**  
**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

	<u>Page</u>
<a href="#">Report of Independent Registered Public Accounting Firm</a>	F-2
<a href="#">Consolidated Balance Sheets as of December 31, 2006 and December 31, 2007 (Successor)</a>	F-3
<a href="#">Consolidated Statements of Operations for the Period from March 7, 2006 to December 13, 2006 (Predecessor), November 13, 2006 to December 31, 2006 (Successor) and for the year ended December 31, 2007 (Successor)</a>	F-4
<a href="#">Consolidated Statements of Changes in Shareholders' Equity for the Period from March 7, 2006 to December 13, 2006 (Predecessor), November 13, 2006 to December 31, 2006 (Successor) and for the year ended December 31, 2007 (Successor)</a>	F-5
<a href="#">Consolidated Statements of Cash Flows for the Period from March 7, 2006 to December 13, 2006 (Predecessor), November 13, 2006 to December 31, 2006 (Successor) and for the year ended December 31, 2007 (Successor)</a>	F-6
<a href="#">Notes to Consolidated Financial Statements</a>	F-7
<a href="#">Schedule 1-GCL Silicon Technology Holdings Inc. Condensed Financial Statements as of December 31, 2006 and 2007 and for the period from November 13, 2006 to December 31, 2006 and for the year ended December 31, 2007</a>	F-23
<a href="#">Unaudited Condensed Consolidated Balance Sheets as of December 31, 2007 and June 30, 2008</a>	F-28
<a href="#">Unaudited Condensed Consolidated Statements of Operations for the Six Months Ended June 30, 2007 and 2008</a>	F-29
<a href="#">Unaudited Condensed Consolidated Statements of Shareholders' Equity for the Six Months Ended June 30, 2007 and 2008</a>	F-30
<a href="#">Unaudited Condensed Consolidated Statements of Cash Flows for the Six Months Ended June 30, 2007 and 2008</a>	F-31

F-1

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and the Board of Directors of GCL Silicon Technology Holdings Inc. (successor company) and Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. (predecessor company):

We have audited the accompanying consolidated balance sheets of GCL Silicon Technology Holdings Inc. and its subsidiaries (referred to as the “Group”) as of December 31, 2006 and 2007, and the related consolidated statements of operations, shareholders’ equity, and cash flows for the period from November 13, 2006 to December 31, 2006 and for the year ended December 31, 2007. Our audits also included the financial statement schedule included as Schedule 1. We have also audited the consolidated statements of operations, shareholders’ equity and cash flows of Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and its subsidiary (predecessor company) for the period from March 7, 2006 to December 13, 2006. These consolidated financial statements and the financial statement schedule are the responsibility of the Group’s management. Our responsibility is to express an opinion on the consolidated financial statements and the financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Group is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing the audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Group’s internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements of the successor company present fairly, in all material respects, the financial position of GCL Silicon Technology Holdings Inc. and its subsidiaries as of December 31, 2006 and 2007, and the results of their operations and cash flows for the period from November 13, 2006 to December 31, 2006 and for the year ended December 31, 2007 in conformity with accounting principles generally accepted in the United States of America. Further, in our opinion, the predecessor company’s financial statements referred to above present fairly, in all material respects, the results of operations and cash flows of Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and its subsidiary for the period from March 7, 2006 to December 13, 2006 in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, the financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects the information set forth therein.

As discussed in Note 2 to the financial statements, the Group was in the development stage at December 31, 2006; during the year ended December 31, 2007, the Group completed its development activities and commenced its planned principal operations.

**/s/ Deloitte Touche Tohmatsu**

Certified Public Accountants

Hong Kong

April 25, 2008 (July 18, 2008 as to the effects of the share splits described in Note 9)



**GCL SILICON TECHNOLOGY HOLDINGS INC.****CONSOLIDATED BALANCE SHEETS****(In thousands of U.S. dollars, except share and per share data)**

	<b>December 31,</b> <b>2006</b> <b>(Successor)</b>	<b>December 31,</b> <b>2007</b> <b>(Successor)</b>
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 5,033	\$40,067
Restricted cash	—	13,802
Accounts receivable	—	6,333
Inventories	—	916
Prepaid expenses and other current assets	24	2,468
Amount due from an affiliated company	16,783	138
Total current assets	21,840	63,724
Property, plant and equipment, net	18,909	141,731
Deposits for purchase of plant and equipment	39,655	16,677
Deposit for purchase of land use right	—	390
Land use right	13,887	8,163

Deferred financing costs	–	2,140
Deferred tax assets	–	145
TOTAL ASSETS	<u>\$ 94,291</u>	<u>\$ 232,970</u>
LIABILITIES		
CURRENT LIABILITIES		
Accounts payable	\$ –	\$ 1,608
Accrued expenses and other current liabilities	1,520	15,135
Advances from customers	–	2,927
Bank borrowings	–	22,028
Other borrowings	31,364	–
Income taxes payable	–	4,359
Amounts due for acquisition of JZPTD	16,374	–
Loans from and other amounts due to affiliated companies	–	14,891
Total current liabilities	49,258	60,948
Deferred tax liabilities	1,954	–
Floating rate bonds	–	62,099
Bank borrowings	<u>31,468</u>	<u>58,650</u>

TOTAL LIABILITIES	82,680	181,697
Commitments and contingencies (note 13)		
MINORITY INTEREST	9,823	34,935
Series A convertible redeemable preferred shares (\$0.00001 par value; no shares authorized and issued as of December 31, 2006 and 50,000,000 shares authorized and 16,667,000 issued and outstanding as of December 31, 2007)	–	21,111
SHAREHOLDERS' EQUITY (DEFICIT)		
Ordinary shares (\$0.00001 par value; 1,000,000,000 shares authorized and 1,000,000,000 issued as of December 31, 2006; 100,000,000,000 shares authorized and 983,333,000 issued as of December 31, 2007)	10	10
Additional paid-in capital	1,990	15,009
Accumulated deficit	(212 )	(23,119 )
Accumulated other comprehensive income	–	3,327
Total shareholders' equity (deficit)	1,788	(4,773 )
TOTAL LIABILITIES, MINORITY INTEREST, CONVERTIBLE REDEEMABLE PREFERRED SHARES AND SHAREHOLDERS' EQUITY	\$ 94,291	\$ 232,970

See notes to the consolidated financial statements.

**GCL SILICON TECHNOLOGY HOLDINGS INC.**

**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In thousands of U.S. dollars, except share and per share data)

	March 7, 2006 to December 13, 2006 <u>(Predecessor)</u>	November 13, 2006 to December 31, 2006 <u>(Successor)</u>	For the year ended December 31, 2007 <u>(Successor)</u>
REVENUES			
Third party sales	\$ –	\$–	\$33,378
Related party sales	–	–	7,470
Total revenues	–	–	40,848
Cost of revenues	–	–	(10,996 )
Gross profit	–	–	29,852
OPERATING EXPENSES			
General and administrative	(2,776 )	(239 )	(17,836 )
OPERATING INCOME (LOSS)	(2,776 )	(239 )	12,016
NON-OPERATING INCOME (EXPENSE)			
Interest income	58	54	376
Interest expense	(743 )	(147 )	(6,097 )
Other income	12	2	6
Gain on disposal of JSJST	–	–	566

Total non-operating expenses	<u>(673 )</u>	<u>(91 )</u>	<u>(5,149 )</u>
(LOSS) INCOME BEFORE INCOME TAX AND MINORITY INTEREST	<u>(3,449 )</u>	<u>(330 )</u>	<u>6,867</u>
Income tax expense	<u>–</u>	<u>–</u>	<u>(3,123 )</u>
(LOSS) INCOME BEFORE MINORITY INTEREST	<u>(3,449 )</u>	<u>(330 )</u>	<u>3,744</u>
Minority interest	<u>–</u>	<u>118</u>	<u>(5,540 )</u>
NET LOSS	<u>(3,449 )</u>	<u>(212 )</u>	<u>(1,796 )</u>
Deemed distribution on convertible redeemable preferred shares—accretion of redemption premium	<u>–</u>	<u>–</u>	<u>(1,111 )</u>
NET LOSS ATTRIBUTABLE TO HOLDERS OF ORDINARY SHARES	<u><u>\$ (3,449 )</u></u>	<u><u>\$(212 )</u></u>	<u><u>\$(2,907 )</u></u>
ORDINARY SHARES USED IN LOSS PER ORDINARY SHARE CALCULATION			
Basic and diluted		<u><u>1,000,000,000</u></u>	<u><u>994,292,123</u></u>
EARNINGS (LOSS) PER ORDINARY SHARE			
Basic and diluted		<u><u>\$(0.0002 )</u></u>	<u><u>\$(0.0029 )</u></u>

See notes to the consolidated financial statements.

**GCL SILICON TECHNOLOGY HOLDINGS INC.**

**CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY**  
(In thousands of U.S. dollars, except share data)

	<u>Ordinary Shares</u>		<u>Additional</u>		<u>Accumulated</u>		<u>Total</u>	
	<u>Shares</u>	<u>Amount</u>	<u>Paid-in</u>	<u>Accumulated</u>	<u>Other</u>	<u>Shareholders'</u>	<u>Total</u>	<u>Total</u>
			<u>Capital</u>	<u>Deficit</u>	<u>Comprehensive</u>	<u>Equity</u>		<u>Comprehensive</u>
					<u>Income</u>			<u>(Loss) Income</u>
<b>Predecessor—Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.:</b>								
Contributions from shareholders upon inception	–	\$ –	\$ 24,967	\$ –	\$ –	\$ 24,967	\$	
Foreign currency translation adjustment	–	–	–	–	552	552	552	
Net loss	–	–	–	(3,449 )	–	(3,449 )	(3,449 )	
BALANCE AT DECEMBER 13, 2006	–	\$ –	\$ 24,967	\$ (3,449 )	\$ 552	\$ 22,070	\$ (2,897 )	
<b>Successor—GCL Silicon Technology Holdings Inc.:</b>								
Shares at inception	1,000,000,000	\$ 10	\$ (10 )	\$ –	\$ –	\$ –	\$	
Contributions from shareholders	–	–	2,000	–	–	2,000		
Net loss	–	–	–	(212 )	–	(212 )	(212 )	
BALANCE AT DECEMBER 31, 2006	1,000,000,000	10	1,990	(212 )	–	1,788	(212 )	
Foreign currency translation adjustment	–	–	–	–	3,327	3,327	3,327	
Contributions from shareholders	–	–	13,019	–	–	13,019		

Ordinary shares redesignated as Series A convertible redeemable preferred shares (Note 10)	(16,667,000 )	–	–	(20,000 )	–	(20,000 )	
Deemed distribution on Series A convertible redeemable preferred shares		–	–	(1,111 )	–	(1,111 )	
Net loss	<u>–</u>	<u>–</u>	<u>–</u>	<u>(1,796 )</u>	<u>–</u>	<u>(1,796 )</u>	<u>(1,796 )</u>
BALANCE AT DECEMBER 31, 2007	<u>983,333,000</u>	<u>\$ 10</u>	<u>\$ 15,009</u>	<u>\$ (23,119 )</u>	<u>\$ 3,327</u>	<u>\$ (4,773 )</u>	<u>\$ 1,531</u>

See notes to the consolidated financial statements.

**GCL SILICON TECHNOLOGY HOLDINGS INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands of U.S. dollars)

	March 7, 2006 to December 13, 2006 (Predecessor)	November 13, 2006 to December 31, 2006 (Successor)	For the year ended December 31, 2007 (Successor)
OPERATING ACTIVITIES			
Net loss	\$ (3,449 )	\$ (212 )	\$ (1,796 )
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:			
Land use right expense	46	15	215
Depreciation of property, plant and equipment	17	6	2,366
Amortization of discount and deferred financing costs on floating rate bonds	–	–	2,487
Gain on disposal of JSTST	–	–	(566 )
Minority interest	–	(118 )	5,540
Deferred taxes	–	–	(1,163 )
Changes in operating assets and liabilities:			
Increase in accounts receivable	–	–	(6,227 )
Increase in inventories	–	–	(916 )
Increase in amount due to affiliated companies	–	–	1,231



(Increase) decrease in prepaid expenses and other current assets	(54 )	91	(2,522 )
Increase (decrease) in accrued expenses and other current liabilities	658	(624 )	8,072
Increase in advances from customers	–	–	2,927
Increase in accounts payable	–	–	1,581
Increase in income taxes payable	–	–	4,286
Net cash (used in) provided by operating activities	(2,782 )	(842 )	15,515
INVESTING ACTIVITIES			
Purchase of property, plant and equipment	(6,415 )	(1,473 )	(80,548 )
Deposits for purchase of property, plant and equipment	(34,513 )	(5,089 )	(15,477 )
Deposit for purchase of land use right	–	–	(390 )
Cash acquired in acquisition of JSJST and JZPTD	6	24,484	–
Acquisition of JSJST and JZPTD	(12,152 )	–	(16,374 )
Increase in restricted cash	–	–	(13,802 )
Disposal of JSJST (net of cash equivalents disposed of \$908)	–	–	12,034
Purchase of land use right	(6,929 )	–	(84 )
(Advance to) repayment from an affiliated company	(854 )	(16,057 )	17,925
Net cash provided by (used in) investing activities	(60,857 )	1,865	(96,716 )

FINANCING ACTIVITIES			
Proceeds from issuance of floating rate bonds	–	–	60,000
Proceeds from bank borrowings	31,468	–	46,809
Proceeds from other borrowings	31,235	14	–
Repayments of other borrowings	–	–	(19,234 )
Contributions from shareholders	24,967	2,000	13,019
Capital contributed to a subsidiary by minority shareholders	–	1,996	18,054
Financing costs incurred for floating rate bonds	–	–	(2,528 )
Net cash provided by financing activities	<u>87,670</u>	<u>4,010</u>	<u>116,120</u>
NET INCREASE IN CASH AND CASH EQUIVALENTS	24,031	5,033	34,919
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	–	–	5,033
Effect of foreign exchange on cash and cash equivalents	<u>453</u>	<u>–</u>	<u>115</u>
CASH AND CASH EQUIVALENTS AT END OF PERIOD	<u><u>\$ 24,484</u></u>	<u><u>\$ 5,033</u></u>	<u><u>\$ 40,067</u></u>
SUPPLEMENTAL DISCLOSURES OF CASH FLOWS			
Interest paid (net of interest capitalized)	\$ (272 )	\$ (79 )	\$ (3,285 )
NON-CASH INVESTING ACTIVITIES			
Purchase of property, plant and equipment	\$ 237	\$ 374	\$ 6,330

Acquisition of JZPTD

\$ -

\$ 16,374

\$ -

See notes to the consolidated financial statements.

F-6

**GCL SILICON TECHNOLOGY HOLDINGS INC.**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**(In thousands of U.S. dollars, except share and per share data)**

**1. Organization and nature of operations**

The consolidated financial statements include the financial statements of GCL Silicon Technology Holdings Inc. (formerly named Asia Silicon Technology Holdings Inc. and known as “the Company” or “Successor”), its wholly owned subsidiary GCL Silicon Technology Holdings Limited (“GCL HK”) and Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. (“JZPTD” or “Predecessor”) (formerly known as Jiangsu Zhongneng Photovoltaic Industry Development Co., Ltd.).

The Company was incorporated on May 9, 2007 in the Cayman Islands. GCL HK was incorporated on November 13, 2006 in Hong Kong, and JZPTD was incorporated on March 7, 2006 in the People’s Republic of China (“PRC”).

The Company and its subsidiaries (hereinafter collectively referred to as the “Group”) are engaged in the manufacture and sale of polysilicon. In the periods presented, substantially all of the Group’s business was conducted through JZPTD.

***Reorganization***

On December 13, 2006, GCL HK acquired 64% ownership interest in JZPTD and its subsidiary Jiangsu Yangguang Jingyuan Science and Technology Co., Ltd. (“JSJST”) for a consideration of \$16,374. On December 6, 2006, JZPTD acquired JSJST for a consideration of \$12,152. The consideration was paid on behalf of JZPTD by Guotai Energy Investments Limited, the then majority shareholder of JZPTD. JZPTD and JSJST were development stage companies as of December 13, 2006.

Subsequently, on June 20, 2007, JSJST was sold for a consideration of \$12,942 and a gain of \$566 was realized.

As part of a restructuring process in August 2007, all the owners of GCL HK exchanged their equity interest in GCL HK for shares in the Company in proportion of their interest in GCL HK. As a result GCL HK became a wholly owned subsidiary of the Company. The restructuring process has been accounted for as recapitalization of the Company and accordingly the assets and liabilities of GCL HK and its subsidiaries have been transferred at historical cost. The consolidated financial statements have been presented as if the Company owned JZPTD throughout the successor periods presented from November 13, 2006.

JZPTD has been presented as the predecessor entity as the operations of GCL HK prior to the succession was insignificant relative to the operations of JZPTD.

**2. Development Stage**

The Group was in the development stage at December 31, 2006. The Group completed its development activities and commenced its planned principal operations in October 2007.

**3. Summary of significant accounting policies**

***(a) Basis of presentation and consolidation***

The financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

---

## [Table of Contents](#)

The consolidated financial statements include the financial statements of the Company and its subsidiaries. All significant intercompany transactions and balances have been eliminated on consolidation. The Group did not have any variable interest entity during the periods presented.

### ***(b) Use of estimates***

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect certain reported amounts of assets and liabilities as at the date of the financial statements, and the reported amounts of income and expenses for the periods presented. Actual results could differ from those estimates. Material estimates in these financial statements that are susceptible to change as more information becomes available include valuation allowance on deferred tax assets, useful lives of property, plant and equipment and valuation of derivative financial instruments.

### ***(c) Concentrations of credit risk***

Financial instruments that potentially expose the Group to concentrations of credit risk consist primarily of cash and cash equivalents, accounts receivable and amount due from an affiliated company.

The Group places its cash and cash equivalents in various financial institutions in the PRC. The Group believes that no significant credit risk exists as these banks are principally government-owned financial institutions with high credit ratings and quality.

Accounts receivable represent those receivables derived in the ordinary course of business. The Group conducts credit evaluations of customers and its affiliated companies and generally requires advance payments from customers. The Group establishes an allowance for doubtful accounts mainly based on age of the receivables and other factors surrounding the credit risk of specific customers and affiliated companies.

### ***(d) Fair value of financial instruments***

The Group's financial instruments include cash and cash equivalents, accounts receivable, other current assets, amount due from an affiliated company, accounts payable, accrued expenses and other current liabilities, short-term bank borrowings, amounts due to and loans from affiliated companies. As of December 31, 2006 and 2007, the carrying amounts approximate the fair values due to the short-term nature of these instruments. The carrying value of the long-term bank borrowings approximate their fair values as they carry market interest rates.

The floating rate bonds ("the bonds") are initially recorded at their fair value and are subsequently measured at their accreted value, which approximates the cash outlay that would be due upon settlement, if not converted into ordinary shares. As the bonds are not publicly traded, the Group relied on valuations to determine the fair value as at the balance sheet date. The valuation model includes assumptions regarding discount rates, market and other factors that are subjective and judgmental. Changes to any assumptions used in the valuation model would materially impact the results.

### ***(e) Cash and cash equivalents***

Cash and cash equivalents consist of cash on hand and demand deposits which are unrestricted as to withdrawal and use, and which have maturities of three months or less when purchased.

### ***(f) Restricted cash***

Restricted cash consists of an amount \$2,901 placed in bank accounts which are restricted for use to make interest payments on floating rate bonds and an amount of \$10,901 placed in bank accounts as deposits for short-term letters of credit issued by a bank for purchase of plant and machinery.



## [Table of Contents](#)

### ***(g) Inventories***

Inventories are stated at lower of cost or market. Cost is determined using the weighted average method. Cost comprises direct materials, direct labor and those overhead costs that have been incurred in bringing the inventories to their present location and conditions. The Group writes down the cost of excess and slow moving inventories to the estimated market value based on historical and forecast demand. As at December 31, 2007, there were no inventories written down.

### ***(h) Property, plant and equipment, net***

Property, plant and equipment are carried at cost less accumulated depreciation. Depreciation is computed using the straight-line basis over the following estimated useful lives:

	Years
Buildings	lesser of 20 years or lease term
Plant and machinery	15
Furniture, fixtures and equipment	5
Motor vehicles	5

Construction in progress represents construction of production facilities. Costs incurred on construction is capitalized and transferred to property, plant and equipment upon completion, at which time depreciation commences.

Interest expense incurred for construction of property, plant, and equipment is capitalized as part of the cost of such assets. Interest expense capitalized for the period from March 7, 2006 to December 13, 2006 (predecessor), November 13, 2006 to December 31, 2006 (successor) and for the year ended December 31, 2007 (successor), were \$193, \$32 and \$3,936, respectively.

### ***(i) Impairment of long-lived assets***

The Group evaluates the recoverability of long-lived assets with finite lives whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The Group assesses recoverability by a comparison of the carrying amount of the long-lived asset to the estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future undiscounted cash flows, an impairment loss is recognized as the difference between the carrying amount and fair value.

### ***(j) Land use right***

Land use right represents prepayments made to obtain land under operating lease arrangements. Land use right is recognized as an expense on a straight-line basis over the lease period of 50 years. Land use right expense for the period from March 7, 2006 to December 13, 2006 (predecessor), November 13, 2006 to December 31, 2006 (successor) and for the year ended December 31, 2007 (successor), were \$46, \$15 and \$215, respectively.

### ***(k) Deferred financing costs***

Direct and incremental costs incurred in issuance of the bonds are amortized as interest expense over the terms of the related debt agreements.

***(l) Series A convertible redeemable preferred shares***

The Series A convertible redeemable preferred shares (“preferred shares”) have been initially recorded at their fair value upon issuance. The difference between the carrying value and the redemption value is being accreted through retained earnings as deemed distribution over a period of three years, which represents the period from the date of issuance to the earliest possible date of redemption.



***(m) Revenue recognition***

The Group manufactures and sells polysilicon. The Group recognizes revenue when all of the following conditions are met: price to the buyer is fixed and determinable, products are delivered and title has passed to customers and collectability is reasonably assured. Sales agreements typically do not contain customary product warranties except for return and replacement of defective products within a period of 30 days from delivery. Sales agreements do not contain any post-shipment obligations or any other return or credit provisions.

A majority of the sales contracts provide that customers must arrange for the shipping of goods and bear all the costs of such shipping and the risks associated with loss or damage of the goods from the Group's manufacturing premises. Thus, the Group fulfills its obligation of delivery when the goods are shipped. The Group required and received cash on delivery for a majority of its sales transactions. The Group extended a credit term to only one customer since commencement of operations and has assessed a number of factors to determine whether collection was reasonably assured including the customer's credit worthiness.

***(n) Employee welfare benefits***

Full time employees of the Group in the PRC participate in a government-mandated multi-employer defined contribution plan pursuant to which certain pension benefits, medical care, unemployment insurance, and other welfare benefits are provided to the employees. Chinese labor regulations require the Group to accrue for these defined contribution plans based on certain percentages of the employees' salaries.

Contributions to defined contribution plans have been expensed as incurred. During the period from March 7, 2006 to December 13, 2006 (predecessor), November 13, 2006 to December 31, 2006 (successor) and for the year ended December 31, 2007 (successor), the Group incurred an expense of \$22, \$5 and \$350, respectively.

***(o) Income taxes***

Deferred income taxes are recognized for temporary differences between the tax bases of assets and liabilities and their reported amounts in the consolidated financial statements, and unutilized tax loss carryforwards. Deferred tax assets are reduced by a valuation allowance when it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are measured using enacted rates expected to apply to taxable income in which temporary differences are expected to be received or settled. The effect on deferred tax assets and liabilities of change in tax rates has been recognized in the statement of operations in the period of the enactment of the change.

***(p) Share-based compensation***

The Group measures the cost of employee or director services received in exchange for share-based compensation at the grant date fair value of the award. The Group recognizes the compensation costs on a straight-line basis over the vesting terms.

***(q) Earnings (loss) per share***

Basic loss per ordinary share has been computed by dividing the net loss attributable to ordinary shares by the weighted average number of ordinary shares outstanding during the period.

The convertible redeemable preferred shares participate in the dividends of the Company. The convertible redeemable preferred shares have not been included in the computation of basic loss per share as the holders do not have any contractual obligation to share in the Company's loss.

## [Table of Contents](#)

The share options, convertible redeemable preferred shares and floating rate bonds were excluded from the computation of diluted loss per share as their effects would have been antidilutive.

### ***(r) Foreign currency***

The functional currency of the Company and GCL HK is U.S. dollars and the functional currency of JZPTD is Renminbi (“RMB”).

Foreign currency transactions have been converted into the functional currency at the exchange rates prevailing on transaction dates. Foreign currency denominated monetary assets and liabilities have been translated at the exchange rates prevailing on the balance sheet date. Exchange differences have been included in the statement of operations.

For the purposes of consolidation, assets and liabilities of foreign subsidiaries have been translated into U.S. dollars at the exchange rates prevailing at the balance sheet date and all income and expense items have been translated at the average rate of exchange prevailing during the periods presented. Exchange differences arising from the translation have been reported in comprehensive income (loss).

### ***(s) Comprehensive loss***

Comprehensive loss includes all changes in equity from transactions and other events and circumstances from non-shareholder sources. The Group’s comprehensive loss consists of net loss and the foreign exchange differences arising from the translation of foreign subsidiaries.

### ***(t) Segment information***

The Group’s chief operating decision maker has been identified as the chief executive officer, who reviews consolidated results when making decisions about allocating resources and assessing performance of the Group. The Group is a single segment entity whose business is the manufacturing and sale of polysilicon. Substantially all of its revenues are derived in the PRC. The Group’s long-lived assets and operations are substantially located in the PRC.

Revenues from sales transactions with customers A and B were 28% and 17% of the total revenues in the year ended December 31, 2007. No other customer contributed in excess of 10% of the total revenues.

### ***(u) Recent accounting pronouncements***

In September 2006 the FASB issued Statement No. 157, “*Fair Value Measurement*” (“SFAS 157”). SFAS 157 addresses standardizing the measurement of fair value for companies who are required to use a fair value measure for recognition or disclosure purposes. The FASB defines fair value as “the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.” SFAS 157 is effective for fiscal years beginning after November 15, 2007 and interim periods within those fiscal years. The Group does not expect a material effect on its financial statements on adoption of SFAS 157.

In February 2007, the FASB issued SFAS No. 159 “*The Fair Value Option for Financial Assets and Financial Liabilities, Including an amendment of SFAS 115*” (“SFAS 159”). SFAS 159 provides companies with the option to report selected financial assets and liabilities at fair value. SFAS 159 requires companies to provide additional information that will help investors and other users of financial statements to more easily understand the effect of the Group’s choice to use fair value on its earnings. It also requires entities to display the fair value of those assets and liabilities for which the Group has chosen to use fair value on the face of the balance sheet. SFAS 159 is effective for fiscal years beginning after November 15, 2007. The Group does not expect a material effect on its financial statements on adoption of SFAS 159.

## [Table of Contents](#)

In December 2007, the FASB issued SFAS No. 141R, “*Business Combination*” (“SFAS No. 141R”). The statement requires the acquiring entity in a business combination to recognize all (and only) the assets acquired and liabilities assumed in the transaction; establishes the acquisition-date fair value as the measurement objective for all assets acquired and liabilities assumed; and requires the acquirer to disclose to investors and other users all of the information they need to evaluate and understand the nature and financial effect of the business combination. SFAS No. 141R applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008.

In December 2007, the FASB issued SFAS No. 160, “*Noncontrolling Interests in Consolidated Financial Statements*” (“SFAS No. 160”) to improve the relevance, comparability, and transparency of financial information provided to investors by requiring all entities to report net income attributable to both the parent and noncontrolling (minority) interests in subsidiaries in the consolidated financial statements. Moreover, SFAS No. 160 eliminates the diversity that currently exists in accounting for transactions between an entity and noncontrolling interests by requiring they be treated as equity transaction. SFAS No. 160 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. The Group is currently evaluating whether the adoption of SFAS No. 160 will have a significant effect on its consolidated financial position, results of operations or cash flows.

In March 2008, the FASB issued SFAS No. 161, “*Disclosures About Derivative Instruments and Hedging Activities*”, an amendment of FASB Statement No. 133. The new standard requires enhanced disclosures to help investors better understand the effect of an entity’s derivative instruments and related hedging activities on its financial position, financial performance, and cash flows. Statement No. 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008, with early application encouraged. The Group will adopt SFAS No. 161 on January 1, 2009.

#### 4. Property, plant, and equipment, net

	December 31, 2006 (Successor)	December 31, 2007 (Successor)
Cost		
Buildings	\$ –	\$ 20,834
Plant and machinery	–	105,599
Furniture, fixtures and equipment	201	2,950
Motor vehicles	296	679
	497	130,062
Less: Accumulated depreciation	(6 )	(2,424 )
	491	127,638

Construction in progress	<u>18,418</u>	<u>14,093</u>
Property, plant and equipment, net	<u>\$ 18,909</u>	<u>\$ 141,731</u>

Depreciation expense for the period from March 7, 2006 to December 13, 2006 (predecessor), November 13, 2006 to December 31, 2006 (successor) and for the year ended December 31, 2007 (successor) were \$17, \$6 and \$2,366, respectively. No impairment loss was recognized in any of the periods presented.

F-12

[Table of Contents](#)

**5. Accrued expenses and other current liabilities**

Accrued expenses and other current liabilities are as follows:

	<b>December 31,</b> <b>2006</b> <b>(Successor)</b>	<b>December 31,</b> <b>2007</b> <b>(Successor)</b>
Accrued interest	\$ 68	\$ 393
Accrued employee benefits	113	1,416
Payables for purchase of property, plant and equipment	1,164	6,330
Value-added tax payable	–	5,846
Others	175	1,150
Total	<u>\$ 1,520</u>	<u>\$ 15,135</u>

**6. Bank borrowings**

Bank borrowings consists of the following:

	<b>December 31,</b> <b>2006</b> <b>(Successor)</b>	<b>December 31,</b> <b>2007</b> <b>(Successor)</b>
<b>Short-term bank borrowings</b>		
Term loans (maturity in 2008)	\$ –	\$ 8,260
<b>Long-term bank borrowings</b>		
Term loans (maturity by 2010)	31,468	72,418
Less: current portion	–	(13,768 )

Total long-term borrowings

\$ 31,468

\$ 58,650

Short-term bank borrowings were unsecured and were denominated in Renminbi. The weighted average interest rate was approximately 0% and 6.82% as of December 31, 2006 and 2007.

Long-term bank borrowings were unsecured, denominated in Renminbi and had a weighted average interest rate of approximately of 6.63% and 7.47% as of December 31, 2006 and 2007, respectively. According to the laws of the PRC, rates may be adjusted annually based on the interest rates determined by the People' s Bank of China.

As of December 31, 2007, bank borrowings of \$51,766 are guaranteed by Guotai Energy Investments Limited, an affiliated company of the Group; and \$14,869 and \$9,913 are guaranteed by Suyuan Group Limited and Xuzhou Heibun Group Company Limited (formerly known as Xuzhou Suyuan Group Limited), respectively, both of which are minority shareholders of JZPTD.

Bank borrowings are repayable as follows:

2008	\$22,028
2009	50,390
2010	<u>8,260</u>
	80,678
Current portion	<u>(22,028)</u>
Non-current portion	<u>\$58,650</u>

## [Table of Contents](#)

### 7. Other Borrowings

Other borrowings consist of the following:

	December 31	
	2006	2007
	(Successor)	(Successor)
Advances received from the PRC government	\$6,248	\$ –
Loan for acquisition of JSJST	12,298	–
Other loans	12,818	–
Total other borrowings	<u>\$31,364</u>	<u>\$ –</u>

The amount of advances received from the PRC government for JZPTD operations was unsecured, interest-free and was fully repaid on December 24, 2007.

The Group borrowed funds from Guotai Energy and Taicang Harbour Golden Concord Electric-Power Generation Co., Ltd. (“Taicang Electric”), for the purposes of acquisition of JSJST and to fund the construction of the production facilities, respectively. The outstanding loans payable to Guotai Energy and Taicang Electric as of December 31, 2006 were \$12,298 and \$12,818, respectively. As of December 31, 2007, the outstanding loans payable to Guotai Energy and Taicang Electric were \$0 and \$13,789, respectively. The Chairman of the Company is also a shareholder of Taicang Electric and accordingly the payable due as of December 31, 2007 was reclassified as a loan from an affiliated company. The loans were unsecured, carried interest of approximately 6.49% per annum and were repayable on demand. During the period March 7, 2006 to December 13, 2006 (predecessor), November 13, 2006 to December 31, 2006 (successor) and the year ended December 31, 2007, interest paid or payable to these companies amounted to \$155, \$75 and \$1,225, respectively.

### 8. Floating rate bonds

On September 10, 2007, the Group issued floating rate bonds in two tranches for a principal amount of \$60,000 to an independent third-party (the “Bond Holder”), of which \$20,000 is redeemable but not convertible (“Tranche A”) and the remaining \$40,000 was either convertible into the Company’s shares or redeemable (“Tranche B”). Tranche A and Tranche B were issued simultaneously and can only be transferred together in equal proportion and may ultimately be terminated by either redemption or conversion simultaneously, including upon an IPO event. Since Tranche A and Tranche B cannot exist independently, they have been considered as a single instrument (“the bonds”).

The floating rate bonds are secured by the Company’s 64% equity interest in JZPTD.

*Maturity Date*—The floating rate bonds will mature on September 10, 2009.

*Interest*—The Bond Holder is entitled to an interest at the three months Libor deposit rate plus 3% per annum in the first year and three months Libor deposit rate plus 5% per annum in the second year. Interest is payable in arrears each quarter.

*Covenants*—The following covenants are applicable for the period ending March 31, 2008 and quarterly thereafter unless otherwise indicated:

- (a) Consolidated cash flow from operations under U.S. GAAP shall be at least four times the finance costs;
- (b) For the period ending June 30, 2008 and each quarter thereafter, net operating cash flow of JZPTD shall be at least three times the total debt of JZPTD;
- (c) Consolidated debt shall not exceed annualized consolidated earnings before income tax, depreciation and amortization at the end of each quarterly period ending June 30, 2008 and thereafter; and

F-14



## Table of Contents

- (d) JZPTD debt to equity ratio shall not exceed 2.5 times for the quarterly period ending March 31, 2008 and 2.0 thereafter.

If the covenants are not met, the trustee at its sole discretion may, and if so instructed by the bondholders the floating rate bonds become immediately due and payable at 125% of the principal amount plus any accrued and unpaid interest.

*Conversion*—Tranche B is convertible into 2.732% of outstanding ordinary shares immediately prior to a qualifying IPO if a qualifying IPO occurs prior to October 1, 2008. Tranche B is convertible into 3% of outstanding ordinary shares if a qualifying IPO occurs after October 1, 2008, but prior to September 10, 2009.

*Strike Adjustment*—Upon exercise of the conversion feature of Tranche B, if the market capitalization of the Company at conversion is less than \$2,560,000, the Group must pay the Bond Holder 2.732% of the difference between \$2,560,000 and the market capitalization of the Company at conversion if prior to October 1, 2008 (3% if conversion occurs subsequent to October 1, 2008, but prior to September 10, 2009).

### *Redemption—*

- (a) In the event the Group is obligated to pay additional amounts related to withholding tax or other taxation amounts that would otherwise reduce the yield of Bond Holders, subject to agreement by the Bond Holder, the Group may redeem the bonds. If the Bond Holder decides not to have the Group redeem the bonds, the Group will no longer be obligated to gross up the payments to the Bond Holder;
- (b) The Group shall redeem the floating rate bonds that have not been converted at 100% plus accrued interest upon a qualifying IPO. Under the terms of the floating rate bonds, bondholders waive the right to redemption if they have not provided notice of redemption by January 31, 2008. The bondholders have not provided such notice of redemption and as a result the bonds will automatically convert upon a qualifying IPO.
- (c) The Group shall redeem the floating rate bonds at 125% of the outstanding principal amount of the floating rate bonds plus accrued interest at maturity on September 10, 2009 or upon disposal of the Group; and
- (d) The Bond Holder may cause the floating rate bonds to be redeemed at 125% of the outstanding principal amount of the bonds plus accrued interest in instances of default under the subscription agreement.

The \$60,000 principal of the floating rate bonds was recorded as debt at issuance and has been subsequently accreted to \$62,099 as of December 31, 2007. The bifurcated embedded strike adjustment and redemption puts and calls were not allocated a portion of the purchase price as the Group has determined there was no value to these features at issuance.

The fair value of the floating rate bonds was approximately \$61,786, as of December 31, 2007, which included the fair values of the conversion option of \$721 and other embedded derivatives of \$0, respectively. The fair value was determined by the Group with assistance from an unrelated valuation specialist.

The assumptions adopted for the contemporaneous valuation of the floating rate bonds as of December 31, 2007 under the Black-Scholes model are as follows:

- (1) *Risk Free Interest Rate*—3.29% was used by reference to the yield of a 1 year U.S. Treasury Bond;
- (2) *Volatility*—47.61% for the underlying share price has considered the historical price movements of comparable companies;
- (3) *Dividend Yield*—assumed to be 0% per annum;

- (4) The probability of the exercise of other call/put options including the strike adjustment are insignificant.

The issuance cost of the floating rate bonds of \$2,528 is reported as a deferred financing charge and is being amortized using the effective interest method to the maturity date of the floating rate bonds.

## 9. Capital structure

On November 13, 2006, GCL HK was incorporated with 10,000 authorized ordinary shares and one issued share of HK\$1.

In May 2007, the Company was incorporated with 1,000,000 authorized ordinary shares and one issued share of \$1. In June 2007, the Company approved a share split on a 100 to 1 basis for all outstanding shares resulting in an authorized share capital of 10,000,000 ordinary shares and issued share capital of 100 shares.

As described in Note 1, in August 2007, equity interest in GCL HK was exchanged for equal proportions of equity in the Company. As a result, the Company issued an additional 999,900 ordinary shares with \$0.01 par value.

In August 2007, 16,667 shares were repurchased, retired and redesignated as Series A redeemable convertible redeemable preferred shares (Note 10).

On February 21, 2008, the outstanding ordinary shares were split on the basis of 100 shares for every 1 share. On July 18, 2008, the outstanding ordinary shares were further split on the basis of 10 shares for every 1 share. These share splits resulted in 983,333,000 issued shares. The share splits have been retroactively adjusted in the consolidated balance sheets and the statements of changes in shareholders' equity. Basic and diluted earnings per share for all the periods presented have been retroactively adjusted to reflect the change in the number of shares resulting from the share splits.

## 10. Convertible redeemable preferred shares

On August 29, 2007, a shareholder transferred 16,667,000 ordinary shares of the Company to certain investors for a cash consideration of \$20,000. These shares were immediately redesignated as 16,667,000 Series A convertible redeemable preferred shares ("the preferred shares"). The preferred shares have been recognized at their initial fair value of \$20,000 with a per share value of \$1.20. The retirement of the ordinary shares and the excess of fair value of the preferred shares over ordinary shares has been charged to the accumulated deficit, as there are no restrictions of such charge under the laws of the Cayman Islands.

The preferences and privileges related to the preferred shares are as follows:

*Conversion*—The preferred shares are convertible into ordinary shares at any time at the option of the holder at a conversion ratio of one-to-one and will automatically convert upon a qualifying IPO. The fair value of the ordinary shares on August 29, 2007 was \$1.12 per share as determined by the Group with the assistance from an unrelated valuation specialist.

*Dividends*—The preferred shareholders participate in cash and non-cash dividends on a pro rata basis to all ordinary shares on an as-converted basis.

*Liquidation preference*—The preferred shares carry liquidation preference to receive, prior to any distribution to the holders of ordinary shares or any class of shares, an amount per share equal to 100% of the preferred shares issue price plus all accrued or declared but unpaid dividends (the "Preference Amount"). If the Group has insufficient assets, it is required to distribute its assets ratably to the preferred shareholders. The

## Table of Contents

preferred shareholders, after receiving their proportional amount are entitled to further participate in the distribution of the remaining assets of the Group ratably among all the holders of outstanding ordinary shares and preferred shares on an as-converted basis.

*Performance adjustment*—In the event the Group's audited consolidated net income under U.S. GAAP is lower than 95% of the 2008 profit target of \$150,000 (the "2008 Profit Target"), Happy Genius Holdings Ltd. ("HG"), the immediate holding company, is required transfer an additional number of shares to the holder so that the shareholding percentage of each preferred shareholder equals the product of (a) initial shareholding percentage and (b) the quotient of the 2008 Profit Target divided by the audited consolidated net income. To the extent that HG does not have sufficient ordinary shares to fulfill the performance adjustment, the Company is required make up for the difference by issuing additional ordinary shares to the preferred shareholders. In the event that, as a result of the performance adjustment, the shareholding percentage of the preferred shareholders combined exceeds 10% of total issued shares of the Company, the preferred shareholders will have the right to request the Company to redeem the outstanding preferred shares at 150% of the preferred shares issue price. If the Company does not have sufficient cash legally available to redeem the shares, HG shall purchase the shares.

### ***Put Options:***

- (a) In the event of a breach of covenants by HG or the Company, the preferred shareholders have the right to put their preferred shares at 100% of the preferred share issue price plus any accrued and unpaid dividends of the preferred shares either to the Company or to HG.
- (b) If the consolidated earnings before interest and income tax for the period from January 1, 2007 to March 31, 2008 is less than \$20,000; the preferred shareholders have a right to put the preferred shares for redemption at 150% of the preferred share issue price plus any accrued and unpaid dividends to the Company or to HG. If upon exercise of this put right by the preferred shareholders, the Company and HG do not have sufficient funds to redeem or purchase the shares, HG will pledge a number of ordinary shares to the preferred shareholders to make up the difference in price. If the ordinary shares so pledged are not redeemed or repurchased within a 12 month period, the preferred shareholders will become the owner of the ordinary shares and all obligations under the preferred share agreement will thereby be fulfilled.
- (c) If the Group does not effect a qualifying IPO by August 2010, the preferred shareholders have a right to put the preferred shares at 150% of the preferred shares issue price plus any accrued and unpaid dividends of the Series A Shares either to the Company or to HG. If upon exercise of this put right, the Company and HG do not have sufficient funds to redeem or purchase the shares, HG will pledge a number of ordinary shares to the preferred shareholders to make up the difference in price. If the ordinary shares are not redeemed or repurchased within a 12 month period, the preferred shareholders will become the owner of the pledged ordinary shares and all obligations under the preferred share agreement will thereby be fulfilled.

These put options are considered embedded derivatives but were not bifurcated because these are clearly and closely related to the host contract and the preferred shares have been classified in its entirety as mezzanine equity on the balance sheet.

The preferred shares were initially recorded at fair value consideration of \$20,000 and is being accreted, based on the effective interest method to the redemption amount (150%) over the period from the issuance date to the first redemption date, which is the third anniversary of the issuance date.

## **11. Income taxes**

The Company is tax exempt under the laws of the Cayman Islands. GCL HK is subject to Hong Kong profit tax rate of 17.5% on profits earned in Hong Kong. JZPTD is subject to PRC Enterprise Income Tax ("EIT"). During the reporting periods, the Group's EIT rate is 33% less a 3% exemption of local income tax.

## [Table of Contents](#)

JZPTD is a foreign invested enterprise in PRC. It is entitled to full tax exemption for two years and 50% reduction in the following three years. The exemption commences in the first profitable year after offsetting all unexpired tax losses carried forward. As there were less than six months operations in 2007, JZPTD elected to defer the commencement of the tax exemption period to 2008.

In 2007, JZPTD purchased plant and machinery manufactured in the PRC. In accordance with the PRC tax regulations, JZPTD received 40% of the purchased amount as an investment tax credit resulting in a tax deduction of \$3,518.

Under the newly promulgated PRC income tax laws which are effective January 1, 2008, the effective EIT rate will be 25%.

	March 7, 2006 to December 13, 2006 (Predecessor)	November 13, 2006 to December 31, 2006 (Successor)	For the year ended December 31, 2007 (Successor)
(Loss) income before income tax:			
PRC	\$ (3,449 )	\$ (2 )	\$ 18,815
Other jurisdiction	—	(328 )	(11,948 )
	<u>\$ (3,449 )</u>	<u>\$ (330 )</u>	<u>\$ 6,867</u>
Income tax expense:			
PRC current tax	\$ —	\$ —	\$ 4,286
Deferred tax benefit	—	—	(1,163 )
	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 3,123</u>
Deferred tax benefit:			
Pre-operating costs	\$ —	\$ —	\$ (603 )
Land use right	—	—	(36 )
Property, plant and equipment, net	—	—	(524 )
	<u>\$ —</u>	<u>\$ —</u>	<u>\$ (1,163 )</u>

Reconciliation between income tax benefit computed by applying the EIT rate to (loss) income before tax and minority interest and the actual tax expense:

	March 7, 2006 to December 13, 2006 (Predecessor)	December 14, 2006 to December 31, 2006 (Successor)	For the year ended December 31, 2007 (Successor)
(Loss) income before income tax and minority interest	\$ (3,449 )	\$ (330 )	\$ 6,867
PRC EIT rate	33 %	33 %	33 %
Expected income tax (benefit) expenses	(1,138 )	(109 )	2,266
Non-tax deductible expenses	–	–	1,431
Non-taxable income	–	–	(159 )
Increase in valuation allowance	1,035	99	555
Effect of tax exemption	103	10	(571 )
Effect of change in tax rate	–	–	382
Effect of tax benefits on PRC local machinery purchase	–	–	(3,518 )
Effect of income tax rate differences and tax exempt jurisdictions	–	–	2,737
Income tax expense	<u>\$ –</u>	<u>\$ –</u>	<u>\$ 3,123</u>

## [Table of Contents](#)

The deferred income tax assets and liabilities as of December 31, 2007, consisted of the following:

	<u>December 31,</u> <u>2006</u> <u>(Successor)</u>	<u>December 31,</u> <u>2007</u> <u>(Successor)</u>
Deferred tax assets		
Tax loss carryforwards	\$ 1,153	\$ –
Pre-operating costs	–	1,817
Others	–	514
Valuation allowance	<u>(1,153 )</u>	<u>(1,798 )</u>
Total deferred tax assets	<u>\$ –</u>	<u>533</u>
Deferred tax liabilities		
Land use right	\$ (397 )	\$ (174 )
Property, plant and equipment, net	<u>(1,557 )</u>	<u>(214 )</u>
Total deferred tax liabilities	<u>(1,954 )</u>	<u>(388 )</u>
Non-current deferred tax (liabilities) assets	<u>\$ (1,954 )</u>	<u>\$ 145</u>

Valuation allowance has been recorded to the extent deferred tax assets are expected to expire in JZPTD' s tax exemption period.

In July 2006, the Financial Accounting Standards Board (FASB) issued FASB Interpretation No. 48, “*Accounting for Uncertainty in Income Taxes-an interpretation of FASB Statement No. 109*” (FIN 48), which clarifies the accounting and disclosure for uncertainty in tax positions, as defined in that statement. FIN 48 prescribes a more-likely-than-not threshold for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. This interpretation also provides guidance on de-recognition of income tax assets and liabilities, classification of current and deferred income tax assets and liabilities, accounting for interest and penalties associated with tax positions, accounting for income taxes in interim periods in income tax disclosures.

The Group adopted the provisions of FIN 48 effective January 1, 2007. The Group has made its assessment for each tax position and determined there are no unrecognized tax benefits associated with its tax positions. For the year ended December 31, 2007, the adoption of FIN 48 did not have a material impact on the Group's consolidated financial statements and its policy for classification of interest and penalties related to uncertain tax positions as a component of loss before income tax. There was no interest and penalty recorded in the balance sheet and statement of operations was \$0 for the year ended December 31, 2007.

The tax position for 2006 and 2007 remains subject to examination by the Hong Kong and PRC tax authorities.

## **12. Share-based compensation**

On August 15, 2007, the directors of the Company approved a share option plan ("Plan") to grant options to its employees and directors to purchase ordinary shares of the Company subject to vesting requirements. The total number of ordinary shares which may be issued upon exercise of all options shall not exceed 5% of the total number of issued ordinary shares as of August 15, 2007. The options have an exercise price of \$0.5 per share.

The options can only be exercised after either (i) a public listing of the Company; or (ii) certain events constitute a change in control of the Company prior to public listing of the Company and the management has elected to accelerate the exercisability of the options. If either of the foregoing conditions are not satisfied, the options will lapse.

## [Table of Contents](#)

The exercise period may not commence earlier than the first day immediately following the expiry of six months after the public listing of the Company and may not end on a date later than the expiry of 10 years from the date of grant. In any event, the options, in the absence of acceleration by the board of directors prior to the listing date, will vest over four-year period, with 25% of the options vesting upon each of six months, 18 months, 30 months and 42 months following the public listing.

On August 15, 2007, the Company granted two options to one of the Company's directors and one employee to purchase 2,000 ordinary shares of the Company. The fair value of the options at the grant date was \$2 and determined by a retrospective valuation using the binomial options pricing model with assistance from an unrelated valuation specialist. No compensation cost related to the options grant has been recognized in the year ended December 31, 2007, as the vesting period is based on occurrence of events stated above. Subsequent to the balance sheet date, the granted options were cancelled (Note 16).

The assumptions used in determining the fair value of the options were as follows:

(1)	Risk Free Interest Rate	4.85%
(2)	Volatility	43.9%
(3)	Dividend Yield	0%
(4)	Sub-optimal factor	1.5

Expected volatility is estimated based on daily stock prices of comparable listed companies. Risk free interest rate was referenced to the yield of a ten year U.S. Treasury Bond and annual dividend was assumed to be zero. The sub-optimal factor indicates the correlation between the employees exercise behaviour and the underlying share price. It is expected that the employees may exercise the options when the share price is 1.5 times the exercise price.

### 13. Commitments

#### *Capital commitments*

As of December 31, 2007, the Group has capital commitments totaling \$60,109 related to construction of its production facilities and purchase of plant and machinery.

#### *Lease commitments*

The Group leases certain office premises and buildings under non-cancelable leases. Rental expenses under operating lease for the period from March 7, 2006 to December 13, 2006 (predecessor), November 13, 2006 to December 31, 2006 (successor), and for the year ended December 31, 2007 (successor) were \$0, \$0 and \$110, respectively.

As of December 31, 2007, future minimum lease payments under non-cancelable operating leases agreements were as follows:

Within 1 year	\$ 170
Between 1 and 2 years	110
Total	<u>\$280</u>





## 14. Related parties transactions

### *(a) Transactions with an affiliated companies*

The Group made a short-term advance in December 2006 to Shanghai Creative Energy Company Limited (“Shanghai Creative”), a company whose principal shareholder is also a Director of JZPTD. As of December 31, 2006, the outstanding amount was \$16,783, which was fully repaid in January 2007.

The Group also paid handling fees to Shanghai Creative of \$0, \$0 and \$352 for the periods from March 7, 2006 to December 13, 2006 (predecessor), November 13, 2006 to December 31, 2006 (successor) and the year ended December 31, 2007 (successor), respectively, for acquisition of property, plant and equipment on behalf of the JZPTD. As of December 31, 2006 and 2007, outstanding amounts of \$36,866 and \$4,148 deposited with Shanghai Creative were included in deposits for purchase of plant and equipment.

During the period from March 7, 2006 to December 13, 2006 (predecessor), the Group paid consultancy fees to Shanghai Creative of \$1,455. Under the consultancy agreement between the Company and Shanghai Creative, Shanghai Creative provided the Group with assistance in the procurement of polysilicon production technology, including the import and sourcing of equipment and technical support by overseas experts.

Shanghai Creative paid certain administrative expenses on behalf of the Group. The outstanding balances as of December 31, 2006 and 2007 were \$0 and \$827, respectively.

During the year ended December 31, 2007, the Group made a short-term advance to Xuzhou Economic Development Zone Electricity Company Limited, a company controlled by the Chairman. As of December 31, 2007, the outstanding amount was \$138.

### *(b) Loans and other amounts due to affiliated companies*

Golden Concord Holdings (Cayman) Limited, whose principal shareholder is Mr. Zhu Gongshan, has paid certain administrative expenses on behalf of the Group, including other corporate expenses of \$465, payroll expenses of \$156, travel expenses of \$146 and other expenses of \$88. As of December 31, 2007, there was no outstanding reimbursement balance due to Golden Concord Holdings (Cayman) Limited for such expense payments.

The Group paid management fees to Golden Concord (Hong Kong) Holdings Limited, an affiliate company controlled by the Chairman, amounting to \$0, \$0 and \$1,383 for the periods from March 7, 2006 to December 13, 2006 (predecessor), November 13, 2006 to December 31, 2006 (successor) and for the year ended December 31, 2007 (successor), respectively. The Golden Concord Group provides management services and office facilities in Hong Kong for the Company. On a monthly basis, the Golden Concord Group charges the Company a management fee of an agreed allocation percentage to share the expenses incurred by the Golden Concord Group's offices in Hong Kong. Golden Concord (Hong Kong) Holdings Limited also paid certain administrative expenses on behalf of the Group. The outstanding balances as of December 31, 2006 and 2007 were \$0 and \$165, respectively.

During the year ended December 31, 2007, the Group incurred rental expenses of \$110 to Shanghai Yueyuan Machinery Company Limited, an affiliate company controlled by the Chairman, and the outstanding balance as of December 31, 2007 is \$110.

The Group borrowed funds from Taicang Electric, a company which our Chairman is a principal shareholder, to fund the construction of the production facilities. As of December 31, 2007, the outstanding loans payable to Taicang Electric of \$13,789 has been reclassified from other borrowings (see note 7).

In June 2007, the Group entered into a share purchase agreement with two minority shareholders of JZPTD to dispose the interest in JSJST at a consideration of \$12,942. JSJST was intended to produce monosilicon while JZPTD' s intended business is to produce polysilicon. Both types of silicon are used to manufacture solar panels.

F-21

---

## [Table of Contents](#)

Management believed that profit margin of monosilicon production was low as compared to polysilicon and thus disposed of JSJST. At the time of disposal, JSJST was a development stage company with no operations.

JZPTD also contracted with JSJST to supply to JSJST, subject to agreement on definitive terms and conditions, a minimum quantity of polysilicon from 2007 to 2009. The purchase price will be determined on a quarterly basis and be equal to 97% of the average market price for the comparable product during the preceding quarter. In the year ended December 31, 2007, sales to JSJST amounted to \$6,901.

In the year ended December 31, 2007, sales by JZPTD to one of its minority shareholder amounted to \$569. As at December 31, 2007, JZPTD received a sales advance of \$110 from the minority shareholder. The advance has been included under accrued expenses and other current liabilities.

In September 2007, amounts due for acquisition of JZPTD of \$13,816 and \$2,558 were paid to Guotai Energy Investments Limited (“Guotai Energy”) and Beijing Zhongneng Renewable Energy Investments Limited, respectively, companies majority owned by our Chairman.

In September 2007, JZPTD repaid the amount payable of \$12,298 to Guotai for the purchase of JSJST.

### **15. Restricted assets**

Relevant PRC laws and regulations permit payments of dividends by the Company’s subsidiaries only out of their retained earnings, if any, as determined by PRC accounting standards and regulations. Approvals from relevant governmental authorities are required for capital reduction or payments out of capital. In addition, the relevant regulations of PRC require annual appropriations of 10% of net after-tax income to be set aside to statutory reserves prior to payment of any dividends. During the year ended December 31, 2007, the Group made total appropriations of \$1,852 to the statutory reserve.

As a result of these restrictions and the pledge of JZPTD for the floating rate bonds, JZPTD is restricted in its ability to transfer a portion of its net assets to the Company either in the form of dividends, loans or advances.

As of December 31, 2006 and 2007, the restricted portion in aggregate amounted to approximately \$16,472 and \$62,107 respectively.

The Group also had restricted cash of \$13,802 as at December 31, 2007.

### **16. Subsequent events**

- (a) On February 25, 2008, the Company repurchased 5,000,000 ordinary shares for a total consideration of \$7,000. The repurchased shares have been cancelled.
- (b) Pursuant to the Company’s resolution dated on February 29, 2008, the two share options granted by the Company on August 15, 2007 have been cancelled (Note 12). On the same date, the Company granted additional 5,000,000 share options to its directors, consultants and employees with exercise price of \$0.5 per share.

The options can only be exercised after either (i) a public listing of the Company; or (ii) certain events constitute a change in control of the Company prior to public listing of the Company and the management has elected to accelerate the exercisability of the options. If either of the foregoing conditions are not satisfied, the options will lapse.

The options granted are exercisable following the expiry of one year after the public listing of the Company and may not end on a date later than the expiry of 10 years from the date of grant. The options vest 25% each year over a period of four years.

The fair value of the options as of grant date is in the process of determination by the Company.



## GCL SILICON TECHNOLOGY HOLDINGS INC.

## SCHEDULE 1

These financial statements have been prepared in conformity with accounting principles generally accepted in the United States.

## BALANCE SHEET

(In thousands of U.S. dollars, except share and per share data)

	December 31, 2006 (Successor)	December 31, 2007 (Successor)
CURRENT ASSETS		
Cash and cash equivalents	\$ 2	\$ -
Restricted cash	-	2,901
Prepaid expenses and other current assets	-	472
	2	3,373
Investments in subsidiaries, net	18,164	73,237
Deferred financing costs	-	2,140
TOTAL ASSETS	\$ 18,166	\$ 78,750
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES		
Accrued expenses and other current liabilities	\$ 4	\$ 313
Amounts due for acquisition of JZPTD	16,374	-

Total current liabilities	16,378	313
Floating rate bonds	–	62,099
	16,378	62,412
Series A convertible redeemable preferred shares (\$0.00001 par value; no shares authorized and issued as of December 31, 2006 and 50,000,000 shares authorized and 16,667,000 issued and outstanding as of December 31, 2007)	–	21,111
SHAREHOLDERS' EQUITY (DEFICIT)		
Ordinary shares (\$0.00001 par value; 1,000,000,000 shares authorized and 1,000,000,000 issued as of December 31, 2006 and 100,000,000,000 and 983,333,000 shares authorized and issued as of December 31, 2007)	10	10
Additional paid-in capital	1,990	15,009
Accumulated deficit	(212 )	(23,119 )
Accumulated other comprehensive income	–	3,327
Total shareholders' equity (deficit)	1,788	(4,773 )
TOTAL LIABILITIES, CONVERTIBLE REDEEMABLE PREFERRED SHARES AND SHAREHOLDERS' EQUITY	\$ 18,166	\$ 78,750

## GCL SILICON TECHNOLOGY HOLDINGS INC.

**SCHEDULE 1**  
**STATEMENT OF OPERATIONS**  
**(In thousands of U.S. dollars, except share data)**

	From November 13, 2006 (date of inception) to December 31, 2006 <u>(Successor)</u>	For the year ended December 31, 2007 <u>(Successor)</u>
REVENUE	\$ –	\$ –
OPERATING EXPENSES		
General and administrative	<u>(3 )</u>	<u>(919 )</u>
Total operating expenses	<u>(3 )</u>	<u>(919 )</u>
OPERATING LOSS	(3 )	(919 )
NON-OPERATING EXPENSE		
Interest income	1	25
Interest expenses	<u>–</u>	<u>(3,167 )</u>
Total non-operating expenses	<u>1</u>	<u>(3,142 )</u>
NET LOSS BEFORE SHARE OF RESULTS OF SUBSIDIARIES	(2 )	(4,061 )
Share of results of subsidiaries	<u>(210 )</u>	<u>2,265</u>



## NET LOSS

(212 ) (1,796 )

Deemed distribution on convertible redeemable preferred shares—accretion of redemption  
premium

— (1,111 )

## NET LOSS ATTRIBUTABLE TO HOLDERS OF ORDINARY SHARES

\$ (212 ) \$ (2,907 )

F-24

**GCL SILICON TECHNOLOGY HOLDINGS INC.**

**SCHEDULE 1**  
**STATEMENT OF CHANGES IN SHAREHOLDERS' EQUITY**  
(In thousands of U.S. dollars, except share data)

	<u>Ordinary Shares</u>		<u>Additional</u>	<u>Accumulated</u>	<u>Other</u>	<u>Accumulated</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>	<u>Paid-in</u>	<u>Deficit</u>	<u>Comprehensive</u>	<u>Shareholders'</u>	<u>Total</u>
			<u>Capital</u>		<u>Income</u>	<u>Equity</u>	<u>Comprehensive</u>
							<u>(Loss)/Income</u>
Shares at inception	1,000,000,000	\$ 10	\$(10 )	\$-	\$ -	\$-	\$
Contributions from shareholders	-	-	2,000	-	-	2,000	
Net loss	-	-	-	(212 )	-	(212 )	(212 )
BALANCE AT DECEMBER 31, 2006	<u>1,000,000,000</u>	<u>10</u>	<u>1,990</u>	<u>(212 )</u>	<u>-</u>	<u>1,788</u>	<u>(212 )</u>
Foreign currency translation adjustment from a subsidiary	-	-	-	-	3,327	3,327	3,327
Contributions from shareholders	-	-	13,019	-	-	13,019	
Ordinary shares redesignated as Series A convertible redeemable preferred shares	(16,667,000 )	-	-	(20,000 )	-	(20,000 )	
Deemed distribution on Series A convertible redeemable preferred shares	-	-	-	(1,111 )	-	(1,111 )	
Net loss	-	-	-	(1,796 )	-	(1,796 )	(1,796 )
BALANCE AT DECEMBER 31, 2007	<u>983,333,000</u>	<u>\$ 10</u>	<u>\$15,009</u>	<u>\$(23,119 )</u>	<u>\$ 3,327</u>	<u>\$(4,773 )</u>	<u>\$ 1,531</u>



## GCL SILICON TECHNOLOGY HOLDINGS INC.

**SCHEDULE 1**  
**STATEMENT OF CASH FLOWS**  
(In thousands of U.S. dollars)

	From November 13, 2006 (date of inception) to December 31, 2006 <u>(Successor)</u>	For the year ended December 31, 2007 <u>(Successor)</u>
<b>OPERATING ACTIVITIES</b>		
Net loss	\$ (212 )	\$ (1,796 )
Adjustments to reconcile net loss to net cash provided by operating activities:		
Amortization of discount and deferred financing costs on floating rate bonds	—	2,487
Share of results of subsidiaries	210	(2,265 )
Changes in operating assets and liabilities:		
Accrued expenses and other current liabilities	4	309
Prepaid expenses and other current assets	—	(472 )
Net cash provided by (used in) operating activities	<u>2</u>	<u>(1,737 )</u>
<b>INVESTING ACTIVITIES</b>		
Capital contribution to JZPTD	(2,000 )	—
Capital contributed to a subsidiary	—	(49,481 )

Acquisition of JZPTD	–	(16,374 )
Increase in restricted cash	–	(2,901 )
Cash used in investing activities	–	(68,756 )
FINANCING ACTIVITIES		
Proceeds from issuance of floating rate bonds	–	60,000
Contribution from shareholders	2,000	13,019
Financing costs incurred for floating rate bonds	–	(2,528 )
Net cash provided in financing activities	2,000	70,491
NET INCREASE (DECREASE) IN CASH AND		
CASH EQUIVALENTS	2	(2 )
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	–	2
CASH AND CASH EQUIVALENTS AT END OF PERIOD	<u>\$ 2</u>	<u>\$ –</u>
NON-CASH INVESTING ACTIVITIES		
Acquisition of JZPTD	<u>\$ 16,374</u>	<u>–</u>

**GCL SILICON TECHNOLOGY HOLDINGS INC.**

**SCHEDULE 1  
NOTE TO SCHEDULE 1**

1. Schedule 1 has been provided pursuant to the requirements of Rule 12-04(a) and 4-08(e)(3) of Regulation S-X, which require condensed financial information as to financial position, changes in financial position and results and operations of a parent company as of the same dates and for the same periods for which audited consolidated financial statements have been presented when the restricted net assets of the consolidated and unconsolidated subsidiaries together exceed 25 percent of consolidated net assets as of end of the most recently completed fiscal year. As of December 31, 2006 and 2007, \$16,472 and \$62,107, respectively of the restricted capital and reserves are not available for distribution, and as such, the condensed financial information of the Company has been presented for the period from November 13, 2006 (date of inception) to December 31, 2006 and the year ended December 31, 2007.

**2. Basis of preparation**

The condensed financial information has been prepared using the same accounting policies as set out in the Group' s consolidated financial statements except that the parent company has used equity method to account for its investment in JZPTD and its subsidiary JSJST.

**GCL SILICON TECHNOLOGY HOLDINGS INC.**  
**UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS**  
**(In thousands of U.S. dollars, except share and per share data)**

	December 31, 2007	June 30, 2008	June 30, 2008 Pro Forma (Note 16)
ASSETS			
CURRENT ASSETS			
Cash and cash equivalents	\$40,067	\$151,661	\$132,439
Restricted cash	13,802	54,486	53,708
Accounts receivable	6,333	287	
Inventories	916	6,556	
Prepaid expenses and other current assets	2,468	8,548	
Amount due from an affiliated company	138	—	
Total current assets	63,724	221,538	201,538
Property, plant and equipment, net	141,731	306,975	
Deposits for purchase of plant and equipment	16,677	131,381	
Deposit for purchase of land use right	390	2,449	
Land use right	8,163	7,940	

Deferred financing costs	2,140	1,497	–
Deferred tax assets	145	12	
TOTAL ASSETS	<u>\$ 232,970</u>	<u>\$671,792</u>	<u>\$650,295</u>
LIABILITIES			
CURRENT LIABILITIES			
Accounts payable	\$ 1,608	3,345	
Accrued expenses and other current liabilities	15,135	33,680	
Advances from customers	2,927	36,590	
Bank borrowings	22,028	95,847	
Other deferred income	–	478	
Income taxes payable	4,359	–	
Loans from and other amounts due to affiliated companies	14,891	17,471	
Distribution payable	–	–	240,625
Total current liabilities	60,948	187,411	428,036
Floating rate bonds	62,099	65,789	–
Convertible bonds	–	–	446,875
Bank borrowings	58,650	110,219	
Advance from customers under long-term sales arrangements	–	113,743	



Deferred revenues	–	23,495	
Other deferred income	–	6,458	
TOTAL LIABILITIES	181,697	507,115	1,128,826
Commitments and contingencies (note 14)			
MINORITY INTEREST	34,935	81,150	81,150
Series A convertible redeemable preferred shares (\$0.00001 par value; 50,000,000 shares authorized and 16,667,000 shares issued and outstanding as of December 31, 2007 and June 30, 2008; no shares outstanding on a pro-forma basis as of June 30, 2008)	21,111	22,778	–
SHAREHOLDERS' EQUITY (DEFICIT)			
Ordinary shares (\$0.00001 par value; 100,000,000,000 shares authorized and 983,333,000 shares issued as of December 31, 2007; 100,000,000,000 shares authorized and 978,333,000 shares issued as of June 30, 2008; 1,022,183,400 shares outstanding on a pro-forma basis as of June 30, 2008)	10	10	10
Additional paid-in capital	15,009	8,009	76,576
(Accumulated deficit) retained earnings	(23,119 )	43,287	(645,710 )
Accumulated other comprehensive income	3,327	9,443	9,443
Total shareholders' (deficit) equity	(4,773 )	60,749	(559,681 )
TOTAL LIABILITIES, MINORITY INTEREST, CONVERTIBLE REDEEMABLE PREFERRED SHARES AND SHAREHOLDERS' EQUITY	\$232,970	\$671,792	\$650,295

See notes to the unaudited condensed consolidated financial statements.

## GCL SILICON TECHNOLOGY HOLDINGS INC.

## UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands of U.S. dollars, except share and per share data)

	For the six months ended	
	June 30,	
	2007	2008
REVENUES		
Third party sales	\$—	\$153,690
Related party sales		19,917
Total revenues	—	173,607
Cost of revenues	—	(48,730 )
GROSS PROFIT	—	124,877
OPERATING EXPENSES		
General and administrative	(8,978 )	(6,640 )
OPERATING (LOSS) INCOME	(8,978 )	118,237
NON-OPERATING (EXPENSES) INCOME		
Interest income	109	582
Amortization of other deferred income	—	232
Interest expenses	(1,482 )	(7,042 )
Other non-operating income (expenses)	1	(747 )
Gain on disposal of JSJST	566	—

Total non-operating expenses	(806 )	(6,975 )
(LOSS) INCOME BEFORE INCOME TAX AND MINORITY INTEREST	(9,784 )	111,262
Income tax credit (expenses)	2	(297 )
(LOSS) INCOME BEFORE MINORITY INTERESTS	(9,782 )	110,965
Minority interest	1,336	(42,892 )
NET (LOSS) INCOME	(8,446 )	68,073
Deemed distribution on convertible redeemable preferred shares—accretion of redemption premium	—	(1,667 )
NET (LOSS) INCOME ATTRIBUTABLE TO HOLDERS OF ORDINARY SHARES	<u>\$ (8,446)</u>	<u>\$ 66,406</u>
(LOSS) EARNINGS PER SHARE:		
Basic—ordinary share	\$(0.0084 )	\$0.0666
Basic—convertible redeemable preferred share	—	\$0.1667
Diluted—ordinary share	<u>\$(0.0084 )</u>	<u>\$0.0665</u>
WEIGHTED AVERAGE SHARES USED IN (LOSS) EARNINGS PER SHARE CALCULATION		
Basic—ordinary share	1,000,000,000	979,843,989
Basic—convertible redeemable preferred share	—	16,667,000
Diluted—ordinary share	<u>1,000,000,000</u>	<u>981,436,130</u>
PRO FORMA (LOSS) EARNINGS PER ORDINARY SHARE		
Basic		<u>\$[ ]</u>

Diluted

\$[ ]

WEIGHTED AVERAGE SHARES USED IN PRO  
FORMA (LOSS) EARNING PER ORDINARY SHARE

Basic

\$[ ]

Diluted

\$[ ]

See notes to the unaudited condensed consolidated financial statements.

F-29

**GCL SILICON TECHNOLOGY HOLDINGS INC.**

**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**

**(In thousands of U.S. dollars, except share and per share data)**

	<u>Ordinary Shares</u>		<u>Additional Paid-in Capital</u>	<u>(Accumulated Deficit) Retained Earnings</u>	<u>Accumulated Other Comprehensive Income</u>	<u>Total Shareholders' Equity</u>	<u>Total Comprehensive Income (Loss)</u>
	<u>Shares</u>	<u>Amount</u>					
BALANCE AT JANUARY 1, 2007	1,000,000,000	\$ 10	\$1,990	\$(212 )	\$ –	\$ 1,788	
Foreign currency translation adjustment	–	–	–	–	735	735	735
Contributions from shareholders	–	–	13,009	–	–	13,009	
Net loss	–	–	–	(8,446 )	–	(8,446 )	(8,446 )
BALANCE AT JUNE 30, 2007	<u>1,000,000,000</u>	<u>\$ 10</u>	<u>\$14,999</u>	<u>\$(8,658 )</u>	<u>\$ 735</u>	<u>\$ 7,086</u>	<u>\$(7,711 )</u>
BALANCE AT JANUARY 1, 2008	983,333,000	\$ 10	\$15,009	\$(23,119 )	\$ 3,327	\$(4,773 )	
Foreign currency translation adjustment	–	–	–	–	6,116	6,116	6,116
Repurchase of shares	(5,000,000 )	–	(7,000 )	–	–	(7,000 )	
Deemed distribution on Series A convertible redeemable preferred shares	–	–	–	(1,667 )	–	(1,667 )	
Net income	–	–	–	68,073	–	68,073	68,073
BALANCE AT JUNE 30, 2008	<u>978,333,000</u>	<u>\$ 10</u>	<u>\$8,009</u>	<u>\$43,287</u>	<u>\$ 9,443</u>	<u>\$ 60,749</u>	<u>\$ 74,189</u>

See notes to the unaudited condensed consolidated financial statements.



**GCL SILICON TECHNOLOGY HOLDINGS INC.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(In thousands of U.S. dollars)**

	<b>Six Months Ended June 30</b>	
	<b>2007</b>	<b>2008</b>
OPERATING ACTIVITIES		
Net (loss) income	\$ (8,446 )	\$ 68,073
Adjustments to reconcile net (loss) income to net cash provided by operating activities:		
Land use right expense	127	83
Depreciation of property, plant and equipment	52	4,626
Amortization of discount and deferred financing costs on floating rate bonds	—	4,371
Amortization of other deferred income	—	(232 )
Gain on disposal of JSJST	(566 )	—
Minority interest	(1,336 )	42,892
Deferred taxes	(2 )	138
Changes in operating assets and liabilities:		
Decrease in accounts receivable	—	6,419
Increase in inventories	—	(5,586 )
Increase in prepaid expenses and other current assets	(599 )	(5,319 )

Increase in accounts payable	–	1,642
Increase (decrease) in accrued expenses and other current liabilities	1,740	(5,381 )
Increase in advances from customers	–	147,233
Increase in deferred revenues	–	23,495
Decrease in income tax payables	–	(4,511 )
Increase (decrease) in amounts due to affiliated companies	3,349	(8 )
Net cash (used in) provided by operating activities	<u>(5,681 )</u>	<u>277,935</u>

#### INVESTING ACTIVITIES

Purchase of property, plant and equipment	(35,158)	(119,259)
Deposits for purchase of plant and equipment	(14,044)	(130,642)
Deposit for purchase of land use right	–	(2,059 )
Increase in restricted cash	–	(40,041 )
Proceeds from government subsidy	–	6,890
Purchase of land use right	(84 )	–
Disposal of land use right	–	595
Disposal of JSJST (net of cash equivalents disposed of \$908)	12,034	–
Repayment received from an affiliated company	<u>17,925</u>	<u>138</u>



Net cash used in investing activities	(19,327)	(284,378)
<b>FINANCING ACTIVITIES</b>		
Proceeds from bank borrowings	38,906	130,837
Repayment of bank borrowings	–	(10,205 )
Repayment of other borrowings	(12,557)	–
Advances from affiliated companies	–	16,312
Repayment of loans from affiliated companies	–	(14,269 )
Contributions from shareholders	13,009	–
Repurchase of shares	–	(7,000 )
Cash contributed to a subsidiary by minority shareholders	3,565	–
Net cash provided by financing activities	42,923	115,675
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>	17,915	109,232
<b>CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD</b>	5,033	40,067
Effect of foreign exchange on cash and cash equivalents	134	2,362
<b>CASH AND CASH EQUIVALENTS AT END OF PERIOD</b>	<u>\$23,082</u>	<u>\$151,661</u>
<b>SUPPLEMENT DISCLOSURES OF CASH FLOWS</b>		
Interest paid (net of interest capitalized)	\$1,482	\$2,146

Income tax paid		
-----------------	--	--

	<u>-</u>	
--	----------	--

		<u>4,670</u>
--	--	--------------

NON-CASH INVESTING ACTIVITIES

Purchase of property, plant and equipment		
---	--	--

	<u>\$8,729</u>	
--	----------------	--

		<u>\$21,432</u>
--	--	-----------------

See notes to the condensed unaudited consolidated financial statements.

F-31

**GCL SILICON TECHNOLOGY HOLDINGS INC.**

**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**(In thousands of U.S. dollars, except share and per share data)**

**1. Basis of Preparation**

The accompanying unaudited condensed consolidated financial statements include the financial information of GCL Silicon Technology Holdings Inc. (the “Company”), its subsidiaries and its variable interest entity (“VIE”) Taixing Zhongneng Far East Polysilicon Technology Development Co., Ltd. (“Taixing”), (collectively, the “Group”). Taixing, a development stage enterprise, was incorporated in the People’s Republic of China (“PRC”) on June 12, 2008 by the Company and an independent third party. Although the Company owns a majority of the equity ownership of Taixing, the voting rights are disproportionately lower than its share of residual return in Taixing. Taixing will produce trichlorosilane, a raw material for producing polysilicon, exclusively to the Company. As a result, the Company is determined to be the primary beneficiary of Taixing and has consolidated Taixing since its establishment.

The unaudited condensed consolidated financial statements have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission and the accounting principles generally accepted in the United States of America for interim financial reporting. The results of operations for the six months ended June 30, 2007 and 2008 are not necessarily indicative of the results for the full year.

The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the Group’s audited consolidated financial statements for the fiscal years ended December 31, 2006 and 2007. In the opinion of the management, the accompanying unaudited condensed consolidated financial statements reflect all adjustments (consisting only of normal recurring adjustments), which are necessary for a fair representation of financial results for the interim periods presented.

**2. Summary of significant accounting policies**

***(a) Revenue recognition***

In the period ended June 30, 2008, the Group entered into supply arrangements for the sales of polysilicon and wafers. These contracts provide for supply of specified volumes and pre-set pricing that decreases over the terms of the arrangements. Revenues under long-term arrangements have been recognized in the statement of operations using the weighted average price over the contractual term. Revenues relating to future price decreases under these arrangements have been classified as a liability on the balance sheet and reported as deferred revenues.

***(b) Other deferred income***

Other deferred income represents non-refundable cash subsidy received by Jiangsu Zhongneng Polysilicon Technology Development Co. Ltd. (“JZPTD”) from the local PRC government. The subsidy was received as compensation for interest costs incurred in the construction of the manufacturing facility. The subsidy is allocated to income over the useful lives of plant and equipment.

***(c) Earnings (loss) per share***

Basic earnings (loss) per share is computed by dividing net income (loss) attributable to ordinary shareholders by the weighted average number of ordinary shares outstanding during the period using the two-class method. The Group has determined that its convertible redeemable preferred shares participate in undistributed earnings on the same basis as the ordinary shares. Accordingly, the Group has used the two-class method of computing earnings per share. Under this method, net income applicable to holders of ordinary shares is allocated on a pro rata basis to the ordinary and convertible redeemable preferred shares to the extent that each

class may share in income for the period had it been distributed. Losses are not allocated to the participating securities. Diluted earnings per share is computed using the more dilutive of (a) the two-class method and (b) the if-converted method.

***(d) Derivative financial instruments***

The Company has entered into derivative financial instruments such as foreign currency forward contracts to manage its risks on foreign currency borrowings. Derivative financial instruments are initially recognized at fair value and subsequently remeasured at their fair values with changes in fair value included in determination of net income. Net loss of \$78 on change in fair value of forward contracts has been recognized in determination of net income.

As of June 30, 2008, the Company has two US dollar and two Euro forward contracts outstanding with aggregate notional amounts of \$11,433 and Euro12,269, respectively.

***(e) Information on major customers***

Revenue from sales transactions with the Group's three largest customers were 19%, 12% and 11% of the total revenues for the six month period ended June 30, 2008. No other customer contributed in excess of 10% of total revenues.

***(f) Recent accounting pronouncements***

In September 2006 the FASB issued Statement No. 157, "*Fair Value Measurement*" ("SFAS 157"). SFAS 157 addresses standardizing the measurement of fair value for companies who are required to use a fair value measure for recognition or disclosure purposes. The FASB defines fair value as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." SFAS 157 is effective for fiscal years beginning after November 15, 2007 and interim periods within those fiscal years. The adoption of SFAS 157 did not have a material effect on the financial statements.

In February 2007, the FASB issued SFAS No. 159 "*The Fair Value Option for Financial Assets and Financial Liabilities, Including an amendment of SFAS 115*" ("SFAS 159"). SFAS 159 provides companies with the option to report selected financial assets and liabilities at fair value. SFAS 159 requires companies to provide additional information that will help investors and other users of financial statements to more easily understand the effect of the Group's choice to use fair value on its earnings. It also requires entities to display the fair value of those assets and liabilities for which the Group has chosen to use fair value on the face of the balance sheet. SFAS 159 is effective for fiscal years beginning after November 15, 2007. The adoption of SFAS 159 did not have a material effect on the financial statements.

In December 2007, the FASB issued SFAS No. 141R, "*Business Combination*" ("SFAS No. 141R"). The statement requires the acquiring entity in a business combination to recognize all (and only) the assets acquired and liabilities assumed in the transaction; establishes the acquisition-date fair value as the measurement objective for all assets acquired and liabilities assumed; and requires the acquirer to disclose to investors and other users all of the information they need to evaluate and understand the nature and financial effect of the business combination. SFAS No. 141R applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008.

In December 2007, the FASB issued SFAS No. 160, "*Noncontrolling Interests in Consolidated Financial Statements*" ("SFAS No. 160") to improve the relevance, comparability, and transparency of financial information provided to investors by requiring all entities to report net income attributable to both the parent and noncontrolling (minority) interests in subsidiaries in the consolidated financial statements. Moreover, SFAS

## [Table of Contents](#)

No. 160 eliminates the diversity that currently exists in accounting for transactions between an entity and noncontrolling interests by requiring they be treated as equity transaction. SFAS No. 160 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. The Group is currently evaluating whether the adoption of SFAS No. 160 will have a significant effect on its consolidated financial position, results of operations or cash flows.

In March 2008, the FASB issued SFAS No. 161, *“Disclosures About Derivate Instruments and Hedging Activities”*, an amendment of FASB Statement No. 133 (“SFAS No. 161”). The new standard requires enhanced disclosures to help investors better understand the effect of an entity’s derivate instruments and related hedging activities on its financial position, financial performance and cash flows. SFAS No. 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008, with early application encouraged. The Group will adopt SFAS No. 161 on January 1, 2009.

### 3. Inventories

Inventories are as follows:

	December 31, 2007	June 30, 2008
Raw materials	\$ 270	\$1,158
Work-in-progress	561	3,395
Finished goods	85	2,003
	<u>\$ 916</u>	<u>\$6,556</u>

### 4. Prepaid expenses and other current assets

Prepaid expenses and other current assets are as follows:

	December 31, 2007	June 30, 2008
Deferred offering costs	\$ 472	\$3,116
Prepayment for purchase of raw materials	1,563	3,611
Others	433	1,821
Total	<u>\$ 2,468</u>	<u>\$8,548</u>

### 5. Property, plant and equipment, net

	December 31, 2007	June 30, 2008
Cost		
Buildings	\$ 20,834	\$46,716
Plant and machinery	105,599	212,692
Furniture, fixtures and equipment	2,950	4,586
Motor vehicles	679	1,214
	130,062	265,208
Less: Accumulated depreciation	(2,424 )	(7,308 )
Sub-total	127,638	257,900
Construction in progress	14,093	49,075
Property, plant and equipment, net	<u>\$ 141,731</u>	<u>\$306,975</u>

## [Table of Contents](#)

Depreciation expense for the six months ended June 30, 2007 and 2008 were \$52 and \$4,626, respectively. No impairment loss was recognized in any of the periods presented.

### 6. Accrued expenses and other current liabilities

Accrued expenses and other current liabilities are as follows:

	December 31, 2007	June 30, 2008
Accrued interest	\$ 393	\$918
Accrued employee benefits	1,416	717
Payables for purchase of property, plant and equipment	6,330	21,432
Wafer processing fee payable	—	1,629
Valued-added tax payable	5,846	4,636
Others	1,150	4,348
Total	<u>\$ 15,135</u>	<u>\$33,680</u>

### 7. Bank borrowings

Bank borrowings consist of the following:

	December 31, 2007	June 30, 2008
Short-term bank borrowings		
Term loans	<u>\$ 8,260</u>	<u>\$76,895</u>
Long -term bank borrowings		
Term loans (maturity by 2010)	72,418	129,171

Less: current portion

(13,768 )

(18,952)

Total long-term borrowings

\$ 58,650

\$110,219

Short-term bank borrowings had a weighted average interest rate of approximately 6.82% and 7.62% as of December 31, 2007 and June 30, 2008, respectively. As of December 31, 2007, short-term bank borrowings were denominated in Renminbi. As of June 30, 2008, short-term bank borrowings of \$47,674, \$18,304 and \$10,917 were denominated in Renminbi, Euro and US dollars, respectively. As of June 30, 2008, short-term bank borrowings were unsecured except for amounts of \$29,220 which were secured by JZPTD' s restricted cash.

Long-term bank borrowings were denominated in Renminbi and had a weighted average interest rate of approximately of 7.47% and 8.00% as of December 31, 2007 and June 30, 2008, respectively. According to the laws of the PRC, rates may be adjusted annually based on the interest rates determined by the People' s Bank of China. Long-term bank borrowings were unsecured except for amounts of \$58,317 which were secured by JZPTD' s plant and machinery.

As of June 30, 2008, bank borrowings of \$50,444 are guaranteed by Guotai Energy Investments Limited, a company controlled by the Chairman of the Company.

F-35



## [Table of Contents](#)

Bank borrowings are repayable as follows:

Due by June 30, 2009	\$95,847
Due by June 30, 2010	100,013
Due by December 31, 2010	<u>10,206</u>
	206,066
Current portion	<u>(95,847)</u>
Non-current portion	<u>\$110,219</u>

### 8. Floating rate bonds

On September 10, 2007, the Group issued floating rate bonds for a principal amount of \$60,000 (“floating rate bonds”) to an independent third-party (the “Bond Holder”).

*Covenants*—The following covenants are applicable as of June 30, 2008:

- (a) Consolidated cash flow from operations under U.S. GAAP, at the end of each quarter from March 31, 2008 and thereafter, shall be at least four times the finance costs. During the three months period ended March 31, 2008 and June 30, 2008, the consolidated cash flow from operations was approximately 25 and 53 times the finance costs, respectively;
- (b) For the six months period ended June 30, 2008 and each quarter thereafter, the operating cash flow of JZPTD shall be at least three times the total debt of JZPTD. During the six months period ended June 30, 2008, the operating cash flow of JZPTD was approximately 16 times the total debt of JZPTD;
- (c) Consolidated debt shall not exceed annualized consolidated earnings before interest, income tax, depreciation and amortization (“EBITDA”) by three times at the end of each quarter from June 30, 2008 and thereafter. During the three months period ended June 30, 2008, the consolidated debt was approximately two times the annualized EBITDA as of June 30, 2008; and
- (d) JZPTD’ s debt to equity ratio shall not exceed 2.5 times for the three months period ended March 31, 2008 and 2.0 in each quarter thereafter; As of March 31, 2008 and June 30, 2008, JZPTD’ s debt to equity ratio was approximately 0.6 and 0.9 times, respectively.

The \$60,000 principal of the floating rate bonds was recorded as debt at issuance and has been subsequently accreted to \$65,789 as of June 30, 2008.

The fair value of the floating rate bonds was approximately \$70,496, as of June 30, 2008, which included the fair values of the conversion option of \$5,257 and other embedded derivatives of \$0, respectively. The fair value was determined by the Group with assistance from an independent valuation specialist.

The assumptions adopted for the contemporaneous valuation of the floating rate bonds as of June 30, 2008 under the Black-Scholes model are as follows:

- (1) *Risk Free Interest Rate*–2.34% was used by reference to the yield of a 1 year U.S. Treasury Bond;
- (2) *Volatility*–65.56% for the underlying share price has considered the historical price movements of comparable companies;
- (3) *Dividend Yield*- assumed to be 0% per annum;
- (4) The probability of the exercise of other call/put options including the strike adjustment is insignificant.

F-36

## [Table of Contents](#)

### 9. Capital structure

On February 25, 2008, the Company repurchased 5,000,000 ordinary shares for a total consideration of \$7,000. The repurchased shares have been cancelled.

### 10. Convertible redeemable preferred shares

On August 29, 2007, a shareholder transferred 16,667,000 ordinary shares of the Company to certain investors that were immediately redesignated as 16,667,000 Series A convertible redeemable preferred shares (“the preferred shares”).

Under the terms of the preferred shares agreement, if the consolidated earnings before interest and income tax for the period from January 1, 2007 to March 31, 2008 is less than \$20,000, the preferred shareholders have a right to put the preferred shares for redemption at 150% of the preferred share issue price plus any accrued and unpaid dividends to the Company or to Happy Genius Holdings Limited (“HG”), the immediate holding company of the Company. For the period from January 1, 2007 to March 31, 2008, the consolidated earnings before interest and income tax was \$45,158.

### 11. Income taxes

The Company is tax exempt under the laws of the Cayman Islands. GCL HK is subject to Hong Kong profit tax rate of 17.5% on profits earned in Hong Kong. JZPTD and Taixing are subject to PRC Enterprise Income Tax (“EIT”). During the six months period ended June 30, 2007 and 2008, the Group’s EIT rate is 33% less a 3% exemption of local income tax and 25%, respectively.

JZPTD is a foreign invested enterprise in PRC. It is entitled to full tax exemption for two years and 50% reduction in the following three years. The exemption commences in the first profitable year after offsetting all unexpired tax losses carried forward. As there were less than six months operations in 2007, JZPTD elected to defer the commencement of the tax exemption period to 2008.

The Company’s income tax (benefit) expenses represents:

	Six Months Ended June 30	
	2007	2008
Underprovision of PRC EIT in prior years	\$ –	\$ 159
Deferred tax (benefit) expenses	(2 )	138
	<u>\$ (2 )</u>	<u>\$ 297</u>

The deferred income tax assets and liabilities as of June 30, 2008, consisted of the following:

	December 31, 2007	June 30, 2008
Deferred tax assets		
Pre-operating costs	\$ 1,817	\$1,725

Others	514	390
Valuation allowance	<u>(1,798 )</u>	<u>(1,550)</u>
Total deferred tax assets	<u>533</u>	<u>565</u>
Deferred tax liabilities		
Land use right	\$ (174 )	\$(182 )
Property, plant and equipment, net	<u>(214 )</u>	<u>(371 )</u>
Total deferred tax liabilities	<u>(388 )</u>	<u>(553 )</u>
Non-current deferred tax assets	<u>\$ 145</u>	<u>\$12</u>

## [Table of Contents](#)

Valuation allowance has been recorded to the extent deferred tax assets are expected to expire in JZPTD' s tax exemption period.

### 12. Share-based compensation

On August 15, 2007, the directors of the Company approved a share option plan ("Plan") to grant options to its employees and directors to purchase ordinary shares of the Company subject to vesting requirements. The total number of ordinary shares which may be issued upon exercise of all options shall not exceed 5% of the total number of issued ordinary shares as of August 15, 2007. The options have an exercise price of \$0.5 per share. The options can only be exercised after either (i) a public listing of the Company; or (ii) on occurrence of certain events which constitute a change in control of the Company prior to public listing of the Company and the management has elected to accelerate the exercisability of the options. If either of the foregoing conditions are not satisfied, the options will lapse.

On August 15, 2007, the Company granted two options to one of the Company' s directors and one employee to purchase 2,000 ordinary shares of the Company. On February 29, 2008, the two options were cancelled. On the same date, the Company granted additional five million share options to its directors, consultants and employees to purchase 50,000,000 ordinary shares of the Company with exercise price of \$0.5 per share. Each option is exercisable into 10 ordinary shares. The options granted become exercisable following the expiry of one year after the public listing of the Company and must be exercised within 10 years from the date of grant. The options vest each year over a period of four years. The total fair value of the options at the grant date was \$69,442 and has been determined by a contemporaneous valuation using the binomial options pricing model with assistance from an independent valuation specialist. No compensation cost related to the options grant has been recognized for the six months period ended June 30, 2008, as the vesting period is based on occurrence of events stated above.

A summary of option activity as of June 30, 2008 is presented below:

	Number of options	Weighted average exercise price	Weighted average remaining Contractual life	Weighted average fair value of share options at grant date	Aggregate intrinsic value
OUTSTANDING AT JANUARY 1, 2008	2	\$ 0.5			
Granted on February 29, 2008	5,000,000	0.5		\$ 13.89	
Cancelled on February 29, 2008	(2 )	0.5			
OUTSTANDING AT JUNE 30, 2008	<u>5,000,000</u>	<u>\$ 0.5</u>	<u>9.7</u>	<u></u>	90,765

As of June 30, 2008, none of the outstanding options were vested and no option was available for future grant.

The assumptions used in determining the fair value of the options were as follows:

(1) Risk Free Interest Rate-3.71%

Risk free interest rate was referenced to the yield of a ten year U.S. Treasury Bond and annual dividend was assumed to be zero.

(2) Volatility-60.65%

Expected volatility is estimated based on daily stock prices of comparable listed companies.

F-38

## [Table of Contents](#)

### (3) Dividend Yield–0%

The dividend yield was estimated by the Company based on its expected dividend policy over the expected term of the options.

### (4) Sub-optimal factor–1.5

The sub-optimal indicates the correlation between the employees exercise behaviour and the underlying share price. It is expected that the employees may exercise the options when the share price is 1.5 times the exercise price.

## 12. (Loss) earnings per share

The calculation of (loss) earnings per share is as follows:

	Six Months Ended June 30,	
	2007	2008
Net (loss) income	\$(8,446 )	\$68,073
Deemed distribution to Series A convertible redeemable preferred shares–accretion of redemption premium	–	(1,667 )
Net (loss) income attributable to holders of ordinary shares	\$(8,446 )	\$66,406

### Numerator used in basic and diluted (loss) earnings per share:

Net (loss) income allocated for computing (loss) earnings per ordinary share–basic	(8,446 ) <sup>(i)</sup>	65,295
Net (loss) income allocated for computing (loss) earnings per Series A convertible redeemable preferred share–basic	– <sup>(i)</sup>	2,778
Net (loss) income allocated for computing (loss) earnings per ordinary share–diluted	(8,446 )	65,252

### Denominator used in basic and diluted (loss) earnings per share:

Weighted average ordinary shares outstanding used in computing (loss) earnings per ordinary share–basic	1,000,000,000	979,843,989
---	---------------	-------------

Weighted average shares outstanding used in computing (loss) earnings per series A convertible redeemable preferred share–basic

N/A

16,667,000

Weighted average ordinary shares outstanding used in computing (loss) earnings per ordinary share–diluted

1,000,000,000<sup>(ii)</sup>

981,436,130

(Loss) earnings per ordinary share–basic

(0.0084 )

0.0666

(Loss) earnings per Series A convertible redeemable preferred shares–basic

N/A

0.1667

(Loss) earnings per ordinary share–diluted

(0.0084 )

0.0665

(i) The net income attributable to holders of ordinary shares was allocated between ordinary shares and Series A convertible redeemable preferred shares in a pro rata basis on the dividend participating right. The net income allocated for computing net income per Series A convertible redeemable preferred share–basic also contained the deemed dividend for accretion of the redemption premium

(ii)

The Group has securities outstanding which could potentially dilute basic earnings per share in the future, but which were excluded from the computation of diluted net income per share in the six-months ended June 30, 2008 as their effects would have been anti-dilutive. Such outstanding securities consisted of floating rate bonds convertible into a weighted average number of 27,320,000 ordinary shares. There is no



## [Table of Contents](#)

potential dilutive securities for the six-months period ended June 30, 2007. The calculation of the weighted average number of ordinary shares for the six-months period ended June 30, 2008 for the purpose of diluted earnings per ordinary share has included the effect of share options of a weighted average number of 33,516,484, which results in an incremental weighted average number of 1,592,141 ordinary shares from the assumed conversion of these share options using the treasury stock method.

### 14. Commitments

#### *Capital commitments*

As of June 30, 2008, the Group has capital commitments totalling \$392,226 related to construction of its production facilities and purchase of plant and machinery.

#### *Lease commitments*

The Group leases certain office premises and buildings under non-cancellable leases. Rental expenses under operating lease for the six months period ended June 30, 2007 and 2008 were \$27 and \$99, respectively.

As of June 30, 2008, future minimum lease payments under non-cancellable operating leases agreements were as follows:

Within 1 year	\$ 160
Between 1 and 2 years	58
Total	<u>\$218</u>

#### *Other commitments*

During the six month period ended June 30, 2008, the Group entered into long-term polysilicon and wafer supply agreements under which the Group contracted to supply specified volumes of polysilicon and wafers during the period commencing April 2008 to December 2015. The selling price declines over the agreement period and is not subject to renegotiation. The customers are required to make an interest-free advance. Such advance is deductible from payment for sales starting from January 2010. As of June 30, 2008, \$113,743 of such amount was received and was recorded as advances from customers under non-current liabilities.

### 15. Related parties transactions

#### *(a) Transactions with affiliated companies*

The Group has made advances to Shanghai Creative Energy Company Limited ("Shanghai Creative"), a company whose principal shareholder is also a director of JZPTD, for acquisition of property, plant and equipment on behalf of the JZPTD. As of December 31, 2007 and June 30, 2008, outstanding amounts of \$4,148 and \$0 deposited with Shanghai Creative, respectively, were included in deposits for purchase of plant and equipment.

Shanghai Creative has also paid certain administrative expenses on behalf of the Group. The outstanding balance as of December 31, 2007 and June 30, 2008 were \$827 and \$379, respectively.

The Group paid management fees to Golden Concord (Hong Kong) Holdings Limited, an affiliate company controlled by the Chairman, amounting to \$360 and \$816 for the six months period ended June 30, 2007 and 2008, respectively.

F-40

## [Table of Contents](#)

As of December 31, 2007, there was a short-term advance from the Group to Xuzhou Economic Development Zone Electricity Company Limited, a company controlled by the Chairman. The outstanding balance as of December 31, 2007 was \$138 and was repaid during the six months period ended June 30, 2008.

### ***(b) Loans and other amounts due to affiliated companies***

The Group borrowed funds from Taicang Harbour Golden Concord Electric-Power Generation Co., Ltd. (“Taicang Electric”), a company of which our Chairman is a principal shareholder, to fund the construction of the production facilities. The loan was unsecured, carried interest of approximately 6.49% per annum and was repayable on demand. During the six months period ended June 30, 2007 and 2008, interest paid or payable to Taicang Electric was \$417 and \$54, respectively. As of December 31, 2007, the outstanding loans payable to Taicang Electric was \$13,789 and was repaid in January 2008.

Golden Concord (Hong Kong) Holdings Limited, a company controlled by the Chairman of the Company paid certain administrative expenses on behalf of the Group. The outstanding balances as of December 31, 2007 and June 30, 2008 was \$165 and \$780, respectively.

During the six months period ended June 30, 2007 and 2008, the Group incurred rental expenses of \$54 and \$56, respectively, to Shanghai Yueyuan Machinery Company Limited, an affiliate company controlled by the Chairman. The outstanding balance as of December 31, 2007 and June 30, 2008 were \$110 and \$0, respectively.

JZPTD contracted to supply JSJST a minimum quantity of polysilicon from 2007 to 2009. The contract was subsequently cancelled in June 2008. JSJST ceased to be an affiliated company of the Company on June 10, 2008. During the period from January 1, 2008 to June 10, 2008, sales to JSJST amounted to \$19,917.

During the six months period ended June 30, 2008, the Group borrowed funds from Zibo Baokai Trading Company Limited, a minority shareholder of Taixing. The advance was unsecured, interest free and repayable on demand. As of June 30, 2008, the outstanding balance was \$1,312.

During the six months period ended June 30, 2008, the Group entered into a promissory note with HG, the immediate holding company of the Company. The note was unsecured, interest free and repayable at the earlier of the listing date and June 20, 2009. The Company is required to pay HG’s costs incurred in connection with the negotiation, preparation and execution of the promissory note. As of June 30, 2008, the outstanding balance was \$15,000.

## **16. Pro forma information**

The pro forma balance sheet information as of June 30, 2008 assumes (i) the redemption and conversion upon completion of the initial public offering (“IPO”) of the convertible redeemable preferred shares and floating rate bonds into ordinary shares and (ii) distribution to shareholders of (a) cash payment of \$240,625 and (b) issuance of convertible bonds with principal value of \$446,875.

Pro forma basic and diluted income per ordinary share for the six months period ended June 30, 2008 is computed by dividing income attributable to holders of ordinary shares by the weighted average number of ordinary shares outstanding for the period plus (i) the number of ordinary shares resulting from the assumed conversion of the outstanding convertible redeemable preferred shares, floating rate bonds and the convertible bonds; (ii) the number of shares whose proceeds would be necessary to pay the cash dividend in excess of the

## [Table of Contents](#)

current period' s earnings; and (iii) share distributions to be made to shareholders (see note 18) as of January 1, 2008. Floating rate bonds are assumed to be converted into ordinary shares using a rate of 2.732% on the aggregate number of outstanding ordinary shares and convertible redeemable preferred shares as of January 1, 2008. Shares used in determining pro forma basic and diluted earnings per shares for the six months period ended June 30, 2008 are as follows:

Shares used in calculating basic earnings per share on a pro forma basis:

Weighted average shares outstanding in computing basic earnings per share	979,843,989
Ordinary shares as a result of redeemable preferred shares and floating rate bonds conversion	43,987,000
Issuance of ordinary shares for distribution proceeds	[            ]
Issuance of ordinary shares as share distribution	268,537,970
	<u>                    </u>

Shares used in calculating diluted earnings per share on a pro forma basis:

Weighted average shares outstanding in computing diluted earnings per share	981,436,130
Ordinary shares as a result of redeemable preferred shares and floating rate bonds conversion	43,987,000
Ordinary shares as a result of convertible bonds conversion	[            ]
Issuance of ordinary shares for distribution proceeds	[            ]
Issuance of ordinary shares as share distribution	268,537,970
	<u>                    </u>

Income used in determining pro forma income per share for the six months period ended June 30, 2008 is as follows:

Net income attributable to holders of ordinary shares	\$ 66,406
---	-----------

Plus: Deemed distribution to convertible preferred shares

– accretion of redemption premium	1,667
Interest expense related to floating rate bonds	4,564
Less: Deferred financing costs	(1,497 )
Total pro forma net income	<u>\$71,140</u>

## 17. Restricted assets

Relevant PRC laws and regulations permit payments of dividends by the Company' s subsidiaries only out of their retained earnings, if any, as determined by PRC accounting standards and regulations. Approvals from relevant governmental authorities are required for capital reduction or payments out of capital. In addition, the relevant regulations of PRC require annual appropriations of 10% of net after-tax income should be set aside to statutory reserves prior to payment of any dividends. As of June 30, 2008, the balance of statutory reserve was \$1,916.

As a result of these restrictions and the pledge of JZPTD for the floating rate bonds, JZPTD is restricted in its ability to transfer a portion of its net assets to the Company either in the form of dividends, loans or advances.

As of June 30, 2008, the restricted portion in aggregate amounted to approximately \$144,344.

The Group also had restricted cash of \$54,486 as at June 30, 2008. This amount consists of \$778 placed in bank accounts which are restricted solely for the interest payments on floating rate bonds and an amount of

\$53,708 placed in bank accounts as deposits for short-term letters of credit issued by a bank for purchase of plant machinery.

#### **18. Subsequent events**

(a) On July 18, 2008, the Company and its principal shareholders entered into an agreement under which concurrent with the initial public offering, the principal shareholders will transfer to the Company 100% ownership interest in Sun Wave Group Ltd. (“Sun Wave”) and Greatest Joy International Limited (“Greatest Joy”), entities which together own the 36% interest in JZPTD. Sun Wave and Greatest Joy are under the common control of the Chairman and were created for the sole purpose of holding their respective ownership interests in JZPTD. The transfer consideration will consist of (i) \$240,625 in cash, (ii) the issue of bonds with a principal value of \$446,875 and convertible into the Company’s ordinary shares and (iii) issue of 268,537,970 ordinary shares of the Company. The consideration will be settled concurrent with the closing of the IPO.

(b) In July 2008, JZPTD obtained certain Renminbi-denominated, unsecured and interest bearing bank borrowings of \$77,707 of which \$9,185, \$53,943 and \$14,579 are repayable in 2008, 2009 and 2010, respectively. These borrowings carry a weighted average interest rate at approximately 7.16%, which may be adjusted annually based on the interest rates determined by the People’s Bank of China.











**PART II**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

**EXPENSES RELATED TO THIS OFFERING**

The following table sets forth the main estimated expenses in connection with this offering, other than the underwriting discounts and commissions, which we and the selling shareholders will be required to pay.

U.S. Securities and Exchange Commission registration fee	\$33,896.25
FINRA filing fee	75,500.00
New York Stock Exchange listing fee	
Legal fees and expenses	
Accounting fees and expenses	900,000.00
Printing fees and expenses	
Registered transfer agent fees	
Miscellaneous	
Total	\$

All amounts are estimated, except the U.S. Securities and Exchange Commission registration fee, the New York Stock Exchange listing fee and the FINRA filing fee.

**Item 6. Indemnification of Directors and Officers**

Cayman Islands law does not limit the extent to which a company's articles of association may provide for indemnification of officers and directors, except to the extent any such provision may be held by the courts of the Cayman Islands courts to be contrary to public policy, such as to provide indemnification against civil fraud or the consequences of committing a crime. Our articles of association provide for indemnification of officers and directors for losses, damages, charges and expenses incurred in their capacities as such, except through their own willful neglect or default.

Pursuant to the form of indemnification agreements filed as Exhibit 10.2 to this Registration Statement, we will agree to indemnify our directors and officers against certain liabilities and expenses incurred by such persons in connection with claims made by reason of their being such a director or officer.

The form of Underwriting Agreement to be filed as Exhibit 1.1 to this Registration Statement will also provide for indemnification of us and our officers and directors.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended (the "Securities Act") may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

II-1

## [Table of Contents](#)

### Item 7. Recent Sales of Unregistered Securities

During the past three years, we have issued the following securities (including options to acquire our ordinary shares). We believe that each of the following issuances was exempt from registration under the Securities Act in reliance on Regulation S under the Securities Act or under Section 4(1) or 4(2) of the Securities Act regarding transactions not involving a public offering.

<u>Purchaser</u>	<u>Date of Sale or Issuance</u>	<u>Number of Securities</u>	<u>Consideration in U.S. dollars</u>	<u>Underwriting Discount and Commission</u>
Deutsche Bank AG	September 11, 2007	Mandatory redeemable bonds with the principal amount of \$20,000,000	\$20,000,000	None
Deutsche Bank AG	September 11, 2007	Convertible bonds with the principal amount of \$40,000,000	\$40,000,000	None
Happy Genius Holdings Limited	August 21, 2007	769,309 ordinary shares	No dollar consideration <sup>(1)</sup>	None
Mandra Materials Limited	August 21, 2007	225,591 ordinary shares	No dollar consideration <sup>(1)</sup>	None
Positive Rise Group Ltd.	August 21, 2007	5,000 ordinary shares	No dollar consideration <sup>(1)</sup>	None
Issuance under the 2007 share incentive plan	August 15, 2007	Options to purchase 200 ordinary shares	No dollar consideration	None
Issuance under the 2007 share incentive plan	February 29, 2008	Options to purchase 5,000,000 ordinary shares	No dollar consideration	None

- (1) The ordinary shares were issued in exchange for: (i) the transfer of a loan receivable in the amount of \$15 million from Happy Genius Holdings Limited and (ii) the transfer of 1 share of Asia Silicon Technology Holdings Limited to us.

### Item 8. Exhibits and Financial Statement Schedules

#### (a) Exhibits

See Exhibit Index beginning on page II-5 of this registration statement.

#### (b) Financial Statement Schedules

Schedules have been omitted because the information required to be set forth therein is not applicable or is shown in the Consolidated Financial Statements or the Notes thereto.

### Item 9. Undertakings

(1) The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreements, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

(2) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described in Item 6, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than payment by a registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or

proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(3) The undersigned Registrant hereby undertakes that:

(a) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424 (b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(b) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and this offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F-1 and has duly caused this amendment to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Hong Kong, S.A.R on August 29, 2008.

### GCL SILICON TECHNOLOGY HOLDINGS INC.

/s/ HUNTER JIANG

By:

\_\_\_\_\_  
Name: Hunter Jiang

Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act, this amendment to the Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
_____ /s/ ZHU GONGSHAN Zhu Gongshan	Chairman	August 29, 2008
_____ * Zhang Songyi	Director	August 29, 2008
_____ /s/ HUNTER JIANG Hunter Jiang	Chief Executive Officer (Principal Executive Officer) and Director	August 29, 2008
_____ * Jason Li	Chief Financial Officer (Principal Financial Officer)	August 29, 2008
_____ * Jason Li	Chief Accounting Officer (Principal Accounting Officer)	August 29, 2008
_____ * CT Corporation System	Authorized Representative in the United States	August 29, 2008



/s/ ZHU GONGSHAN

\* By:

---

**Name: Zhu Gongshan**

**Attorney-in-fact**

II-4

## EXHIBIT INDEX

<u>Exhibits</u>	<u>Description</u>
1.1 <sup>(2)</sup>	Form of Underwriting Agreement
3.1 <sup>(2)</sup>	First Amended and Restated Memorandum and Articles of Association
3.2 <sup>(2)</sup>	Second Amended and Restated Memorandum and Articles of Association
3.3 <sup>(2)</sup>	Form of Third Amended and Restated Memorandum and Articles of Association
4.1 <sup>(2)</sup>	Specimen Certificate for Ordinary Shares
4.2 <sup>(2)</sup>	Share Purchase Agreement among TB Silicon Ltd., Benchmark Europe III, L.P. (as nominee for Benchmark Europe III, L.P., Benchmark Europe Founders' Fund III L.P. and related individuals, acting by its manager Balderton Capital Management (UK) LLP), Asia Silicon Technology Holdings Inc. and Happy Genius Holdings Limited dated August 29, 2007
4.3 <sup>(2)</sup>	Share Purchase Agreement by and among Guotai Energy Investment Ltd., Xuzhou Suyuan Group Ltd., Suyuan Group Ltd., Beijing Zhongneng Renewable Energy Investment Ltd., Asia Silicon Technology Holdings Inc. and Lianyungang Suyuan Group Ltd. dated November 29, 2006
4.4 <sup>(2)</sup>	Share Purchase Agreement by and among Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd., Nanjing Linyang Electric Investment Co., Ltd. and Lianyungang Suyuan Group, Ltd. dated June 6, 2007
4.5 <sup>(2)</sup>	Investors' Rights Agreement among Asia Silicon Technology Holdings Inc., Happy Genius Holdings Limited, TB Silicon Ltd. and Benchmark Europe III, L.P. (as nominee for Benchmark Europe III, L.P., Benchmark Europe Founders' Fund III L.P. and related individuals, acting by its manager Balderton Capital Management (UK) LLP) dated August 29, 2007
4.6 <sup>(2)</sup>	Preferred Share Rights Agreement among Asia Silicon Technology Holdings Inc., Happy Genius Holdings Limited, TB Silicon Ltd. and Benchmark Europe III, L.P. (as nominee for Benchmark Europe III, L.P., Benchmark Europe Founders' Fund III L.P. and related individuals, acting by its manager Balderton Capital Management (UK) LLP) dated August 29, 2007
4.7 <sup>(2)</sup>	Amended Investors' Rights Agreement among Asia Silicon Technology Holdings Inc., Happy Genius Holdings Limited, TB Silicon Ltd. and Benchmark Europe III, L.P. (as nominee for Benchmark Europe III, L.P., Benchmark Europe Founders' Fund III L.P. and related individuals, acting by its manager Balderton Capital Management (UK) LLP) dated September 7, 2007
4.8 <sup>(2)</sup>	Trust Deed constituting Tranche A U.S.\$20,000,000 Floating Rate Secured Bonds due 2009 and Tranche B U.S.\$40,000,000 Floating Rate Secured Convertible Bonds due 2009 convertible into shares of Asia Silicon Technology Holdings Inc. between Asia Silicon Technology Holdings Inc. and DB Trustees (Hong Kong) Limited dated September 10, 2007
4.9 <sup>(2)</sup>	Subscription Agreement relating to Tranche A U.S.\$20,000,000 Floating Rate Secured Bonds due 2009 and Tranche B U.S.\$40,000,000 Floating Rate Secured Convertible Bonds due 2009 between Asia Silicon Technology Holdings Inc. and Deutsche Bank AG dated September 7, 2007
4.10 <sup>(2)</sup>	Paying and Conversion Agency Agreement relating to Tranche A U.S.\$20,000,000 Floating Rate Secured Bonds due 2009 and Tranche B U.S.\$40,000,000 Floating Rate Secured Convertible Bonds due 2009 among Asia Silicon Technology Holdings Inc., Deutsche Bank AG, Hong Kong Branch, Deutsche Bank Luxembourg S.A. and DB Trustees (Hong Kong) Limited dated September 10, 2007
4.11 <sup>(2)</sup>	Security Agreement relating to Tranche A U.S.\$20,000,000 Floating Rate Secured Bonds due 2009 and Tranche B U.S.\$40,000,000 Floating Rate Secured Convertible Bonds due 2009 between Asia Silicon Technology Holdings Inc. and DB Trustees (Hong Kong) Limited dated September 10, 2007
4.12 <sup>(2)</sup>	Security Agreement relating to Tranche A U.S.\$20,000,000 Floating Rate Secured Bonds due 2009 and Tranche B U.S.\$40,000,000 Floating Rate Secured Convertible Bonds due 2009 between Asia Silicon Technology Holdings Limited and DB Trustees (Hong Kong) Limited dated September 10, 2007



## [Table of Contents](#)

<u>Exhibits</u>	<u>Description</u>
4.13 <sup>(2)</sup>	English Translation of Agreement of Pledge Over Shares between Asia Silicon Technology Holdings Limited and DB Trustees (Hong Kong) Limited dated September 10, 2007
4.14 <sup>(2)</sup>	Registration Rights Agreement between Asia Silicon Technology Holdings Inc., Mandra Materials Limited and Deutsche Bank AG dated September 10, 2007
4.15 <sup>(2)</sup>	Form of Deposit Agreement among the Registrant, The Bank of New York Mellon, as depositary, and Holders and Beneficial Holders of American Depositary Shares evidenced by American Depositary Receipts issued thereunder, including the form of American Depositary Receipt
4.16 <sup>(2)</sup>	Amended and Restated Registration Rights Agreement among GCL Silicon Technology Holdings, Inc., Deutsche Bank AG, Credit Suisse International, Asia Debt Management Hong Kong Limited and RCG Asia Opportunity Fund, Ltd. dated June 5, 2008
4.17 <sup>(2)</sup>	English Translation of Supplementary Agreement I to the Share Transfer Agreement among Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd., Nanjing Linyang Power Investment Co., Ltd. and Jiangsu Qitian Group Co., Ltd. dated June 22, 2008
4.18 <sup>(2)</sup>	Form of Indenture between GCL Silicon Technology Holdings, Inc. and DB Trustees (Hong Kong) Limited, with respect to the 2008 Convertible Bonds.
4.19 <sup>(2)</sup>	Form of Conversion Registration Rights Agreement among GCL Silicon Technology Holdings Inc., Deutsche Bank AG and the Holders of the Company' s 3% Convertible Senior Notes due 2010
5.1 <sup>(2)</sup>	Opinion of Appleby, Cayman Islands counsel to the Registrant, as to the validity of the issuance of the ordinary shares
10.1 <sup>(2)</sup>	Share Option Scheme adopted by Asia Silicon Technology Holdings Inc. pursuant to board resolutions dated August 15, 2007 and shareholder resolutions dated February 21, 2008
10.2 <sup>(2)</sup>	English Translation of Form of Employment Contract
10.3 <sup>(1)</sup>	English Translation of License Agreement for Hydrochlorination Process among Xuzhou Southeast Polysilicon Materials Development & Research Co., Ltd., Hualu Engineering & Technology Co., Ltd. and Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. dated December 20, 2007
10.4 <sup>(2)</sup>	English Translation of Sino-Foreign Joint Venture Contract between Sun Far East Limited and Zibo Bao Kai Trading Co., Ltd. dated January 11, 2008
10.5 <sup>(1)</sup>	English Translation of Polysilicon Supply Agreement between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Jiangsu Linyang Solarfun Co., Ltd. dated June 22, 2008
10.6 <sup>(1)</sup>	General Terms and Conditions of Contract and Appendices between Jiangsu Zhongneng Photovoltaic Industry Development Co., Ltd. and MSA Apparatus Construction for Chemical Equipment Ltd. dated June 27, 2007 and Supplemental Agreement to General Terms and Conditions of Contract and Appendices among Jiangsu Zhongneng Photovoltaic Industry Development Co., Ltd., MSA Apparatus Construction for Chemical Equipment Ltd. and Chemical Equipment Engineering Limited dated January 17, 2008
10.7 <sup>(1)</sup>	Sales Contract between Jiangsu Zhongneng Photovoltaic Industry Development Co., Ltd. and Tap Mate Limited dated February 4, 2008 and the related Guarantee Agreement among Jiangsu Zhongneng Photovoltaic Industry Development Co., Ltd., Tap Mate Limited and Shanghai Morimatsu Chemical Equipment Engineering Co., Ltd., dated February 4, 2008
10.8 <sup>(1)</sup>	Sales Contract between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Xi' an Nuclear Equipment Co., Ltd dated January 10, 2008
10.9 <sup>(1)</sup>	Sales Contract between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Kaiyuan Chemical Industry Machine Co., Ltd. dated January 29, 2008



## [Table of Contents](#)

<u>Exhibits</u>	<u>Description</u>
10.10 <sup>(1)(2)</sup>	English Translation of Polysilicon Supply Agreement between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Changzhou Trina Solar Energy Co., Ltd. dated March 29, 2008, and the Supplementary Agreement to the Polysilicon Supply Agreement dated August 19, 2008
10.11 <sup>(1)(2)</sup>	English Translation of Wafer Supply Agreement between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Jing Ao Solar Co., Ltd. dated April 7, 2008 and Supplementary Contract I to the Wafer Supply Agreement dated August 17, 2008
10.12 <sup>(1)</sup>	English Translation of Wafer Supply Contract between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Jiangsu AIDE Solar Energy Technology Co., Ltd. dated April 16, 2008
10.13 <sup>(1)</sup>	English Translation of Commissioned Processing Contract between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Changzhou Huasheng Hengneng Optoelectronics Co., Ltd. dated March 21, 2008
10.14 <sup>(2)</sup>	English Translation of Agency Agreement between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Shanghai Creative dated May 12, 2006
10.15 <sup>(2)</sup>	English Translation of Consultancy Agreement between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Shanghai Creative dated July 23, 2006
10.16 <sup>(2)</sup>	English Translation of Office Leasing Agreement between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Shanghai Yueyuan Equipment and Machinery Co., Ltd. dated January 4, 2007
10.17 <sup>(2)</sup>	English Translation of Entrusted Loan Trust Agreement between Taicang Harbour Golden Concord Electric-Power Generation Co., Ltd. and Bank of Jiangsu, Xuanwu Branch dated November 22, 2007
10.18 <sup>(2)</sup>	English Translation of Entrusted Loan Facility Agreement between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Bank of Jiangsu, Xuanwu Branch dated November 22, 2007
10.19 <sup>(1)</sup>	Wafer Supply Agreement between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Solarcell S.p.A. dated June 1, 2008
10.20 <sup>(2)</sup>	Share Purchase Agreement among Happy Genius Holdings Limited, Mandra Silicon Limited and GCL Silicon Technology Holdings Inc. dated July 18, 2008
10.21 <sup>(1)</sup>	Wire Saw Agreement between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Meyer Burger AG dated June 27, 2008
10.22 <sup>(1)</sup>	Wire Saw Agreement, between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Miyamoto Trading Limited and the related Guarantee Agreement among Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd., Nippei Toyama Corporation and Miyamoto Trading Limited, each dated June 27, 2008
10.23 <sup>(2)</sup>	2008 Restricted Share Compensation Plan adopted by GCL Silicon Technology Holdings Inc. pursuant to a board resolution dated July 18, 2008 and a shareholder resolution dated July 18, 2008
10.24*	Form of Exchange Agreement among GCL Silicon Technology Holdings Inc., Happy Genius Holdings Limited and the EB Holders specified in Schedule I to such Agreement
10.25 <sup>(1)(2)</sup>	English Translation of Solar-grade Polysilicon Supply Agreement by and between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and JA Solar Technology Yangzhou Co., Ltd. dated August 17, 2008
10.26 <sup>(1)(2)</sup>	English Translation of Solar-grade Polysilicon Supply Agreement by and between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Suzhou CSI Solar Power Technology Co., Ltd. dated August 20, 2008
10.27 <sup>(1)(2)</sup>	English Translation of Solar-grade Wafer Supply Agreement by and between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Suzhou CSI Solar Power Technology Co., Ltd. dated August 20, 2008



---

## [Table of Contents](#)

<u>Exhibits</u>	<u>Description</u>
10.28 <sup>(1)(2)</sup>	English Translation of Solar-grade Polysilicon Supply Agreement by and between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Wuxi Suntech Power Co., Ltd. dated August 21, 2008
10.29 <sup>(1)(2)</sup>	English Translation of Solar-grade Polysilicon and Wafer Supply Agreement by and between Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. and Wuxi Suntech Power Co., Ltd. dated August 21, 2008
21.1 <sup>(2)</sup>	Subsidiaries of the Registrant
23.1 <sup>(2)</sup>	Consent of Deloitte Touche Tohmatsu, an Independent Registered Public Accounting Firm
23.2 <sup>(2)</sup>	Consent of Appleby (included in Exhibit 5.1)
23.3 <sup>(2)</sup>	Consent of Grandall Legal Group (included in Exhibit 99.5)
23.4 <sup>(2)</sup>	Consent of Jones Lang LaSalle Sallmans Limited
24.1	Powers of Attorney
99.1 <sup>(2)</sup>	Code of Business Conduct and Ethics
99.2 <sup>(2)</sup>	Consent of David Tang
99.3 <sup>(2)</sup>	Consent of John Koh
99.4 <sup>(2)</sup>	Consent of Otmar Haas
99.5 <sup>(2)</sup>	Opinion of Grandall Legal Group regarding certain PRC legal matters

---

\* To be provided by amendment

(1) Certain confidential portions of this exhibit are omitted by means of redacting a portion of the text. A request for confidential treatment of this exhibit has been submitted to the Commission under separate cover.

(2) Previously filed



**License Agreement**  
**for**  
**Hydrochlorination Process to Produce Trichlorosilane from Silicon**  
**Tetrachloride**

Party A: Xuzhou Southeast Polysilicon Materials Development & Research Co., Ltd.

Party B: Hualu Engineering & Technology Co., Ltd.

Party C: Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.

Party A and Party B collectively act as the proprietary and patent applicants (hereinafter referred to as “Technology proprietary or patentee”) of hydrochlorination method in production of trichlorosilane from silicon tetrachloride, and Party C provides necessary location, equipments and other logistic supports for development of the technology. In consideration of efforts made by the parties hereto in the development and research of the hydrochlorination method in production of trichlorosilane from silicon tetrachloride, the Agreement with regard to such process as aforesaid and technical secret as well as patent use right is hereby concluded in accordance with “Patent Law of the People’s Republic of China”, “Implementing Regulations of the Patent Law of the People’s Republic of China” and provisions of other relevant laws and regulations on the basis of friendly consultations, as follows:

**I. Payment of technology price**

1. The Technology proprietary or patentee unanimously agree to confer Party C with the right to permanently use for free the hydrochlorination method in production of trichlorosilane from silicon tetrachloride and technical secret for the first phase of 1,500 ton/year polysilicon project of Party C as well as the right to implement permission for free after obtaining the patent right of such technology.
2. Party C shall, commence from the second phase of the project, pay the Technology proprietary or patentee with a sum totaling RMB5,000,000 Yuan (reading: RMB Five Million Yuan in all) serving as fees for permanent implement permission of such patent technology for each 1,500 ton/year extension of production capacity of polysilicon (such fees shall include without limitation to fees for technology implementation permission, technology instruction, training, etc. Party C shall not make other payment to the Technology proprietary or patentee in addition to such fees as aforesaid) and shall pay to the Technology proprietary or patentee with 50% of the fees for technology implementation permission within one month after obtaining the government approval

on the corresponding project and commencement of entrusting design of the project. Party C shall within one month when the actual production capacity reaches the design production capacity pay to the Technology proprietary or patentee with the remaining 50% of fees for technology implementation permission. Each expansion of production capacity shall be subject to governmental approval and the scale of the entrusting design. The actual enlarged production capacity shall be subject to verification and confirmation by relevant competent authority.

The Technology proprietary or patentee shall issue formal invoice to Party C for such fees and Party C shall upon receipt of such invoices remit such sum specified in such invoices to the bank account/accounts as may be designated by the Technology proprietary or patentee in the manner of telegraphic transfer or bank transfer.

3. Party C shall within seven (7) working days upon taking effect of the Agreement pay the Technology proprietary or patentee 50% of fees for technology implementation permission for the second phase of 1,500 ton/year polysilicon project serving as an advance payment, totaling RMB2,500.000 Yuan, and shall, within one month when the actual production capacity reaches the design production capacity, pay the Technology proprietary or patentee the remaining 50%. Payment for the fees of the third phase and subsequent project shall be similarly made upon being approved by competent governmental authority and commencement of entrusting design.

4. The three parties hereto unanimously agree that Party C shall for each payment for such fees pay \*\*\* of the total sum to the account of Party A hereto and pay \*\*\* of the total sum to the account of Party B hereto. Party A and Party B shall respectively be responsible for compensating their internal employees. Party C shall not be held responsible with regard to employees of Party A and Party B.

5. Party A and Party B shall be responsible for coordination with their respective technology inventors so as to make clear the ownership of such technology and distribution scheme regarding rights and interests in writing. In case the technology inventor should claim for any right or interest relating to intellectual property right against Party C, Party A or Party B shall respectively be liable for settlement of dispute and relevant responsibilities and obligations. In case Party C should have any economic loss so incurred, Party A and Party B shall respectively, jointly and severally indemnify Party C.

6. Payment from Party C under the Agreement shall be subject to the precondition that intellectual property right of the technology has been obtained by Party A and Party B. The obtainment of such intellectual property right shall be marked by the legal patent application number.

## **II. Confidentiality of use of technology**

All parties hereto unanimously undertake to strictly keep the confidentiality of any and all technology, technology secret, technical data and other confidential issues pertaining to hydrochlorination method in production of trichlorosilane from silicon tetrachloride and not to disclose to any third party.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

### **III. Guarantee of the Technology proprietary or patentee**

1. The Technology proprietary or patentee shall undertake the completeness, accuracy and legibility of any and all technical data as may be provided to Party C and shall guarantee to deliver such technical data punctually. The Technology proprietary or patentee shall be responsible for providing trainings for technicians of Party C so that such trainees may be able to manufacture high quality products in the plant by employing such data and proprietary knowledge as may be provided by the Technology proprietary or patentee and that the design production capacity of qualified products can be reached.
2. The Technology proprietary or patentee undertakes to provide the up to date technical data that has been used by them to Party C and Party B undertakes to timely provide any subsequently updated technical data.
3. The Technology proprietary or patentee undertakes that such technology enables Party C to produce qualified highly pure polysilicon products and may contribute to realize the design production capacity. In the event that the performance standards or capacity is not satisfied within a reasonable period of time, the Technology proprietary or patentee shall indemnify Party C appropriately, provided that such compensation shall not exceed the fees for the technology implementation permission.
4. During the period of implementation of hydrochlorination method in production of trichlorosilane from silicon tetrachloride by Party C, in case any third party should claim for any technology infringement against Party C, the Technology proprietary or patentee shall actively give assistance to Party C in handling such cases so as to minimize the loss of Party C. In case Party C should be considered to infringe any third party' s rights and interests due to use of such technology as permitted by the Technology proprietary or patentee when competent judicial authority, the Technology proprietary or patentee shall so refund any and all fees received from Party C and indemnify any and all direct and indirect loss of Party C so incurred.

### **IV. Guarantee of Party C**

Party C shall not, without prior consent of Party A and Party B, disclose any technical secret provided herein to any third party. Any and all personnel of Party C who have direct access to such technical secret shall formulate confidential agreements with Party C and undertake not to breach provisions of the previous sentence. In case any personnel of Party C should release or disclose such technical secret to any third party, Party C and relevant personnel so involved shall be liable for responsibilities accordingly.

### **V. Rights and interests regarding update of technology**

1. Any party hereto shall notify the other parties without delay if it updates the hydrochlorination method in production of trichlorosilane from silicon tetrachloride.

---

2. If improvement on the basis of the original is minor, improved technology shall be disclosed to the other parties for use for free.

3. In case Party A and Party B shall achieve any material improvement and development from implementation of the hydrochlorination method in production of trichlorosilane from silicon tetrachloride other than in any phase of polysilicon project of Party C, any and all patent right so applied and achieved shall belong to both Party A and Party B, provided that Party C shall have priority right and with preferential price to use such new technology and during such period, Party C shall be entitled to use this new technology for free. In case any material improvement and development from implementation of the hydrochlorination method in production of trichlorosilane from silicon tetrachloride should be achieved in any phase of project of Party C, any and all patent right so newly applied and achieved shall belong to Party A and Party B in a proper proportion, and Party C shall have the right to use such improved technology for free for such phase and shall have priority right and with preferential price to use such improved technology in other phases.

4. As to any and all technology so improved, Party A and Party B shall be responsible for keeping the confidentiality of such improved technology (except for the purpose of application with any competent authority for patent right). Party A and Party B shall guarantee not to in any form unilaterally disclose or transfer such improved technology to, or permitted it to be used by any other personnel or any company without prior consent of other parties. In case any permit or assignment should be made when agreed by the parties in writing, such permit or assignment shall be subject to a strict confidential agreement entered into by the parties.

#### **VI. Joint obligations of the parties**

In case any party hereto discovers that the technical secret of the Technology proprietary or patentee is infringed by any third party, it shall notify Party A and Party B without delay and then the Technology proprietary or patentee shall promptly handle such case or appeal to any competent authority or bring an action with the local people's court and the other parties hereto so involved shall give due assistances.

#### **VII. Exemption due to force majeure event**

In case any obligation of any party hereto under the Agreement shall be prevented from being performed due to an event of force majeure such as fire disaster, flood, seism, war, etc, the other parties shall take due measures so as to mitigate or eliminate any and all losses so caused and such party so prevented shall notify the other parties without delay.

#### **VIII. Settlement of dispute**

Any and all issues not covered herein shall be subject to amicable agreement of the parties involved. In case no agreement can be reached, the case in dispute shall be submitted to the China International Economic and Trade Arbitration Commission in Beijing for arbitration according to its valid arbitration rules then.

---

## IX. Effectiveness of Agreement

The Agreement shall come into force upon being sealed by Party A, Party B and Party C and being signed by their respectively authorized representatives.

## X. Miscellaneous

The Agreement is executed in nine counterparts, with each party hereto holding three counterparts.

Party A: Xuzhou Southeast Polysilicon Materials Development & Research Co., Ltd. (chopped)

Legal representative (or authorized agent)

(Signature and seal)

Date:

Tel:

Party B: Hualu Engineering & Technology Co., Ltd.

Special seal for Contract (chopped)

Legal representative (or authorized agent)

(Signature and seal)

Date: 12/19/07

Tel:

Party C: Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.

Special seal for Contract (chopped)

Legal representative (or authorized agent)

(Signature and seal)

Date: 12/20/07

Tel:

**Polysilicon Supply Agreement**

**By and between**

**Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.**

**And**

**Jiangsu Linyang Solarfun Co., Ltd.**

**Serial Number on the side of the Seller:**

**Serial Number on the side of the Buyer:**

**June 22, 2008**

- 1 -

---

This Polysilicon Supply Agreement is executed by the following parties on June 22, 2008.

Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd., a company incorporated in the People' s Republic of China with its legal address at No. 666, Yangshan Road, Xuzhou Economic Development Zone, Jiangsu Province, PRC (hereinafter referred to as “**Seller**”).

Jiangsu Linyang Solarfun Co., Ltd., a company incorporated in the People' s Republic of China with its legal address at 66 Linyang Road, Qidong City, Jiangsu Province (hereinafter referred to as “**Buyer**”).

The Buyer and the Seller are each hereinafter also referred to as the “Party” and, collectively as the “Parties”.

## **PREAMBLE**

WHEREAS, the Buyer intends to engage in a long-term trade relationship with the Seller and to purchase certain quantities of solar grade polysilicon from the Seller, and the Seller intends to be a supplier and to sell certain quantities of solar grade polysilicon to the Buyer; and

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, the Seller and the Buyer agree as follows:

## **1. DEFINITIONS**

As used herein, unless otherwise agreed in the clauses of this Agreement, or defined by the context, the following terms shall have the following meaning:

**Agreement** means this Polysilicon Supply Agreement, including all Exhibits hereto, as it may be amended, modified or supplemented from time to time in accordance with its terms.

**Term of this Agreement** means the period from the Effective Date of this Agreement to the expiry date of it, which is the effective term of this Agreement.

**Business Day** means any day on which companies in the PRC are generally open for business, including a Saturday or Sunday which the PRC government temporarily declares to be a working day (“Working Rest Day”), but excluding a statutory holiday, or a Saturday or Sunday other than a Working Rest Day.

---

**Effective Date** means the date the Parties duly sign this Agreement.

**Agreement Year** means each calendar year during the Term of this Agreement, i.e. from January 1 to December 31. The first Agreement Year shall be from the Effective Date to December 31, 2008.

**Affiliate or Affiliates** means any company which is directly or indirectly controlled by, or under the same control with, controls or jointly controls another company with, each Party.

The term “**control**” as used in the preceding Clause 1.6 means, with respect to a corporation, the right to exercise, directly or indirectly, fifty percent (50%) or more of the voting rights attributable to the shares of such corporation.

**Loss or Losses** means any and all damages, fines, fees, taxes, penalties, deficiencies, losses (including lost profits or diminution in value) and expenses, including interest, reasonable expenses of investigation, court costs, reasonable fees and expenses of attorneys, accountants and other experts or other expenses of any proceedings or of any claim, default or assessment (such fees and expenses to include all fees and expenses, including fees and expenses of attorneys, incurred in connection with (i) the investigation or defense of any third party claims, (ii) asserting or disputing any rights under this Agreement against any Party hereto or otherwise, or (iii) settling any action or proceeding or threatened action or proceeding).

**Intellectual Property** means all the rights from any of the following items: invention, discovery, improvement, utility, model, copyrightable work, industrial design or mask work, algorithm, data structure, trade secrets or know-how, confidential information, or any idea having commercial value. Intellectual Property shall also include any trademark, trade dress, trade name, domain name, or other marks that serve to identify and distinguish goods or services as coming from, or falling under the control of, a single source. Intellectual Property shall include all rights of whatsoever nature in computer software and



data, all intangible rights or privileges of a nature similar to any of the foregoing in every case in any part of the world, and all rights in any applications and granted registrations for any of the foregoing rights.

**China** or **PRC** means the People's Republic of China. But in this Agreement, shall not include Hong Kong , Macao, or Taiwan district.

**Renminbi** or **RMB** means the lawful currency of China.

**Laws** means the laws, regulations, rules, and other legislative, executive or judicial notices, decisions or pronouncements binding on either Party, or in relation to the subject matter of this Contract.

**Products** means the solar grade polysilicon as defined in Products specification in Exhibit A of this Agreement. The Seller agrees to sell and deliver and the Buyer agrees to buy and acquire the Products with such specification.

**Payment** means the total amount of the price (net price) of the Products and the tax borne by the Buyer per each invoice of Seller to Buyer.

**Advance Payment** shall have the meaning as defined in Clause 3.5.1 of this Agreement.

**Total Agreement Price** means the tax-included total price as stipulated in Exhibit B .

## **2. GENERAL PROVISIONS**

- 2.1. The Preamble in the above context and Exhibits attached hereto constitute an integral part of this Agreement.
- 2.2. Headings preceding the text, articles and clauses hereof have been inserted solely for convenience and reference and shall not be construed to affect the meaning, construction or effect of this Agreement.
- 2.3. During the Term of this Agreement, the Buyer shall purchase, accept and pay for the Products, subject to the terms and conditions herein.
- 2.4. During the Term of this Agreement, the Seller shall sell and deliver the Products, subject to the terms and conditions herein.

- 
- 2.5. Term of this Agreement shall be from the Effective Date to December 31, 2015, and unless early terminated or canceled in accordance with the terms of this Agreement, this Agreement shall continue in full force until both Parties have completed their obligations as detailed herein.
- 2.6. Take or Pay Agreement. This Agreement is a “take or pay agreement” such that Buyer is absolutely and irrevocably required to accept and pay for the contracted volume of Products per year in the Term of this Agreement at the prices set forth in Exhibit B, except as otherwise provided in this Agreement. In the event that Buyer fails to perform its contracted volume (including but not limit to: fails to order contracted volume and fails to pay the account payable) in a given year, the Seller is entitled to, at the end of that given year, give payment notice to the Buyer regarding the difference between the ordered and the contracted volume per Exhibit B at their full contract price and the Buyer is liable to pay such full price for the contracted but not ordered Products for the given year as specified in that notice within \*\*\* of the notice date. The Buyer specifically acknowledges and accepts that it will be liable for the full purchase price of volume differentia between the ordered and the contracted volume. Upon the payment of aforesaid price, the ownership of the relevant Products shall be transferred to the Buyer and delivered in accordance with the provisions in this Agreement. The Buyer should pick up the Products on time pursuant to this Agreement. In such case, the Seller shall bear no liabilities in delay delivery and the Buyer should bear all the risk, loss and liabilities arisen, and the Buyer is obligated to compensate for all the loss and expenses suffered by the Seller. In the event that the Seller obtain all the payment and interest as stipulated in this Clause through reselling the Products pursuant to the second paragraph of Clause 3.6.4 of this Agreement and being compensated by the Buyer for the cost and Loss, the Seller shall not claim the payment pursuant to the afore-said provisions for the difference volume.
- 2.7. Except the two circumstances as specified hereinafter, the Buyer shall not resell Products or be a reseller or distributor of Products supplied by Seller without prior written consent from the Seller: (i) the Buyer use Products for its purpose of production, or: (ii) the Buyer resell or distribute Products to its Affiliates.

- 2.8. The Buyer may transfer the Products obtained in terms of this Agreement in part or in total to one or more of its Affiliates and to avoid any doubt, specifically to the entity Jiangsu Yangguang Jingyuan Technology Co., Ltd. If the Buyer transfers the Products obtained in terms of this Agreement in part or in total to its other Affiliates other than Jiangsu Yangguang Jingyuan Technology Co., Ltd., it should give a \*\*\* prior notice to the Seller. Except otherwise agreement reached between them, the Seller bears on obligation and liabilities under this Agreement to the Affiliates.

### **3. SUPPLY OF PRODUCTS**

#### **3.1. Products**

The Products to be supplied under this Agreement shall meet the specification as stipulated in Exhibit A to this Agreement or the specification which have been amended and executed by the Parties at the time of supply. The specifications set forth in Exhibit A may be amended only in writing upon the agreement of the Seller and the Buyer.

#### **3.2. Price**

3.2.1. The price of Products during the Term of this Agreement shall be fixed as set forth in Exhibit B. The Parties hereto agree that upon the execution of this Agreement, neither Party may require the adjustment of the said price by the other Party for any grounds.

3.2.2. The price in this Agreement shall be quoted as VAT-included price (the Value Added Tax rate is 17%), and subject to adjustment when issuing an invoice if any change of the Value Added Tax rate is made by the government. The price shall not include any expense for transportation, insurance and other logistic procedures, or any other tax borne by the Buyer.

#### **3.3. Volume**

3.3.1. The volume of Products supplied during the Term of this Agreement shall be set forth in Exhibit B, provided, however, Seller may through prior written notice at the beginning \*\*\* of each quarter adjust the supply plan of the Products supplied in every quarter ("quarter" referred to as each period of three months from July 2008, and so forth) within \*\*\* of the total volume of the products supplied in the past three months in a given quarter. The Seller shall make up for the short supply to

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

the scheduled volume within \*\*\* of the following quarter. In this case the Seller shall not bear liability for delay in delivery. Otherwise, Seller shall be responsible for liquidated damages per Clause 8.3. In addition, the parties hereto agree that upon the execution of this Agreement, neither Party may require the adjustment of the said volume by the other Party for any grounds. The Products shall be invoiced in accordance with Clause 3.5.3 hereunder. In case there are delays in delivery, the Products can be priced with the scheduled price of delivery date and the price difference can be deducted by the Buyer from upcoming payments.

### 3.4. Quality

- 3.4.1. The quality standard of the Products under this Agreement shall follow Products specification in Exhibit A to this Agreement. In case of any dispute arising concerning the Products' quality, the Parties shall entrust official authentication institute for an authentication report and the authentication report shall prevail in respect of the quality of the Products. If the deficiencies of the Products are proved according to the authentication report, the expenses and costs shall be ultimately borne by the Seller; and if the deficiencies of the Products are proved non-in-existence according to the authentication report, the expenses and costs shall be ultimately borne by the Buyer.

The parties hereto expressly agree that the quality standard of the Products under this Agreement shall follow Products Specification in Exhibit A to this Agreement from the Effective Date, which should be adjusted during the \*\*\* month after the first delivery of the Products by the Parties; in case that no consensus has been reached between the Parties within \*\*\* from the negotiating date, the Parties shall strive for collecting the top three producers of solar grade polysilicon in the mainland of PRC within \*\*\* and adjust the Exhibit A according to the average specification of these specifications from the top three producers. The Seller shall be included in the top three and its specification shall be taken as a reference should its production rank the top three; in case consensus between the Parties regarding the adjustment of the specification in Exhibit A is not yet reached with the time abovementioned, the Parties shall be responsible to separately purchase \*\*\* of products as sample from the top three producers and deliver these samples to official authentication institute for authentication report(s), the charge of which should be apportioned between the Parties. The Parties shall make effort to obtain the consequent average specification of the

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

top three producers products as specified in the authentication report(s) in the shortest time and the consequent average specification shall be applied in the adjustment of the Exhibit A. The adjusted specification shall be effectively applied from the \*\*\* day from the receipt of the authentication report(s) for the samples supplied by the top three producers. To avoid any doubt, the receipt of the authentication report(s) by any Party shall be deemed the receipt of the authentication report(s) by Parties.

3.4.2. From the \*\*\* month after the date of the first delivery, Seller shall provide the verification reports with each delivery. Buyer is entitled to verify these Products pursuant to Clause 3.6.6.

### 3.5. Payment

3.5.1. Advance Payment. The Buyer agrees to pay RMB \*\*\* as Advance Payment, of which the interest shall not be calculated and the Seller shall own all the interest herein. Unless otherwise stipulates in the context of this Agreement, the Advance Payment is unrefundable, and irrevocable. The term of paying the Advance Payment shall be the same as the term stipulated in Exhibit B. Unless otherwise specified in this Agreement, the Buyer explicitly acknowledges and accepts that: after execution of this Agreement, the Seller shall not be responsible to return all or part of the Advance Payment to the Buyer in any case. The Advance Payment shall be deducted for Payment to Products only in situations specified in this Agreement. The Parties herein explicitly agree that: the Buyer is entitled to deduct monthly \*\*\* of the Advance Payment as Payment to Products from \*\*\* up to the date that the total amount of the Advance Payment is thoroughly deducted. If the Advance Payment is deducted as liquidated damages or compensation for any losses due to the Buyer's breach of contract, the deduction of \*\*\* of the remaining Advance Payment as the monthly Payment of the Products shall be commenced only after the deduction of the liquidated damages or compensation for any losses. The Seller shall return the residual amount of the Advance Payment to the Buyer within \*\*\* after its performance of this Agreement finished or early cancellation or termination of this Agreement because of the breach by the Seller.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

If the Buyer breaches the Agreement, the Seller shall have right to deduct relevant liquidated damages or loss compensation from the Advance Payment, and request the Buyer to pay an amount equal to the deduction to replenish the Advance Payment, non-performance of which shall be deemed as a breach of this Agreement and the Buyer shall be responsible to assume the liability pursuant to Clause 8.3 of this Agreement.

- 3.5.2. Payment. The Buyer shall make the Payment to the Seller before the Seller delivers the Products in accordance with the Exhibit B, the Seller is entitled to refuse the delivery of the Products if the Buyer does not pay adequately. The Seller is obligated to deliver the corresponding Products to the Buyer within \*\*\* from the date of its receipt of the Payment. The Seller shall make reasonable efforts to deliver the monthly scheduled volumes in \*\*\* equally spread lots.
- 3.5.3. After the Buyer makes the full Payment to the Seller each time, the Seller shall issue relevant invoice for the use of value-added-tax with the value of the paid amount at that time to the Buyer within \*\*\*. The property rights of the Products shall be owned by the Seller before the Payment is fully settled.
- 3.6. Delivery
- 3.6.1. All deliveries shall be made in accordance with the delivery schedule specified in Exhibit B.
- 3.6.2. All Products purchased and sold hereunder shall be delivered at Seller' s location or other locations ordered by the Seller (e.g. workshop, factory or storehouse). All risk of Losses to such Products shall be transferred to Buyer upon the date of any delivery herein.
- 3.6.3. Transportation and Insurance. The Buyer is liable for the transportation and insurance of the Products at its own cost.
- 3.6.4. In the event of a delay in delivery due to Buyer' s request or due to Buyer' s failure to collect the Products at the delivery date, the Seller is entitled to place such Products in escrow to notarial authorities or seal up the Products for storage at the Buyer' s cost. Once the Products are in escrow or sealed up, the risk of the Products shall transfer to the Buyer, and the Buyer shall bear the expense of escrow or the sealed storage. If the Buyer delays for more than \*\*\* to collect the Products, it shall be considered as irrevocable acceptance of the Products, and the Seller has the right to dispose the Products at a reasonable price.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

In the event that the Buyer fails to purchase Products from the Seller in accordance with the volume of this Agreement in a given month, the Seller is entitled to resell the unpurchased Products to other buyers in the domestic or overseas market at its own discretion, and the Buyer shall be liable to pay the margin between the resale price and scheduled price in this Agreement and the expenses resulting from the resale. Except as stipulated in Clause 3.3.1 herein, in the event that the Seller fails to meet the supply volume in accordance with the Agreement, the Buyer has the right to purchase the shortfall from other suppliers to mitigate its loss. The Seller agrees to be liable to the additional cost suffered by the Buyer in its purchasing such Products from other sellers from the spot market due to Seller's short supply. The Buyer agrees that the Seller shall not be liable for any other damage under this Agreement provided that the Seller compensates the Buyer for the afore-said additional cost.

- 3.6.5. In the event that the Seller is delayed to deliver the Products as stipulated in Clause 4.4 of this Agreement, the Buyer shall permit the Seller to reasonably extend the delivery term for a period no less than \*\*\* and no more than \*\*\*, which should be noticed explicitly by the Buyer. The Seller shall not be responsible for any liability of breach of this Agreement during the extension period. If the Seller fails to deliver the scheduled Products upon the expiration of the extension period, it shall be charged with the liability for delay delivery as specified in Clause 8.3.

The Seller shall have right to deliver partly upon the consent of the Buyer,

- 3.6.6. Inspection. The Buyer shall process the inspection and issue a written notice of Products' flaws to the Seller in \*\*\* after delivery if there are flaws discovered during the inspection. Once exceed the time limit, the Products delivered shall be deemed to be up to standard, and the Buyer shall accept all the Products unconditionally. To avoid any doubt, the rules of inspection herein is only applicable to the inspection of polysilicon and the Parties herein disagree to apply the inspection rules of silicon chips to the inspection of polysilicon.

- 3.6.7. As additional remedy to Buyer, in the event that Seller delivers \*\*\* is a calendar quarter Products that fail to meet specification in Exhibit A, Seller will pay to Buyer liquidated damages, which equals to a delivery free of charge of \*\*\*,

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

which excludes any other liabilities borne by the Seller, including but not limited to the liquidated damage under this Agreement. The test results shall be obtained from a recognized laboratory (according to Clause 3.4.1 hereof.).

- 3.6.8. The Parties acknowledge and explicitly agree that: the Seller is only liable to provide the Products according to the Exhibit A of this Agreement, and the responsibilities for the fitness of the Products for special purpose, and the processing, use, and application of the Products should be solely assumed by the Buyer.

3.7. Warranty

- 3.7.1. The Parties hereto agree and acknowledge that all risks arising out of the fluctuation of the product prices shall be borne by the Parties respectively, and Buyer is obligated to purchase and Seller is obligated to provide the Products contracted during the Term of this Agreement.

- 3.7.2. Quality warranty. The Seller makes its warranty for the quality of delivered Products to the extent permitted and required under Exhibit A. In the event that the delivered Products do not meet the specification as specified in Exhibit A, the Seller shall be liable for exchange of Products up to the specification in Exhibit A within \*\*\* upon the request of the Buyer. If the Seller fails to exchange within the aforesaid period, it shall be liable for liquidated damages in accordance with Clause 8.4. Except the warranty abovementioned, any implied or express warranty from the Seller for the qualification of Products or warranty for the future proper sale of Products or fitness for a particular purpose are specifically excluded from this Agreement.

- (a) According to the related provisions of this Agreement, in the event that the Buyer suffers any claims or suits arising from any deficiencies of the Products, the remedial right of the Buyer and the liabilities and obligations of the Seller are absolutely limited to: (i) making exchange for the disqualified Products or paying back the sum of money paid for them, or (ii) paying damages with a sum of money not exceeding the purchase price of the involved Products resulting in the claims or suits. As a condition precedent to the exercitation of the remedial right of the Buyer, the Buyer should give a prior notice to the Seller pursuant to the relevant provisions of this Agreement.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



- (b) Parties agree that the remedies stipulated in this Agreement are sufficient and exclusive. Save for these indemnification obligations of the Parties as stipulated in this Agreement, one Party shall not be liable to any special damages, incidental damages, indirect damages or any other damages suffered by the other Party resulting from its disobeying by the obligations under this Agreement or other reasons excluded from this Agreement, including suit of infringement, strict liability, liability for products and infringement of trademark. The Buyer agrees that except the circumstance that the Products may be transferred pursuant to Clause 2.8 of this Agreement, it will not transfer, permit to use, confer or make other behavior to let a third party have the Products, otherwise it will bear all the liabilities by itself, such as liabilities in related with patent, and Loss suffered by the Seller on account of its afore-said behavior.

#### **4. FORCE MAJEURE**

##### **4.1. Events of Force Majeure**

If a Party delays or fails in performance of any obligation of this Agreement, completely due to causes beyond its reasonable control, and the Party who delays or fails in performance is in compliance with the requirement of Clause 8 of this Agreement and is of no fault or negligence, the Party shall not be liable for such delays or failures in performance and shall not be deemed as breaching this Agreement. The aforesaid causes include, but are not limited to, force majeure, war, riot, explosion, fire, changes of Laws, acts or nonfeasance of the government inducing the delays or failures in performance of this Agreement (generally referred to as "Force Majeure"). Provided the matters (the delays or failures in performance) of the carriers, distributors, or suppliers of the Buyer, which results in the delays or failures in performance of the Buyer, are completely caused by aforesaid events of Force Majeure, it shall also be deemed as the delays or failures in performance induced by the Force Majeure under this clause. The parties agree to continue performing their obligations as soon as the events of Force Majeure disappear, and to deduct the non-performance period caused by Force Majeure and postpone the Agreement accordingly.

#### 4.2. Notice and Response

The Party experiencing the Force Majeure shall promptly give written notification to the other Party. Such notification shall include a full and complete explanation of the Force Majeure and its cause, the status of the Force Majeure, and the actions such Party is taking and proposes to take to overcome the Force Majeure. The Party experiencing the Force Majeure shall exercise due diligence in endeavoring to overcome any delay caused by Force Majeure and shall undertake reasonable measures to make up the time delayed by the Force Majeure without additional compensation from the other party. In the event that Seller is unable to resume production within \*\*\* after the date of such force majeure event, Buyer shall have the right to terminate this Agreement without bearing any liability for breaching this Agreement and Seller shall not return the balance of the Advance Payment only if the Buyer is not in liabilities or bears any risk.

#### 4.3. Effect of Force Majeure

Except as otherwise provided in this Agreement, if any Party delays or fails in performance of any obligation of this Agreement due to occurrence of Force Majeure, its term of performing this Agreement shall be prolonged to include the reasonable time which is needed to overcome the events of Force Majeure.

#### 4.4. Exemptions

The Seller shall choose to delay delivery without bearing default liabilities in the following circumstance:

- 4.4.1. The Seller schedules maintenance \*\*\* times per year. The schedule for each maintenance will be announced at least \*\*\* in advance. Smaller delivery delays may occur at the time of these maintenance. Parties will discuss and agree in good faith the resulting schedule changes.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

## **5. INTELLECTUAL PROPERTY**

Any and all drawings, data, designs, tooling, equipment, procedures, engineering changes, inventions, trade secrets, copyrights, mask works, source code, object code, patents, patent applications, know-how, computer and/or product software and all parts thereof, trademarks and all other information, technical or otherwise which was developed, made or supplied by or for Seller in the development, production or manufacture of the Products, will be and remain the sole property of Seller (or its licensors, if any), and in any way nothing in this Agreement shall be construed as granting intellectual property regarding the Products (to Buyer). Buyer agrees not to reverse engineer any Product purchased hereunder.

## **6. CONFIDENTIALITY**

- 6.1. The Parties acknowledge and agree that the terms of this Agreement and certain information exchanged between them pertaining to this Agreement, including information regarding research, technology, product developments, marketing plans or conditions, products information, business strategies, and the like, constitutes “Confidential Information” of the Party disclosing the information. The purpose of the exchange of the Confidential Information is to allow the Parties to perform their obligations and responsibilities under this Agreement. During the term of this Agreement, and for a period of \*\*\* years following its termination or expiration, except as required by applicable laws, regulation or rules of any securities exchange, the Party received any Confidential Information, and its employees, agents, attorneys, financial advisors, officers, directors and shareholders who shall receive such Confidential Information (hereinafter referred as to “Receiving Parties”) shall not, except with the prior written consent of the disclosing Party, use, divulge, disclose or communicate, to any person, firm, corporation or entity, in any manner whatsoever, the terms of this Agreement or any Confidential Information of the disclosing Party; provided, however, that each Party may use, divulge, disclose or communicate the terms of this Agreement or Confidential Information of the disclosing Party to its affiliates if such affiliates undertake to keep such information strictly confidential in accordance with stipulations of this Agreement and each affiliate has a “need to know”. Each Party further agrees to use the same degree of care to avoid publication or dissemination of the Confidential Information disclosed to the

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

other Party under this Agreement as it employs with respect to its own Confidential Information, but at all times one party shall use at least reasonable care to protect against disclosure of Confidential Information of the opposite Party. Confidential Information does not and shall not include information that:

- (a) was already known to the Receiving Parties at the time such information is disclosed by the other Party;
- (b) was or became publicly known without Receiving Parties' faults;
- (c) was rightfully received from a third party without restriction;
- (d) was independently developed by the Receiving Parties;
- (e) was approved for release by written authorization of the Party disclosing such information under this Agreement; or
- (f) was required by legal or financial reporting purposes to be disclosed; provided, however, that the Party being required to disclose shall, if circumstances permit, provide advance notice to the other Party and shall allow the other Party a reasonable opportunity to oppose such disclosure, if appropriate.

6.2. The Parties shall treat such Confidential Information as confidential, each Party shall not recopy or use such Confidential Information unless in necessity of fulfilling its obligations under this Agreement. One Party shall return all Confidential Information to the other Party upon completion of such obligations for its use, or upon the request of the other Party.

6.3. The Parties acknowledge and agree that the illegal use or disclosure of the Confidential Information may cause irreparable injury to Disclosing Party for which its loss may not be adequately remedied by Laws, and that any actual or contemplated breach of this clause will entitle Disclosing Party to obtain immediate injunctive relief prohibiting such breach, in addition to any other rights and remedies available to it.

6.4. The Parties (including the Affiliates procuring Confidential Information under this Agreement) agree that, each Party shall comply with the obligations and liabilities concerning Confidential Information under this Agreement, one Party shall not, without obtaining the prior consent from the other Party, issue or release any announcement, report, declaration, or message

about this Agreement or any transaction or clause of this Agreement. However, any Party or its Affiliates may disclose the contents of this Agreement according to and within the extent of the compulsory requirements of its local Laws and applicable Laws, Both Parties understand that listing rules from the respective stock exchanges allow significant time for alignment with the other Party on how to disclose such required information in related with this Agreement that may contain Confidential Information of the other Party, and that this alignment shall be sought. After achieving a mutual consent on the details of the news report, the Parties shall report the subscription and contents of this Agreement through press.

## **7. OWNERSHIP AND USE OF DRAWINGS, DOCUMENTS AND OTHER ITEMS**

All drawings, blueprints, dies, patterns, tools, printing plates and any other items or documents prepared or constructed by the Seller to develop, produce or manufacture the Products hereunder shall be the sole property of the Seller, and promptly upon the expiration, termination or cancellation of this Agreement, shall be delivered to the Seller. The Buyer shall use all drawings, blueprints, dies, patterns, tools, printing plates and any other items or documents prepared or constructed by Seller solely for the purposes of this Agreement and shall not use any of such items for the benefit of any third party.

## **8. TERMINATION**

8.1. Buyer understands and acknowledges that Seller is, on the basis of trust to the Buyer and estimation to the Buyer' s demand, making substantial capital investments to expand its manufacturing capabilities in order to satisfy Buyer' s demand for the Products. The Parties acknowledge it is their sincere intent that the risks on the fluctuation of the product prices shall be borne by the Parties respectively, and Buyer is obligated to purchase and Seller is obligated to provide the contracted volumes over the Term of this Agreement. Accordingly, the basis and circumstances under which the parties can terminate this Agreement prior to the expiration of the Term of this Agreement is expressly limited to the terms of this Clause 8.

8.2. Seller understands and acknowledges that Seller is, on the basis of trust to the Buyer and estimation to the Buyer' s demand, making substantial capital investments to expand its manufacturing capabilities. The parties acknowledge it is their sincere

intent that the risks on the fluctuation of the product prices shall be borne by the Parties respectively, and Buyer is obligated to purchase and Seller is obligated to provide the contracted volumes over the Term of this Agreement. Accordingly, the basis and circumstances under which the parties can terminate this Agreement prior to the expiration of the Term of this Agreement is expressly limited to the terms of this Clause 8.

### 8.3. Damages for the delayed payment of the Buyer

If the Buyer delays to make the Advance Payment of Products, the Buyer shall be liable to pay \*\*\* as liquidated damages per delayed day, and if the delayed period expires \*\*\*, the Seller shall be entitled to terminate this Agreement anytime thereafter. In case the Seller terminates this Agreement, the Buyer shall bear liquidated damages of \*\*\* in addition to the accumulated amount of the aforesaid liquidated damages for Advance Payment. The Seller shall also have the right not to terminate this Agreement and the liquidated damages should be accumulatively calculated. The accumulated amount of aforesaid liquidated damages for Advance Payment shall be calculated from the day after the scheduled payment date up to the date of actual payment. If Buyer delays to make any Payment, Seller shall issue a notice within \*\*\* after the scheduled payment date to ask Buyer to rectify default, and Buyer shall rectify default in time. In case Buyer fails to rectify the default within \*\*\* after date of Seller's notice informing late Payment, the Buyer shall be liable for \*\*\* as liquidated damages per delayed day as of the \*\*\* delayed day, if the Buyer delays to pay the Payment for \*\*\* or more days, the Seller may terminate this Agreement anytime thereafter. In case Seller terminates this Agreement, Seller shall claim Buyer for, in addition to the accumulated amount of the aforesaid liquidated damages, an amount of liquidated damages equal to residual Payment for the un-purchased volume of Products within the committed volume during the Term of this Agreement as stipulated in Exhibit B; or Seller shall make such requests to the Buyer: (a) to pay the accumulated amount of the aforesaid liquidated damages; and (b) the residual Advance Payment paid by the Buyer shall be forfeited by the Seller; and (c) to pay an amount of liquidated damages equal to \*\*\*. The Seller shall also have the right to not terminate this Agreement and the liquidated damages stipulated in section (a) of this clause should be accumulatively calculated.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

8.4. Damages for Seller' s default

Except as otherwise stipulated in Clause 3.3 or the failure of the Buyer to delivery the Product in the volume as stipulated in Appendix A on time, if the Seller' s delivery delays or falls short of contracted volume of the Products in conformity with the specification under this Agreement, the Buyer may, within \*\*\*, issue notice to ask Seller to rectify default, the Seller shall rectify default in time, if the Seller fails to do so within \*\*\*, the Seller shall be liable for \*\*\* as liquidated damages per delayed day as of the \*\*\* delayed day, if the Seller fails to deliver for \*\*\* or more days, Buyer shall be entitled to terminate this Agreement anytime thereafter. In case the Buyer terminates this Agreement, the Buyer shall make such requests to the Seller: (a) to pay the aforesaid liquidated damages accumulatively, and (b) Seller shall return the residual Advance Payment paid by the Buyer to the Buyer, and pay \*\*\* to the Buyer as liquidated damages, and (c) (i) in the period of 2008-2010 to pay \*\*\* as liquidated damages; and (ii) in the period of 2011-2015, pay \*\*\* as liquidated damages. The Buyer shall also have the right to not terminate this Agreement and the liquidated damages stipulated in section (a) of this clause should be accumulatively calculated.

8.5. The Parties hereto agree and acknowledge that all Losses arising out of the said breaches have been anticipated at the conclusion of this Agreement, and agree that the calculation methods for Losses therefrom shall be the same with those of liquidated damages. The Parties hereto agree to waive the rights set forth in Article 114 of Contract Law of the People' s Republic of China to petition to court of the payment or non-payment of balances between the higher liquidated damages and the lower Losses or vice versa.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

## 9. NOTICE

All certificates or notices required hereunder shall be given in writing and addressed or delivered to the representative specified herein below. Notices shall be deemed received (a) upon delivery, when personally delivered; (b) upon receipt, when sent via registered or certified mail; and (c) the next business day, when sent via overnight courier. Copies of all general correspondence regarding this Agreement shall also be sent to following representatives:

### Notices to Seller:

Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.

No.66, Yangshan Road, Xuzhou

Economic Development Zone, Jiangsu,

PRC

Mr. Zhu Guomin

General Manager

### Notices to Buyer:

Jiangsu Linyang Solarfun Co., Ltd.

Linyang Road, Qidong City, Jiangsu,

PRC

Mr. Fan Xiaochuan

Manager in charge of raw material purchase

Buyer or Seller may change the representative designated to receive notice hereunder by written notice to the other Party. All correspondence and transmittals between the Parties shall be executed pursuant to coordination procedures that shall be developed by the Parties.



---

**10. LANGUAGE**

The Parties hereby confirm that this Agreement shall be prepared in Chinese and English. Both languages are consistent and binding. In case disputes arise, the Chinese version should prevail.

**11. CHOICE OF LAWS**

This Agreement shall be governed by and construed in accordance with the Laws of PRC, excluding the non-PRC laws and rules regarding collision of choice of law.

**12. ARBITRATION**

Except as otherwise provided in this Agreement, any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or validity thereof, shall be finally settled by the China International Economic and Trade Arbitration Commission, Shanghai Commission (“CIETAC”) under the then effective PRC arbitration rules of CIETAC. The place of arbitration shall be Shanghai, and the language used in the arbitral proceedings shall be Chinese mandarin.

The arbitration panel shall consist of three arbitrators. The arbitral award made and granted by the arbitration panel shall be final, binding and incontestable and may be used as sole basis for enforcement in a court having competent jurisdiction. All costs of arbitration (including, without limitation, those incurred in the appointment of arbitrator according to the principle that loser pays and attorney fees) shall be apportioned in the arbitral award,

**13. NON-WAIVER**

The failure of either Party to demand strict performance of the terms hereof or to exercise any right conferred hereby shall not be construed as a waiver or relinquishment of its rights to assert or rely on any such term or right in the future.

**14. SEVERABILITY**

In the event that any provision of this Agreement is deemed as a matter of Laws to be unenforceable or null and void, such unenforceable or void portion of such provision shall be deemed severable from the Agreement and the remainder of the Agreement shall continue in full force and effect.

---

**15. ASSIGNMENT**

Neither Seller nor Buyer shall assign, subcontract or otherwise delegate any of their rights or obligations hereunder without the other Party' s prior written consent. Any such assignment without the other Party' s consent shall be void.

**16. SURVIVAL**

All warranties, remedial obligations, indemnities, and confidentiality rights and obligations provided herein shall survive the cancellation, expiration or termination hereof.

**17. AMENDMENTS**

No amendment, modification or waiver of any term hereof shall be effective unless set forth in a writing signed by both Buyer and Seller.

**18. ENTIRE AGREEMENT**

This Agreement, which includes this cover contract and the Exhibits hereto, constitutes the entire agreement of the Parties with respect to the subject matter herein and supersedes any prior or contemporaneous agreement or understanding between the Parties. There are currently no other agreements in place between the Parties concerning this subject matter.

**19. EFFECTIVENESS**

This Agreement will become effective as of the date the Parties execute it.

- 21 -

Seller: Jiangsu Zhongneng Polysilicon Technology  
Development Co., Ltd.

/sign/  
seal

Authorized representative

Date:

Buyer: Jiangsu Linyang Solarfun Co., Ltd.

/sign/  
seal

Authorized representative

Date:

---

## Exhibit A

Suggest to replace/amend as in point 3.4.1

Specifications of Solar Grade Polysilicon

1. Boron: \*\*\*
2. Donor: \*\*\*
3. Carbon: \*\*\*
4. Total Metals (Fe, Cu, Ni, & Cr etc.): \*\*\*
5. Lifetime (N type): \*\*\*

## Exhibit B

### Solarfun (Linyang)

#### 2008-2009 Quarterly delivery schedule and price

<u>Year</u>	<u>Unit</u>	<u>Year 2008</u>					<u>Year 2009</u>					
Quarter		Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Q4	Total	
Quarterly quantity	Ton	***	***	***	***	***	***	***	***	***	***	
Unit price (VAT incl.)	RMB/ KG	***	***	***	***		***	***	***	***		
Total amount (VAT incl.)	RMB	***	***	***	***	***	***	***	***	***	***	
	<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>Jun</u>	<u>Jul</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>
Monthly delivery 2008-09	***	***	***	***	***	***	***	***	***	***	***	***
	***	***	***	***	***	***	***	***	***	***	***	***

#### 8 year delivery schedule and price

<u>Year</u>		<u>Year</u> <u>2008</u>	<u>Year</u> <u>2009</u>	<u>Year</u> <u>2010</u>	<u>Year</u> <u>2011</u>	<u>Year</u> <u>2012</u>	<u>Year</u> <u>2013</u>	<u>Year</u> <u>2014</u>	<u>Year</u> <u>2015</u>	<u>Total</u>
Quantity	Ton	***	***	***	***	***	***	***	***	9,990
Unit price (VAT incl.)	RMB/ KG	***	***	***	***	***	***	***	***	
Total amount (VAT incl.)	RMB	***	***	***	***	***	***	***	***	8,936,164,000
Prepayment	RMB									***
	payment date	7th Jul 2008	7th Oct 2008	7th Jan 2009	7th Apr 2009					
Prepayment schedule	RMB	***	***	***	***					***

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

**Note:**

1. \*\*\* adjustment on the quarterly quantity will be acceptable;
2. The full amount for the product to be delivered in next month will be prepaid by the buyer on \*\*\*;
3. The annual volume from 2010-2015 will be delivered equally through out each month.
4. The after tax price has included a tax of 17%, if the tax rate has been adjusted by the government, the tax shall be calculated based the rate determined by the government.

**GENERAL TERMS AND CONDITIONS OF CONTRACT  
AND APPENDICES**

**Table of Content**

Contract Form	1
General Terms And Conditions Of Contract	3
Chapter 1	
Definitions	3
Chapter 2	
Scope of Contract	7
Chapter 3	
Contract Price	8
Chapter 4	
Terms of Payment	9
Chapter 5	
Delivery and Terms of Delivery	12
Chapter 6	
Packing and Marking	16
Chapter 7	
Documentation	18
Chapter 8	
Mistakes in Information	19
Chapter 9	
Variations and Omissions	20
Chapter 10	
Coordination, Liaison and Project Management	22
Chapter 11	
Safety Management and Quality Assurance	24
Chapter 12	
Inspection at Manufacturer' s Premises and after Delivery	27
Chapter 13	
Erection, Commissioning, Testing and Acceptance	30
Chapter 14	
Warranties and Defects After Delivery	32
Chapter 15	
Additional Spare and Replacement Parts and Repairs to the Equipment	37



Chapter 16	Liability for Accidents and Damage	39
Chapter 17	Licensing	41
Chapter 18	Insurance	42
Chapter 19	Taxes and Duties	43
Chapter 20	Force Majeure	44
Chapter 21	Vesting of the Equipment and Documentation	45
Chapter 22	Infringement	46
Chapter 23	Assignment and Sub-letting	48
Chapter 24	Supplier' s Default and Damages Payable	49
Chapter 25	Bankruptcy	50
Chapter 26	Suspension and Termination	51
Chapter 27	Statute and Other Regulations	53
Chapter 28	Liens	54
Chapter 29	Independence of the Supplier	55
Chapter 30	Conflict of Interest	56
Chapter 31	Business Ethics	57
Chapter 32	Confidentiality	58

Chapter 33	Availability of Information	59
Chapter 34	Settlement of Disputes	60
Chapter 35	Notices	60
Chapter 36	Construction of Contract	61
Chapter 37	Effectiveness of the Contract and Miscellaneous	62
Chapter 38	Exclusivity	62

## **Appendix B**

Appendix B-1	Scope of Supply
Appendix B-2	Technical Conditions
Appendix B-3	Technical Description
Appendix B-4	Quality Assurance
Appendix B-5	Inspection and Testing in Workshop
Appendix B-6	Performance Guarantees
Appendix B-7	Sub-suppliers
Appendix B-8	Schedule
Appendix B-9	Codes Rules and Guides
Appendix B-10	Project Coordination and Management
Appendix B-11	Dossier of Attachments and Document Requirement
Appendix B-12	Equipment Localization
Appendix B-13	Safety Management Requirements

**Contract Form**

Contract No.: JSZN2003

Date of Signing: June 27, 2007

Place of Signing: Xuzhou, Jiangsu, P.R.C.

This Contract is made on the day of June 27, 2007 between Jiangsu Zhongneng Photovoltaic Industry Development Co., Ltd. (江蘇中能光伏科技發展有限公司), a company incorporated and existing under the laws of the PRC with offices at [\*], the PRC (hereinafter referred to as the "Purchaser") as one Party and MSA Apparatus Construction for Chemical Equipment Ltd., a company incorporated and existing under the laws of United Kingdom with offices at 82008 Unterhaching Isartalstr 50, Germany (hereinafter referred to as "MSA"), (the MSA hereinafter collectively referred to as the "Supplier") as the other Party.

WHEREAS the Supplier is a manufacturer and supplier of, among other things, the corresponding accessories, software and related engineering and installation services and has the capability and experience of manufacturing, installation, commissioning and starting-up for the Equipment and the provision of the Services.

WHEREAS the Supplier is willing to supply the Purchaser with the Equipment, Engineering, Additional Spare and Replacement Parts, Special Tools, Documentation and Services and to perform the Works associated with the Equipment on the terms and conditions of this Contract;

WHEREAS the Purchaser is willing to purchase the Equipment, Engineering, Documentation and Services and the Works associated with the Equipment to be provided by the Supplier on the terms and conditions of this Contract;

WHEREAS the Supplier shall be and shall be deemed to be, an independent supplier and not the agent or employee of the Purchaser;

NOW THEREFORE, the Parties authorize their respective representatives, following friendly consultations, to agree on the following terms and conditions and to sign this Contract.

The following documents shall be deemed to form the Contract between the Purchaser and the Supplier, and be read and constructed as part of the Contract, and shall be interpreted in the following order in case of discrepancy or ambiguity among the following documents:

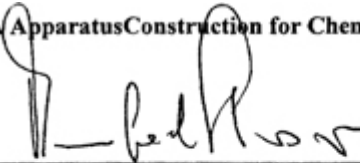
Contract Form;

General Terms and Conditions; and

Appendix B

SIGNED BY

**MSA Apparatus Construction for Chemical Equipment Ltd**

By: 

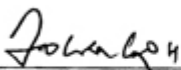
(signature of authorized representative)

Name: SCHIRNER

Title: Director.

**Jiangsu Zhongneng Photovoltaic Industry Development Co., Ltd.**

江蘇中能光伏科技發展有限公司

By: 

(signature of authorized representative)

Name: GOH HUK HIN, Rohm

Title: Executive Director

## General Terms And Conditions Of Contract

### Chapter 1 Definitions

In the Contract the following words shall have the meanings herein assigned to them:

- 1.1 “Actual Delivery Date” shall have the meaning set forth under Clause 5.3 (applicable to Equipment and Special Tools), or Clause 5.14 (applicable to Documentation).
- 1.2 “Additional Spare and Replacement Parts” shall mean the spare and replacement parts which are not included in the Equipment.
- 1.3 “China” and “PRC” and “People’ s Republic of China” each means the People’ s Republic of China excluding, for the purposes of this Contract, Hong Kong, Macao Special Administrative Region and Taiwan.
- 1.4 “Contract” shall mean the agreement between the Purchaser and the Supplier, howsoever made, for the supply of Equipment, Engineering, Documentation, Additional Spare and Replacement Parts, Special Tools and the provision of Services, including all documents referred to in the said agreement which set out the rights and obligations of the Parties thereunder.
- 1.5 “Contract Price” shall mean the consideration amount specified in Chapter 3 of the Contract, subject to such additions and deductions as may be made by the Parties in accordance with the Contract, to be paid to the Supplier in consideration for the supply and delivery of Equipment, Engineering, Additional Spare and Replacement Parts, Special Tools, Documentation and the provision of Services and the fulfillment by the Supplier of all its other activities and obligations under the Contract.
- 1.6 “Delivery Dates” shall mean the applicable dates specified in the Contract for delivery of Equipment, Additional Spare and Replacement Parts, Special Tools and Documentation subject to such adjustments as may be made in accordance with the Contract.
- 1.7 “Documentation” shall mean calculation notes, drawings, programs, schedules, manuals, erection and commissioning data, acceptance tests procedures, and all other technical information required for the design, manufacture, erection, tests, operation and maintenance of the Equipment as defined in Appendix B-1 of the Contract.
- 1.8 “Effective Date” or “EOC” shall mean the day when the Contract becomes effective in accordance with the provisions of Clause 38.2 hereof.
- 1.9 “Engineering” shall mean the engineering set forth in Appendix B.

- 1.10 “Equipment” shall mean all or any parts of the system, machinery, apparatus, parts, special tools, materials, spare parts, consumables and instrumentation which are to be supplied by the Supplier in accordance with the Contract as set out in Appendix B-1 of the Contract.
- 1.11 “Final Delivery Date” or “FDD” shall mean, the Actual Delivery Date of the final item of Equipment which is to be delivered to the Purchaser according to the schedule set out in Appendix B-8, providing that such item of Equipment is not delivered in advance of the Delivery Date without the prior approval of the Purchaser, in which case the Delivery Date shall apply.
- 1.12 “Force Majeure” shall mean an occurrence such as war, serious fire, flood, typhoon, earthquake, which is unavoidable, unforeseeable and insurmountable.
- 1.12(A) “Hong Kong” shall mean the Hong Kong Special Administrative Region of the PRC.
- 1.12(B) “Intellectual Property” shall mean all letters patents, trademarks, trade names, brand names, business names, service marks, designs, utility models, copyrights, inventions, know-how, licenses, technical processes, database rights and other forms of intellectual property in connection with the Project.
- 1.13 “Month/Day” shall mean calendar month/day; “Week” shall mean seven (7) calendar days.
- 1.14 “Overall Project Schedule” shall have the meaning set forth in Appendix B-8.
- 1.15 “Parties” shall mean collectively the Purchaser and the Supplier.
- 1.16 “Party” shall mean either the Purchaser or the Supplier.
- 1.17 “Project” shall mean the construction of the plant at Site to be developed by the Purchaser or its affiliates.
- 1.18 “Provisional Acceptance Certificate” and “PAC” shall have the meaning set forth under Clause 13.5.
- 1.19 “Services” shall mean instruction and services provided by the Supplier at various stages such as licensing, construction, erection, testing, commissioning, operation and maintenance of the Equipment and other services as set out in this Contract up to the [Date].
- 1.20 “Site” shall mean the place at Xuzhou, Jiangsu Province in the PRC as designated by the Purchaser.
- 1.21 “Special Tools” shall mean the special tools for the erection, test, commissioning transportation and packing of the Equipment which tools are not included in the Equipment.
- 1.22 “Specification” shall mean the technical requirements applicable to Appendix B-1 as defined in the Appendices B-2 and B-3 hereto.

- 1.23 “Sub-supplier” shall mean any person or entity (other than the Supplier) named in the Contract for the provision of any part of the Work thereunder or any person or entity to which any part of the Contract has been sub-let with the prior written consent of the Purchaser.
- 1.24 “Variation Order” shall mean the serially numbered form issued by the Purchaser to the Supplier in accordance with Chapter 9.
- 1.25 “Warranty Period” shall mean any of the period commencing on the Actual Delivery Date of the Equipment in question and terminating upon the sooner of the following: \*\*\* after Final Delivery Date; or the \*\*\* after the issue of PAC.
- 1.26 “Working Day” means a day other than a Saturday, a Sunday or public holiday declared by Chinese governmental authorities or other day on which commercial banks in the PRC are required to be closed by reason of any tropical cyclone warning.
- 1.27 “Work” shall mean the supply by the Supplier or the Sub-supplier of all Equipment Additional Spare and Replacement Parts, Documentation, Special Tools, Services and the performance by the Supplier or where applicable, Sub-supplier of all its other activities and obligations under the Contract.
- 1.28 Where used in these General Terms and Conditions of Contract, “writing” or “written” shall mean any manuscript, type-written, or printed statement, under seal or hand as appropriate, but shall also include telegraphic, telex and fax communications.
- 1.29 Words importing persons shall include firms and corporations.
- 1.30 Words importing the singular only shall include the plural and vice-versa when applicable.
- 1.31 “CPT”, “DDU”, “EXW” and “CFR” shall be interpreted and governed in accordance with Incoterms 2000 edition of the International Chamber of Commerce, unless otherwise provided in the Contract.
- 1.32 Headings of this Contract are included for convenience only and shall not affect the construction of any provision of this Contract.
- 1.33 Terms such as “include”, “including”, “are inclusive of and similar expressions are no expressions of limitation and shall be construed as if followed by the words “without limitation”.
- 1.34 References to “law” or “laws” shall include all applicable laws, regulations, rules and orders of any Governmental Authority, securities, exchange or other self-regulating body, any common or customary law, constitution, code, ordinance, statute or other: legislative measure and any regulation, rule, treaty, order, decree or judgment; and “lawful” shall be construed accordingly.
- 1.35 If a period of time is specified and dates from a given day or the day of a given act or: event, such period shall be calculated [exclusive] of that day.



## Chapter 2 Scope of Contract

- 2.1 The Supplier shall supply to the Purchaser completely all Engineering, Equipment, Special Tools, Additional Spare and Replacement Parts and Documentation including interfaces, Services and other things of all kinds necessary for the carrying out, completion and maintenance of the Work in accordance with the Contract. The Supplier undertakes that if during the implementation of the Contract, it fails to supply any items which are required for the safe and reliable operation of the Equipment or for achieving the functions and performance as stipulated in the Contract, such items shall be supplied by the Supplier at no additional cost to the Purchaser.
- 2.2 The Equipment, Engineering, Documentation Services and where applicable, the Special Tools, Additional Spare and Replacement Parts supplied under the Contract shall be in full conformity with the Specifications, conditions, requirements, performance and limits of supply as defined in Appendix B.
- 2.3 The Equipment to be supplied by the Supplier shall conform to the requirements and the limits of supply stipulated in the Contract. The Supplier shall be responsible for providing the Purchaser or the Design Institute designated by the Purchaser with all the information in accordance with the schedule in Appendix B-8.
- 2.4 The Supplier shall assign competent personnel with the relevant expertise to carry out on-Site Services if and when requested by the Purchaser and with a week advance notice in order to ensure that the Equipment is appropriately erected, installed, tested, maintained and put into operation correctly, and the personnel dispatched on Site shall abide by the Safety Management Agreement signed by the Parties in conjunction with the Contract.
- 2.5 The Supplier shall make available Additional Spare and Replacement Parts promptly in accordance with Chapter 15 and, if required to do so by Purchaser, shall carry out repairs to the Equipment in accordance with the provisions of Chapter 15.
- 2.6 During the course of the Project, the Supplier shall, free of any charge to the Purchaser, provide the Purchaser with new operating information and technical know-how and processes obtained by the Supplier, and at all times keep the Purchaser informed of any identified improvement in relation to the technical and safety aspects of the Equipment.
- 2.7 The Supplier shall also perform its other obligations under the Contract and shall perform such other obligations from time to time reasonably required by the Purchaser for the purpose of performing this Contract.

### Chapter 3 Contract Price

- 3.1 Unless the context otherwise provided or agreed by the Parties in writing, the Contract Price shall constitute the entire consideration amount payable by the Purchaser to the Supplier for the supply of Equipment, Engineering, Additional Spare and Replacement Parts, Special Tools, Documentation, the provision of Services, packing, transportation and the fulfillment by the Supplier of all of its other obligations under the Contract.
- 3.2 The Contract Price is \*\*\* the particulars of which are set out in Clause 3.3 below. Unless otherwise agreed by the Parties in writing, the Contract Price specified herein shall be fixed and final.
- 3.3 Particulars of the Contract Price are set out as follows:

<u>Sr.</u>	Name of Equipment	Unit Price		Remarks
		(EUR)	Q' ty	
***	Reactor (***)	***	***	
***	Reactor (***)	***	***	***
	Total Contract Value	***		

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

## Chapter 4 Terms of Payment

- 4.1 Payment shall be considered as effected at the time when payment is made by the Purchaser. Original payment document shall be sent by the Supplier directly to the Purchaser.

Should the dates of payment release fall into any of the statutory holiday, the payment shall be effected on the following Working Day, and the deferment shall not be regarded as delay of the payment.

All banking charges incurred in connection with the Purchaser' s Banks shall be borne by the Purchaser otherwise all banking charges incurred shall be borne by the Supplier.

- 4.2 The Purchaser shall pay the Supplier the Contract Price stated in Chapter 3 in the following manner:

- (i) The Purchaser shall open or issue 1<sup>st</sup> irrevocable direct letter of credit ("1<sup>st</sup> Letter of Credit") by the bank which is acceptable to the Supplier' s bank (which acceptance shall not be unreasonably withheld) in favor of the Supplier in the sum of \*\*\* being \*\*\* of the Contract Price to the Supplier within \*\*\* from the date of this Contract. 1<sup>st</sup> Letter of Credit shall be valid for \*\*\* from the issuance date of the 1<sup>st</sup> Letter of Credit.
- (ii) The Purchaser shall open or issue 2<sup>nd</sup> irrevocable direct letter of credit ("2<sup>nd</sup> Letter of Credit") by the bank which is acceptable to the Supplier' s bank (which acceptance shall not be unreasonably withheld) in favor of the Supplier for \*\*\* of the Contract Price within \*\*\* after the Delivery Date of the first batch of \*\*\* Sets and upon the Purchaser receives one (1) original of the valid export license issued by relevant authorities of the Supplier' s and/or manufacturer' s country or a statement of relevant authorities/agency certifying that no export license is required. 2<sup>nd</sup> Letter of Credit shall be valid for \*\*\* after the Delivery Dates of the 1st batch of \*\*\* Sets.

The Supplier may suspend the works in the event that the Supplier does not receive the aforesaid 2<sup>nd</sup> Letter of Credit within \*\*\* after the written notice by the Supplier to the Purchaser of the failure of the receipt of aforesaid 2<sup>nd</sup> Letter of Credit in accordance with aforesaid paragraph under this Clause 4.2 (ii).

- (iii) The Purchaser shall, within \*\*\* after the Delivery Dates of the 2<sup>nd</sup> batch of \*\*\* Sets, open or issue 3<sup>rd</sup> irrevocable direct letter of credit ("3<sup>rd</sup> Letter of Credit") by the bank in favor of the Supplier for \*\*\* of the Contract Price after the written notice made by the Supplier with respect to the shipment of the Equipment. The 3<sup>rd</sup> Letter of Credit shall be valid for \*\*\* after the Delivery Dates of the 2nd batch of \*\*\* Sets.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

A retainer fee being \*\*\* of the Contract Price shall be paid by telegraphic transfer by the Purchaser through the Purchaser's Bank, within \*\*\* after the Purchaser duly received all of the following documents and fully satisfied the performance of the obligations by the Supplier under this Contract:

- (a) A copy of Final Acceptance Certificate issued by the Purchaser in accordance with Clause 14.16; and
- (b) One (1) original of commercial invoice or VAT invoice covering the amount of the payment.

4.3 \*\*\* of the Contract Price shall be paid against the abovementioned 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Letters of Credits, upon presentation of the following documents by the Purchaser to the Supplier in respect of the actual pro rata value of each shipment, which are found in order:

- (a) Three (3) originals and three (3) duplicate copies of clean on board ocean Bill of Lading made out to order, blank endorsed, notifying the Purchaser and marked "FREIGHT PREPAID", or one (1) original and four (4) duplicate copies of airway bill made out to order of the Purchaser;
- (b) Five (5) originals of manually signed commercial invoice indicating the amount to be paid and the itemized price;
- (c) Two (2) originals and three (3) duplicate copies of detailed packing list indicating the shipping weight, number and the date of the corresponding invoice;
- (d) Two (2) originals and three (3) duplicate copies of ex-works quality certificate issued by the manufacturer;
- (e) Two (2) copies of sight draft;
- (f) One (1) original and four (4) duplicate copies of certificate of origin issued by relevant authorities or agency of the manufacturer's country;
- (g) Five (5) copies of fax advising the Purchaser of the shipment within forty-eight (48) hours after it is made;
- (h) One (1) original and four (4) copies of the Quarantine Certificate/Heat Treatment Certificate for the wooden packing materials or non-wooden packing declarations in case of ocean transport, or four (4) copies of the Quarantine Certificate/Heat Treatment Certificate for the wooden packing materials or non-wooden packing declarations in case of air freight.

4.4 Unless otherwise specifically provided in a Variation Order which increases or decreases the Contract Price, the amount thereof shall be added to or deducted from the amount of payment under Clause 4.2 and 4.3 with the same ratio, which are outstanding at the issuance of the Variation Order in question.

4.5 The Purchaser shall effect any payment within \*\*\* after receiving the appropriate invoices and supporting documentation in accordance with the provisions of this Chapter, unless the Purchaser considers such documentation is not in conformity with the Contract or disputes the amount of any invoices submitted by the Supplier whereupon the Purchaser shall notify the Supplier in writing stating its reasons within \*\*\*.

- 4.6 The Supplier shall be solely responsible for arranging payments to its Sub-suppliers and all other persons as may be engaged by the Supplier in the performance of the Contract.
- 4.7 If pursuant to Chapter 14, 24 or 34 hereof the Supplier is liable to pay liquidated damages to the Purchaser, the relevant amount of liquidated damages shall be paid by the Supplier to the Purchaser within \*\*\* days after receipt of the first written notice from the Purchaser or such other date as specified in the court judgment or order stating the amount payable.
- 4.8 The amount of liquidated damages which the Supplier is liable to pay to the Purchaser pursuant to the terms of this Contract or following a court judgment or order as provided for in Chapter 34 shall be paid by the Supplier directly to the Purchaser or where applicable, deducted from any remaining payment by the Purchaser.

## Chapter 5 Delivery and Terms of Delivery

- 5.1 Subject to Chapter 39 of this Contract, all the Equipment supplied under the Contract shall be delivered by the Supplier under terms of CFR Shanghai port of shipment in accordance with the terms of this Chapter and the Schedule specified in Appendix B-8 hereunder.
- 5.2 This Clause is intentionally left blank.
- 5.3 Within two (2) months after the EOC, the Supplier shall provide the Purchaser a forecast delivery schedule which shall fulfill the requirements of the Overall Project Schedule for the approval of the Purchaser. The delivery dates provided in such forecast delivery schedule approved by the Purchaser shall be the Delivery Dates for the Equipment.

In the above-mentioned forecast delivery schedule, the Supplier shall provide the Purchaser with the following updated information:

- A. Name of Equipment;
- B. Gross Volume;
- C. Gross Weight;
- D. Respective Delivery Schedule for CFR;
- E. Names of respective port of shipment for CFR;
- F. Cargo package/packing list;
- G. Names, Weight Measurement and Drawings of the over-weight, over-sized Equipment, loose goods and bulk materials;
- H. Names, Weight, Measurement and IMCO No. (as per International Maritime Dangerous Goods Code) of dangerous goods.

For the purpose of the Contract, the term “Actual Delivery Date” shall, pursuant to CFR term mean the date of clean on board Bill of Lading.

- 5.4 Under CFR term, the Supplier shall deliver the Equipment in accordance with the following provisions:
- 5.4.1 Not later than sixty (60) days before the readiness or delivery to the first carrier for each shipment, the Supplier shall notify the Purchaser and the Purchaser’s shipping agent by fax of the following contents:
- a) Contract No.;
  - b) Date of readiness for the shipments;
  - c) Total volume;
  - d) Total gross weight/total number of packages;
  - e) Contract value of the equipment;
  - f) Port/Place of Shipment;
  - g) Name, total gross weight and measurements of each piece exceeding \*\*\* metric tons in weight or \*\*\* cubic meters in measurement;

- h) Name, weight, cargo quantity, IMCO No. (as per International Maritime Dangerous Goods Code) of the dangerous and/or inflammable goods; and
- i) Export Warning Notice (EWN) serial number, if applicable.

In the meantime the Supplier shall airmail via express mail the following documents in six (6) duplicate copies to the Purchaser:

- a) The packing list of the shipment covering Contract No., item No., name of the Equipment, specification, type, quantity, unit/total price, unit/total weight, unit/total volume, the overall dimensions of each package (lengthxwidthxheight), total number of packages and Port of Shipment.
- b) Overall packing sketch and drawings for each large piece exceeding twenty (20) metric tons in weight or 9x3 x3 cubic meters in measurement;
- c) Description of any dangerous and/or inflammable goods indicating names, properties, special protective measures and handling methods in case of accident;
- d) Description of the special precautions for the Equipment that requires special storage and transportation.

Another duplicate copy of the said documents shall be airmailed via express mail to the shipping agent appointed by the Purchaser as the basis for arranging transportation, loading and unloading of the Equipment.

- 5.4.2 Within twenty-four (24) hours after completion of each loading, the Supplier shall inform the Purchaser by fax of the following information: Contract No., name of Equipment, actual loading quantity, total gross weight, total volume, proforma invoice and the statement of packing without wood or the fumigation certificate issued by concerned inspection organization. In case the Purchaser fails to arrange insurance in time due to the Supplier's failure to inform it in time, all the losses shall be borne by the Supplier.
- 5.4.3 Within two (2) days after loading the Equipment onto the carrying vessel designated by the Purchaser, the Supplier shall deliver by express mail one (1) original of the clean on board Bill of Lading, proforma invoice, quality certificate, certificate of origin, the statement of packing without wood or the fumigation certificate issued by concerned inspection organization and packing list to the Purchaser.
- 5.4.4 The Supplier shall complete the delivery of Equipment in accordance with the Delivery Dates. Any delivery to be made by the Supplier prior to the Delivery Dates shall be subject to the prior written consent of the Purchaser, otherwise all responsibilities and cost and expenses thus incurred shall be borne by the Supplier.
- 5.4.5 If any Equipment contains dangerous and/or inflammable items, the Supplier shall submit to the Purchaser an English description in one (1) copy indicating the name, characteristics, special handling and protective measures in case of accidents in respect of such items. The Supplier shall instruct the shipping agent to indicate in the Bill of Lading the case No./container No., IMCO No., thereof.
- 5.4.6 The Supplier/his shipping agent shall book shipping space in advance. The Supplier shall keep close contact with the Purchaser. Should the shipping vessel or the date of arrival be changed, the Supplier/his shipping agent shall inform the Purchaser in time.

- 5.4.7 If the Supplier fails to deliver by express mail, the above-mentioned documents stipulated in 5.4.3 to the Purchaser in due time, all the costs incurred due to delayed customs clearance including but not limited to storage, fumigation and heat treatment expenses shall be borne by the Supplier.
- 5.4.8 In case the Equipment are lost and/or damaged in the ocean transportation after the transfer of the risk to the Purchaser, the Supplier shall assist the Purchaser to apply to the insurance company for compensation at the Purchaser's expenses and effect, upon the Purchaser's request, supplementary supply of the same Equipment and Document at the original Contract Price.
- 5.5 The Clause 5.5, Clause 5.6, Clause 5.7 and Clause 5.8 are intentionally left blank.
- 5.6 Documentation provided by the Supplier shall be delivered at the site directed by the Purchaser.
- 5.7 All Documentation to be supplied by the Supplier shall be delivered in accordance with the Schedule as shown in Appendix B-8 under the Contract. In case the delivery dates are not defined in the Contract, their delivery should comply with the erection, testing, commissioning, operation and maintenance plan of related Equipment.
- 5.8 The Supplier shall remain responsible for the contents of unopened Documentation packages being in accordance with the Supplier's appropriate detailed list of Documentation until such packages are opened. In the case of any shortage, loss or damage caused to the Documentation, the Supplier shall make supplementary delivery to the Site of the item or items lost or damaged within \*\*\* after receiving notification from the Purchaser, without any charge. Any item or items lost or damaged after transfer of the risk to the Purchaser or due to the Purchaser's fault shall be replaced by the Supplier at the cost of the Purchaser.
- 5.9 The Supplier shall, one (1) week prior to the delivery of Documentation, notify the Purchaser and its nominated carrier of the number of cases, gross weight, Contract No. and the expected date of arrival of the Documentation to be delivered.
- 5.10 Within twenty-four (24) hours after dispatching Documentation, the Supplier shall notify the Purchaser and its nominated carrier by fax of the Contract No., dispatching date, number of parcels, flight No., Airway Bill No., and approximate gross weight, and submit by courier service to the Purchaser and/or its nominated carrier the following documents:
- a) Two (2) copies of airway bill (marked with Contract No. and the consignee) or carrier's receipt;
  - b) Two (2) copies of detailed list of Documentation;
  - c) Two (2) copies of detailed packing list; and
  - d) One (1) original Certificate of fumigation treatment issued by concerned inspection organization or the statement of packing without wood for Document delivered from abroad.



- 5.11 The date of receiving the Documentation at Site shall be deemed as the Actual Delivery Date for Documentation provided by the Supplier within People' s Republic of China.

The delivery date of the final version of the Documentation shall be deemed as the Actual Delivery Date of the Documentation concerned.

## Chapter 6 Packing and Marking

- 6.1 The Supplier shall have the Equipment tightly packed and shall take all measures to protect the Equipment from moisture, mould, rain, rust, corrosion, and all forms of damage, etc. taking into account the local climatic conditions and the nature of the Equipment. Such packing shall be suitable to withstand numerous handling, loading and unloading and long-distance air and/or sea and/or inland transportation to ensure the safe arrival of the Equipment at the Site without any damage or corrosion. The Supplier shall also provide all special frames, supports or fixtures necessary for handling and stowing the Equipment, and ensure them to meet the specified requirement of the further transportation, storage, protection and hoisting for the consequent equipment. The Supplier shall take such special measures as may be necessary to protect such things as the welding preparations of high pressure pipes, instrumentation, sockets and other fragile fittings.
- 6.2 In each package of Equipment a detailed packing list in three (3) copies together with the relevant quality certificate issued by relevant manufacturers shall be enclosed. The packing list shall specify:
- (i) for individual equipment:
    - (a) functional identification of equipment and designation;
    - (b) reference (coding number and title) of the drawing (assembly drawing or other) identifying the equipment;
    - (c) quality.
  - (ii) for bulk material:
    - (a) coding identification and designation of the relevant item;
    - (b) references (coding number and title) of the standardized document identifying the item;
    - (c) quantity and quality.

The packing list shall be presented and coded according to the applicable procedures.

- 6.3.1 The Supplier shall mark the following on the four (4) adjacent sides of each package with indelible paint in conspicuous printed words:
- (i) Contract No.;
  - (ii) consignee;
  - (iii) destination;
  - (iv) shipping mark;

- (v) gross/net weight (kg);
- (vi) measurement (length x width x height in m);
- (vii) case No./bale No.;
- (viii) name of Equipment;
- (ix) consignee code;
- (x) Supplier' s name.

6.3.2 In accordance with the characteristics and various requirements in loading, unloading and shipping equipment, the packing shall be conspicuously marked "Handle with care", "Right side up", "Keep dry", etc. in words, or with appropriate international trade practice and illustrations.

6.3.3 Should any packages weight two (2) metric tons or more, its weight and hoisting position and with international trade practice and illustrative marks shall be clearly shown on two (2) adjacent sides of each package so as to facilitate loading, unloading and handling.

6.3.4 Loose accessories in package or bundles shall be labeled by the Supplier, indicating Contract No., names of accessories and their location, number and accessory No. on assembly drawings.

6.3.5 For unpacked pieces of Equipment the above mentioned marking shall be indicated directly on Equipment or on tightly fastened metal labels. For large pieces proper handling frames and supports should be provided.

6.3.6 Should any Equipment be damaged or lost due to improper packing and/or inadequate protective measures, the Supplier shall be responsible for the repair, replacement and/or compensation in accordance with the Contract. If mistake of transportation of Equipment occurs due to wrong/poor packing or ambiguous marking, the Supplier shall bear additional expenses arisen thereof.

6.3.7 The Documentation to be provided by the Supplier shall be properly packed to withstand numerous handling, long-distance transportation and to be protected against damage from moisture and rain.

6.3.8 Three (3) copies of a detailed list marking the Documentation coding number, title designation, revision and status of documents shall be enclosed in each parcel of the Documentation.

6.4 Any item delivered pursuant to or in connection with the Contract and which remains the property of or is rented out by the Supplier shall be marked accordingly.

6.5 The Supplier shall request in due time from the Purchaser the necessary information for marking.

6.6 All mark described in this chapter shall be made in English.

## Chapter 7 Documentation

- 7.1 Both Parties shall deliver the Documentation to the other Party in accordance with Appendices B-1 and B-8. Final documentation shall take into account the latest modifications made during on-Site Acceptance tests.
- 7.2 The Supplier shall submit the Documentation to the Purchaser and the Design Institute designated by the Purchaser for review within the time specified in the Contract or, where there is no specified time, the Supplier shall submit the Documentation to the Purchaser within the time reasonably required by the Purchaser. The review of Documentation by the Purchaser shall not release the Supplier from its any obligation under the Contract.
- 7.3 If the Supplier in order to comply with its obligations under the Contract shall wish to modify or correct any Documentation which has already been supplied to the Purchaser, it shall submit such modified Documentation or revisions thereof for the review by the Purchaser and the Design Institute designated by the Purchaser.
- 7.4 The Purchaser and the Purchaser's representative or any third party appointed or engaged by the Purchaser shall have the right, at all reasonable times to inspect at the premises of the Supplier and where applicable, its Sub-suppliers all Documentation relating to any item of the Equipment.
- 7.5 Documentation and the Contract are intended to complement each other, so that anything shown in Documentation but not mentioned in the Contract, or vice-versa, is to be supplied as though specifically set forth in both. Any discrepancies in the Documentation or Contract shall be promptly referred to the Purchaser and the Design Institute designated by the Purchaser before the Supplier proceeds with the manufacture of the relevant part of the Equipment.
- 7.6 Detailed drawings shall take precedence where they differ from general drawings.
- 7.7 All documents shall be provided in English and shall refer to the metric system, except otherwise stipulated in the Contract.

## **Chapter 8 Mistakes in Information**

- 8.1 The Supplier shall be responsible for any discrepancies, errors or omissions in the Documentation and other information supplied by the Supplier under the Contract, whether such Documentation and other information has been reviewed or approved by the Purchaser or not, provided that such discrepancies, errors or omissions are not due to inaccurate documentation furnished to the Supplier by the Purchaser.
- 8.2 The Supplier shall at its own expense carry out any alterations or remedial Work necessitated by reason of such discrepancies, errors or omissions and modify Documentation accordingly. In the event that the Supplier fails to carry out such alterations or remedial Work upon the receipt of the notice from the Purchaser, and if such alterations, remedial Work or modifications are done by or on behalf of the Purchaser, the Supplier shall bear all costs reasonably incurred therein. The performance of its obligations under this Chapter shall not relieve the Supplier of its liability under Chapter 14.
- 8.3 The Purchaser shall be responsible for information supplied to the Supplier in writing by the Purchaser. The Purchaser shall issue a Variation Order in accordance with Chapter 9 for alterations necessitated by reason of inaccurate information so supplied to the Supplier, if the alterations affect the Supplier's costs.
- 8.4 The Supplier shall promptly bring to the attention of the Purchaser any matters that appear to be deficiencies, omissions, contradictions or ambiguities, or any doubt about the meaning or correctness of any information supplied to the Supplier by the Purchaser. The Purchaser shall then promptly instruct the Supplier how to proceed.

## Chapter 9 Variations and Omissions

- 9.1 The Supplier shall not alter any of the Works except as directed in writing by the Purchaser, but the Purchaser shall have the full power, subject to the provisions hereinafter contained, at any time during the execution of the Contract to alter, amend, omit, add to or otherwise vary any of the Works. The Supplier shall carry out such variations and be bound by the same conditions, so far as applicable, as though the said variations were an integral part of the Contract.
- 9.2 The Purchaser may from time to time in writing instruct the Supplier to submit, in such detail as the Purchaser may require and within a reasonable period of time, the proposed revision to the Contract Price and Delivery Dates.
- 9.3 If in the opinion of the Supplier any proposed variation is likely to prevent it from or prejudice it in fulfilling any obligation under the Contract, it shall notify the Purchaser thereof in writing, and a change proposal shall be submitted by the Supplier at the same time, but there shall be no delay on the part of the Supplier in performing its obligations under any Variation Order issued by the Purchaser.
- 9.4 If the Supplier believes that any direction, instruction, decision or any other act or omission of the Purchaser affects the Supplier's costs for performing the Works or the time required therefore, the Supplier shall promptly notify the Purchaser in writing, but there shall be no delay on the part of the Supplier in performing its obligations under any Variation Order by the Purchaser. The Purchaser may issue a Variation Order revising the Contract Price and Delivery Dates as required, provided however that no Variation Order shall be allowed if:
- a) the act of the Purchaser affected the Supplier's performance in a manner consistent with the Contract or was necessitated by the Supplier's failure to comply with the terms of the Contract; or
  - b) the Supplier's performance was adversely affected by the Supplier's fault, negligence or failure to comply with the stipulations of the Contract; or
  - c) the Supplier did not promptly notify the Purchaser in writing, due to which the Purchaser could not make recourse to the liable third party.
- 9.5 Such revision to the Contract Price shall be ascertained and determined in the following manner:
- (i) where options and alternatives are defined and priced in the Contract, the amounts stated therefore;
  - (ii) where they are not so defined and priced, the amounts shall be agreed by the Parties in accordance with one or more of the methods stated below:
    - (a) on a lump-sum basis, determined from an estimate produced by the Supplier on a basis consistent with the Contract;

- (b) on a lump-sum basis, based on unit prices and/or unit rates which stated in the Contract;
- (c) on the basis of costs which the Contract so provides;

where they are not so defined and priced, the amounts shall be discussed and agreed by both Parties in writing.

Due account shall be taken of any partial execution of Work which may be rendered useless by any such variation or omission, and of any sums which may be recoverable by the Supplier from third parties.

Detailed itemized price shall be submitted by the Supplier, and inquiry/quotation documents with its Sub-suppliers shall also be provided to support the related price. All these shall be treated as the supporting documents for the issuance of Variation Order.

Except with the prior agreement of the Purchaser, the Supplier' s submission of change proposal shall be made not later than \*\*\* after receipt of the Purchaser' s instruction.

- 9.6 In case both Parties cannot reach an agreement on commercial issues and delivery schedules of a change proposal within two (2) weeks after the receipt by the Supplier of the notification from the Purchaser, the Supplier shall suspend the Work under the proposed variations of the Purchaser. Both Parties shall continue the discussions on the change proposal mentioned above, and then a final agreement shall be reached under the Contract' s condition.
- 9.7 If the Supplier fails to carry out the relevant Works under any Variation Order of the Purchaser in order to secure the progress of the Project after the receipt by the Supplier of the notification from the Purchaser, the Purchaser is entitled for a self-execution, and the Supplier will be responsible for any consequences arising from abovementioned self- execution within \*\*\* after the receipt by the Supplier of the notification from the Purchaser.
- 9.8 A Variation Order shall be issued after the Purchaser has agreed the Supplier' s submission and shall be on a standard form entitled "Variation Order" which shall be the sole method for revising Delivery Dates, the Schedule and/or the Contract Price.

## **Chapter 10 Coordination, Liaison and Project Management**

- 10.1 The Supplier shall liaise and work in coordination with the Purchaser's project management team in the People's Republic of China and with the representative of the Overall Designer of the Project entrusted by the Purchaser. The procedure for such liaison is outlined in Appendix B-10 and it shall be specified in detail in the Project Procedures Manual according to Appendix B-10.
- 10.2 Unless specifically stated to the contrary in the Contract, the cost of undertaking such liaison in accordance with Appendix B-10 shall be, and shall be deemed to be, covered by the prices included in the Contract. The Supplier further undertakes that it (and its Sub-suppliers where applicable) shall fulfill its obligations pursuant to Appendix B-10 but it is expressly agreed between the Parties that the Supplier is not liable for any of the obligations of any other suppliers engaged by the Purchaser; in the event that the Supplier considers that its fulfillment of its obligations under Appendix B-10 is being impeded by any other supplier engaged by the Purchaser, it shall promptly bring such matter to the attention of the Purchaser's Project Director.
- 10.3 Project Director shall be the person so nominated by the Purchaser from time to time by the issue of a written notice to the Supplier. When issuing any such notice the Purchaser shall also notify the Supplier of the power that it has delegated to its Project Director and all acts, instructions and decisions subsequently given by the Project Director in accordance with such delegated powers shall be deemed to be acts, instructions and decisions of the Purchaser.
- 10.4 The Purchaser shall have the right to withdraw or amend any delegation given to its Project Director pursuant to Clause 10.3 by the issue of written notice in advance to the Supplier.
- 10.5 The Project Director shall have the right to re-delegate any of the powers vested in him by the Purchaser (other than the power to approve any variation or to change any previously established date for the fulfillment of an obligation by the Supplier under the Contract) by the issue of written notice to the Supplier and all acts, instructions and decisions subsequently given by any person within the powers delegated to him by the Project Director shall be deemed to be acts, instructions and decisions of the Project Director.
- 10.6 The Project Director shall have the right to withdraw or amend any re-delegation of his powers pursuant to Clause 10.5 by the issue of written notice in advance to the Supplier.
- 10.7 Within one (1) month after Signature of Contract, the Supplier shall submit details of its proposed contract management organization for the Project Director's review. Such details shall consist of an organization chart and a brief job description for key personnel, and show the powers and authorities vested in those shown in the Supplier's contract management organization as having direct contact with the Purchaser, the Project Director (including his delegates pursuant to Clause 10.5), and the



Purchaser's other representatives including the Overall Designer engaged by the Purchaser for the purposes of the Project. In the event of it being agreed that changes should be made to the Supplier's organization chart, the Supplier shall forthwith submit a modified organization chart to the Project Director.

- 10.8 Whenever the Supplier considers that the previously reviewed contract management organization should be changed without prejudice to the interests of the Project, or where the need for change has become unavoidable, it shall forthwith submit details of its proposed revised contract management organization to the Project Director for review as if it were the original proposed contract management organization.
- 10.9 The Purchaser shall have the right to issue copies of the Supplier's contract management organization details to its other suppliers engaged for the purposes of the Project.
- 10.10 In order to enable the Purchaser to exercise its rights under the Contract with regards to access relating to the Works being undertaken by the Supplier's Sub-suppliers, the Supplier shall provide the Project Director with the necessary details of the Sub-suppliers' organizations.
- 10.11 The Supplier undertakes that throughout its contract management organization it shall only use suitably qualified and experienced personnel and that where such personnel are a point of direct contact with the Purchaser, including the Project Director and any of his delegates and representatives, they shall be fluent in the English language.
- 10.12 Each Party shall provide such facilities as is required under the Contract so as to facilitate the coordinated working procedures outlined in Appendix B-10 and each Party shall be responsible for ensuring that the acts of its employees, agents and other representatives under the Contract shall not prejudice the best interests of the Project. In particular, but without limitation, without prior notice to the Purchaser the Supplier shall not enter, nor permit its Sub-suppliers to enter, into any negotiations with any government entity or agency to develop variances or revisions to any law which has direct application to the Contract and which could adversely affect the best interests of the Purchaser.
- 10.13 The activities required to be provided by the Supplier pursuant to Appendix B-10 include the attendance by the Supplier's personnel at periodic coordination meetings, monthly progress meetings and meetings on special issues. The host shall provide meeting facilities and prepare meeting documents concerned.

## Chapter 11 Safety Management and Quality Assurance

### Part 1: Safety Management

- 11.1 The Supplier shall abide by the compulsive design standards and codes which shall be noted in the design document and the Contract. In case of no such standards and codes in existence, the Supplier shall make sure as required by the Product Quality Law of People' s Republic of China the design and the product be safe to human health and lives, and property as well.
- 11.2 Considerations shall be made to ensure the safety and protection of the product in erection and operation. The Supplier shall highlight the safety related information in the design documentation and provide instructions in accident prevention.
- 11.3 In case the application of new structure, material or state of arts, the Supplier shall provide relevant safety suggestions to the construction personnel.
- 11.4 The Supplier shall do the best in enhancing the intrinsic safe performance of the product.
- 11.5 The Supplier shall provide the Purchaser with the information on the hazards and safety instructions in regard of the transport, erection, commissioning, operations and maintenance of the Equipment.
- 11.6 The manufacturer shall follow the design and make sure the quality and safety performance of the Equipment in operation lifetime.
- 11.7 Appropriate safety signs and marks on the product and/or the package of the product shall be provided as required by the Product Quality Law of People' s Republic of China.
- 11.8 The product containing radioactive sources or toxic and hazardous substance (if any) shall bear outstanding warning signs on the surface and the packages, and the Supplier shall make statement on the shipping document and provide safe storage instruction and precautions to the Purchaser.

### Part 2: Quality Assurance (hereinafter referred to as the "QA")

- 11.9 The Supplier shall establish and implement a Quality Management System which shall comply with ISO9001: 2000 Standard.
- 11.10 The Supplier shall establish a Project Quality Assurance Program (hereinafter referred to as the "program") for this Contract after taking into account scope and nature of the Contract, Specifications, quality warranties and quality control requirements and prepare management procedures and work instruction to meet the contract requirements, if necessary.  
The detailed requirement for "program" and procedures is specified in Appendix B-4.
- 11.11 The Supplier shall submit to the Purchaser its generic "quality management manual" for review, and "program" and management procedures specific for the project for approval.

- 11.12 The Supplier shall submit to the Purchaser documents and records in line with requirement prescribed in Appendices. And the Supplier shall ensure the validity of these documents and records provided to the Purchaser regardless of the Purchaser's review. In the event that the Purchaser discovers that any quality related documents do not conform to the requirements of the Contract, the Purchaser shall have the right to require revision by the Supplier.

All quality related documents and records relevant to the contract shall be available to the Purchaser's representatives for reference and review at the location where the corresponding activity is performed. At the Purchaser's request, if needed on a case-by-case basis, the Supplier shall provide a copy of such quality-related documents. The Purchaser shall have the right to make copies of all documents and records submitted by the Supplier and distribute such copies to its representatives for their use.

- 11.13 The Supplier shall evaluate its main Sub-suppliers in line with documented procedure and submit to the Purchaser the qualification report for approval before signature of relevant contracts according to the requirements of Purchaser's Project Procedures. When it is necessary, the Purchaser shall have right to perform sources evaluation on selected Sub-suppliers with supplier. The Supplier shall establish and maintain up to date the list of qualified Sub-suppliers in which the status of qualification, QA standard applied and scope of contract shall be indicated. The list of qualified Sub-supplier, modification to this list and associated supporting documents shall be submitted to the Purchaser for review.

The Supplier shall strictly supervise the implementation of its Sub-supplier's QA/QC activities according to the requirements of the applicable QA/QC documents.

- 11.14 The Quality Plans for this Contract shall be established and implemented by the Supplier in accordance with the requirement of Appendix B-4.
- 11.15 The Supplier shall handle non-conformance related to this Contract in accordance with the provisions described in Appendix B-4. The non-conformance list of this Contract shall be established and up-dated.
- 11.16 The Purchaser's representative has the right to access to the Supplier and its Sub-supplier's premises for its QA and QC activities. The Supplier shall provide to the Purchaser's representative with convenience and necessary assistance to carry out such QA and QC activities. The Purchaser reserves the right to stop the Supplier's activities when significant conditions adverse to quality arise and the Supplier shall take all necessary corrective actions promptly to resolve the conditions into satisfaction of the Purchaser prior to resumption of the activities.
- 11.17 The Purchaser shall have the right to participate in the internal and external QA audits as observer/auditor and kick-off meetings arranged by the Supplier. The Supplier shall inform the Purchaser of the schedule in advance.

Conclusions, findings and corrective actions of QA audit report related to this Contract shall be transmitted to the Purchaser.

- 11.18 The representative of the Purchaser shall have access to the Supplier' s and its Sub-suppliers premises for surveillance and inspection if safety related activities concerned.
- 11.19 The Supplier shall include in its sub-contracts the necessary provisions to ensure that all Sub-suppliers of this contract comply with the provisions of this chapter, and to entitle the Purchaser with the same right to Sub-suppliers as to the Supplier under this Contract.
- 11.20 All QA and QC activities carried out by the Purchaser and the inspecting and witnessing safety related activities carried out by the Purchaser to the Supplier and its Sub-suppliers shall not alleviate or free the Supplier from its obligations and legal responsibilities under the Contract.

## **Chapter 12 Inspection at Manufacturer' s Premises and after Delivery**

- 12.1 During manufacture, the Supplier shall be responsible for all inspection, examination and testing ("In-factory Acceptance Tests") of the Equipment to be supplied under the Contract and the costs thereof, including that of its Sub-suppliers, prior to completion. Such inspection and examination shall be according to the standards and codes stipulated in the Contract, or where standards and codes are not specifically defined, in accordance with appropriate and generally accepted practice for the Equipment in question.
- 12.2 The Purchaser' s involvement in the inspection and test in the supplier' s premise is defined in Appendix B-5. During manufacture, the Purchaser or its representative shall be entitled at all reasonable times to inspect and examine, on the Supplier' s premises, the materials and workmanship of Equipment to be supplied under the Contract and to witness the inspection, examination and tests carried out by the Supplier. If part of the said Equipment is being manufactured on other premises the Supplier shall obtain for the Purchaser equivalent authorization as if the said Equipment were being manufactured on the Supplier' s premises. Such inspection, examination and witnessing shall not release the Supplier from any of its obligation under the Contract.
- 12.3 During manufacture, the Supplier shall submit manufacture progress reports on forms as approved by the Purchaser at suitable time. Such monthly reports shall show the actual progress completed as of date of the reports plotted against the schedule as given in the Contract, and shall be broken down so as to indicate status of purchased materials, detailed shop schedule, shipping dates, and the like as required in accordance with the Contract.
- 12.4 For any tests to be performed on the premises of the Supplier or of any Sub-supplier, the Supplier shall provide free of charge such assistance, labor, materials, electricity, fuel stores, apparatus and instruments as may be requisite and as may be reasonably required to carry out such tests efficiently.
- 12.5 If during manufacture, when inspecting, any Equipment or any part thereof is found to be not in accordance with the Contract, or in any other way defective, then the Supplier shall promptly replace or re-manufacture the Equipment or part thereof so affected, or remedy the defect or non-conformance. Unless otherwise authorized by the Purchaser, the Supplier shall re-perform within a reasonable time and upon the same terms and conditions such inspection, examination or test, at the expense of the Supplier. No such replacement, re-manufacture, remedy and associated inspection, examination or tests shall be regarded as a Force Majeure occurrence.
- 12.6 Should the Supplier fails to comply with the requirements of Clause 12.5 above the Purchaser shall have the right to remove the portion of the Equipment concerned from the Supplier and to have the defect remedied by and the test re-performed by the means whatever the Purchaser shall decide, all at the Supplier' s expense.

- 12.7 The Supplier shall ensure that it and its Sub-suppliers maintain good and clear systems of record so as to be able to store and recover the manufacturing and testing history of the Equipment and of its major components.
- 12.8 In-factory Acceptance Tests shall be conducted by the Supplier and witnessed by the Purchaser. The Supplier shall provide the Purchaser or its representatives with reasonable working facilities and assist the Purchaser's inspectors to obtain entry visas and deal with necessary formalities to stay and arrange boarding, lodging, medical care and communication means, etc. in accordance with Appendix B-5.
- The final version of the In-factory Acceptance Tests Procedures shall be issued by the Supplier and supplied to the Purchaser prior to the beginning of the In-factory Acceptance tests. The Supplier shall subsequently, after consulting the Purchaser, give the Purchaser notice in writing in advance of the actual date and place at which any Equipment will be ready for In-factory Acceptance Tests as provided in the Contract.
- 12.9 Except in case of major deficiencies of the Equipment, the In-factory Acceptance Tests should be duly finished in a reasonable time as described in the Appendix B-5 of the Contract.
- 12.10 After completion of the In-factory Acceptance Tests, if the performance warranties specified in Appendix B and the Acceptance Test Procedures have all been satisfied and the operation of all the Equipment has been normal during the course of the In-factory availability period and, a certificate of In-factory Acceptance Tests in two (2) copies shall be signed and issued by the Purchaser. However, the Supplier shall not deliver the Equipment without In-factory Acceptance certificate and until all recognized defects have been remedied. The certificate shall be deemed as signed and issued by the Purchaser in the event that the Purchaser does not dispatch the technical staffs to participate in aforesaid tests.
- 12.11 The In-factory Acceptance Tests and the In-factory availability period shall not release the Supplier from its other obligations under the Contract.
- 12.12 At an appropriate time, after arrival of Equipment at the Site, the Purchaser shall organize the opening of cases, inspection of packing and Equipment and such non-destructive testing as it considers necessary (all being hereinafter referred to as "open-package inspection"), to establish the extent of any shortage or visible damage, to check the Equipment against shipping documentation and to check quality and specifications against the requirements of the Contract. The Supplier is entitled to send its representatives at its own expense to join in the open-package inspection. The Purchaser shall inform the Supplier of the date and nature of inspection or test \*\*\* prior to the open-package inspection. If the representatives of the Supplier cannot reach the Site in time, the Purchaser shall have the right to open the package and conduct the inspection independently. After the Supplier has staff on Site, notice of \*\*\* in advance shall be given to the Supplier's Site staff who may join in such inspection.

- 12.13 Should any shortage, damage or failure to meet quality standards and specifications stipulated in the Contract, be found affecting the delivered Equipment, during the open-package inspection by the Purchaser and/or the Supplier, a detailed record shall be made and signed by representatives of the Parties. The record shall be sent to the Supplier after the Purchaser conduct the inspection independently as stated in Clause 12.12, if the Supplier disagrees on the record, the comments shall be sent to the Purchaser within \*\*\* after receipt, otherwise it shall be deemed that the Supplier accepted the record. This record shall be taken as conclusive evidence for the Purchaser to claim replacement or repair from the Supplier, where the said shortage, defect, damage or failure is due to the fault of the Supplier.
- 12.14 If the Parties cannot agree on the results of the open-package inspection or on any other means of testing to verify condition of the Equipment as received at Site then either Party may submit the results to the local Branch of General Administration of Quality Supervision, Inspection and Quarantine of China for re-examination and the expenses thereof shall be borne by the liable Party. Any claim against the Supplier by the Purchaser shall then rely upon the certificates issued by the same local Branch of General Administration of Quality Supervision, Inspection and Quarantine of China.
- 12.15 Where it is found liable therefore under the Contract, the Supplier shall replace missing parts free of charge to the Purchaser, or repair, or if the Purchaser considers the repair might cause potential defects or reduce the integrity of the Equipment, replace damaged parts free of charges to the Purchaser at the Site immediately after receiving the certificate of claim from the Purchaser and shall be responsible for the risk and freight therefore to the erection Site and also the repeat inspection fee of the Purchaser. If the Supplier disputes the claim, its objection shall be raised within \*\*\* after receiving the certificate of claim. Consultation shall then take place between the Parties. If the objection is raised later than \*\*\*, the Purchaser' s claim shall be upheld.
- 12.16 Replacement or repair performed by the Supplier under Clause 12.15 shall be carried out as soon as practicable by and at the expense of the Supplier and if replacement or repair is required urgently airfreight shall apply.
- 12.17 The open-package inspection and tests mentioned above shall not release the Supplier from its liabilities under Chapter 14 of this Contract.
- 12.18 The lists of standards and codes applicable to the inspection of Equipment to be provided by the Supplier and the delivery dates therefore are set out in the Appendices of the Contract. If the aforementioned standards and codes are not delivered in time or delivered incompletely, the Purchaser shall be entitled to inspect the Equipment according to the existing standards or codes of a third party chosen by the Purchaser.

### **Chapter 13 Erection, Commissioning, Testing and Acceptance**

- 13.1 The erection, commissioning and performance test of the Equipment supplied under the Contract shall be organized and executed by the Purchaser. The Supplier shall provide Documentation, technical assistance, advice and supervision at the Site so as to enable the Purchaser to complete the Contract and put it into operation in accordance with the Appendix B-8.
- 13.2 The responsibilities of the Site Supervision provided by the Supplier at the Site are as follows:
- (i) Assist the Purchaser or its erection contractor to review and to prepare its erection procedures and review with the Purchaser or its erection contractor its erection programs and methods, and provide assistance to the erection contractor when required during the execution of the erection activities;
  - (ii) Supervise mechanical erection and provide surveillance of the erection contractor's erection quality and where required by the Purchaser certify, that quality of erection conforms to the technical requirements of the Supplier;
  - (iii) Assist the Purchaser to prepare and perform the correct commissioning and performance test program and procedures;
  - (iv) Provide advice to the Purchaser on the conduct of start-up activities, to assist where necessary on resolution of technical matters and where required by the Purchaser certify, the compliance with the Supplier's requirements.
- 13.3 During the various stages of erection, commissioning and performance test both Parties shall duly cooperate with each other. In case of any technical problems arising, the Supplier shall advise the Purchaser and analyze the causes and find the solution immediately. Additionally, necessary technical documents shall be provided by the Supplier at no cost to the Purchaser.
- 13.4 After completion of the erection of the Equipment, the commissioning, performance test, pre-operational test, demonstration run, and acceptance under the Appendices of the Contract shall be carried out without unreasonable delay. The purpose of the above activities is to verify whether the Equipment meets the warranties and technical performances specified in the Contract.
- 13.5 After completion of the commissioning, performance test, pre-operational test, demonstration run, if the operation of all the Equipment is normal and the warranties and technical performances of the Equipment have all been achieved, and all the known defects are remedied, the Equipment shall be deemed acceptable. Then a certificate of provisional acceptance (hereinafter called "Provisional Acceptance Certificate") in two (2) original copies shall be signed by both Parties and issued by the Purchaser, one (1) original copy to be retained by each Party.



- 13.6 Notwithstanding the provisions of Clause 13.3, if the pre-operational test, commissioning, demonstration run and performance test of the Equipment cannot meet the requirements of one (1) or more items of warranties or technical performance due to the Supplier' s fault, the provisions of Chapter 14 shall apply.
- 13.7 If the commissioning, performance tests pre-operational test, demonstration run are delayed due to Supplier, the Supplier shall fulfill its responsibilities as defined in 13.2 at any time upon the Purchaser' s request. The delay of the tests mentioned above shall not release the Supplier from its obligations under this Chapter.
- 13.8 The Provisional Acceptance Certificate of the Equipment under this Chapter shall not release the Supplier from its liabilities under the Contract.

## Chapter 14 Warranties and Defects After Delivery

- 14.1 The Supplier warrants that all Equipment supplied shall be brand-new, of the quality required by the Contract and free from any Intellectual Property claim or other claim from any third party. The Supplier further warrants that the Equipment shall satisfy the requirements of the interfaces and comply with the standards, codes, and Specifications specified in the Contract, with the objective of assuring long term, safe, reliable and efficient operation, and easy maintenance.
- 14.1(A) The Supplier warrants that all items of Equipment supplied under this Contract shall be free from defects in material and workmanship, conform to the applicable Specifications and drawings and shall be free from design defects and suitable for the purposes intended by the Purchaser.
- 14.2 Notwithstanding the provisions of Clause 14.1, the Supplier shall promptly notify the Purchaser of any improvement measures related to reliability or efficiency taken or proposed in the light of experience feedback from its own activities or from any other customers. At any time up to the end of the Warranty Period, the Supplier shall be obligated to implement any such improving measures (if required to do so by the Purchaser) free of charge to the Purchaser where such implementation is necessary to ensure reliability of the Equipment to the level envisaged by the Contract or its safe operation.
- 14.3 The Supplier warrants the timely delivery of the Equipment in compliance with the scope of supply stipulated in Chapter 2. During the implementation of the Contract, if any item is omitted which is required for safe and reliable operation or convenient maintenance or for achieving the performance stipulated in the Contract, the Supplier shall supply such item or make the necessary adjustment at no additional cost to the Purchaser.
- 14.4 The Supplier warrants that the Documentation shall be complete, clear and correct and shall meet the requirements of transportation, storage, acceptance testing, operation, maintenance, management, quality control etc. under the Contract.
- 14.5 The Supplier shall be responsible for making good any defect in or damage to any portion of the Equipment which may appear or occur under proper use during the Warranty Period and which arises from defective materials, workmanship, design (other than a design furnished by the Purchaser and for which the Supplier has disclaimed responsibility) or the wrong instructions of the Supplier's technical personnel or an error in the Documentation.
- 14.6 If any such defect shall appear or damage occur, for which the Supplier is responsible, the Purchaser shall immediately inform the Supplier thereof stating in writing the nature of the defect or damage. The Supplier shall promptly repair or, if the Purchaser considers that repair might cause potential defects or reduce the integrity of the Equipment, shall replace the defective or

damaged part of the Equipment, at the Supplier's expense including all costs of removal, insurance, reinstallation, packing, transportation to and from Site and if required urgently shall be freighted by air. If required by the Supplier, the Purchaser shall provide such labor, tools, materials and workshop facilities as are available at the Site and shall be reimbursed for all reasonable expenses incurred in so doing.

- 14.7 Where any defect or damage for which the Supplier is responsible under Clause 14.5 arises after the Equipment has been put into service, then for the repaired or replaced parts of the Equipment, together with any other parts which cannot be used as a consequence of the said defect or damage, the Warranty Period shall be extended until \*\*\* after the repaired or replaced portion of the Equipment has been put back into service by the Purchaser.
- 14.8 Upon pursuant to this Chapter the Supplier shall supply a part in replacement of a defective or damaged part, the defective or damaged part shall become the property of the Supplier, and shall be disposed of by the Supplier at its own expense.
- 14.9 If any defect or damage be not remedied within a reasonable time, the Purchaser may proceed to do the Work at the Supplier's risk and expense without affecting the Supplier's other liabilities under the Contract or otherwise.
- 14.10 The Supplier shall make available the Equipment for delivery by the relevant Delivery Dates therefore stated in the Contract. If the Supplier fails to make available the Equipment or any portion thereof by the relevant Delivery Date therefore it shall pay to the Purchaser as liquidated damages the entire amount of \*\*\*

\*\*\*

The liquidated damages for aforesaid delay shall not exceed \*\*\*.

Payment of liquidated damages for delay shall not release the Supplier from its obligations to continuously make the Equipment available and to deliver the Documentation in question.

- 14.11 In the event of any defect which may delay the safe and reliable erection, commissioning and testing being discovered through an open package inspection for which the Supplier is responsible, then, in addition to its obligation to repair the said defect or to replace the Equipment in question in accordance with Chapter 12, the Supplier shall also be reliable to pay liquidated damages for delay in accordance with Clause 14.10 as if the Delivery Date thereof was the date when the defect was discovered and the Actual Delivery Date thereof was the date of delivery on board the vessel following rectification of the defect (or the date when the Supplier remedied the defect at the Site).

- 14.12 If the Supplier fails to perform the Services pertaining to this Contract on time as stipulated in the Contract, the Supplier shall be liable to pay the Purchaser liquidated damages, at the following rate:

\*\*\*

The liquidated damages for delayed Services paid by the Supplier to the Purchaser shall not release the Supplier from the obligation of performing the delayed Services.

- 14.13 In the event of the Equipment or any part of it failing to achieve its warranted performance as specified in Appendix B-6 during the acceptance tests carried out pursuant to Chapter 13, the Supplier shall take all steps to correct the deficiencies as soon as possible, and after the Supplier has been allowed to take remedial measures for up to \*\*\* after the carrying out of relevant performance test pursuant to Chapter 13, then Appendix B-6 shall apply.
- 14.14 The Parties may settle the disputes under this Chapter in accordance with the Chapter 34.
- 14.15 Liquidated damages incurred for delay or failure to achieve warranted performance shall be paid by the Supplier to the Purchaser as stipulated in Clause 4.8.
- 14.16 Before the expiry of the Warranty Period, the Purchaser shall carry out an overall final inspection of the Equipment. The Supplier shall at its own expense dispatch its personnel to participate in the inspection and the Purchaser shall provide to the Supplier reasonable access to the Equipment. If the overall final inspections of the Equipment are delayed, the Supplier shall fulfill its responsibilities as defined in this Clause 14.16 at any time upon the Purchaser's request. The Supplier shall deal promptly with any defect that are revealed thereby. As soon as the defects revealed within the Warranty Period have been remedied, the Purchaser shall issue a final acceptance certificate (hereinafter referred to as the "Final Acceptance Certificate") for the Equipment in two (2) original copies (each Party will hold one (1) original copy), thereby confirming that the Equipment is accepted by the Purchaser.
- 14.17 The Supplier warrants that it has been duly incorporated and organized, and is validly existing (i) in good standing and (ii) in compliance with all registration and approval requirements. It has the corporate power and authority to own and operate its assets and properties and to carry on its business as currently conducted.

- 14.18 The Supplier warrants that it has the power and authority to execute, deliver and perform this Contract to which it has signed as a party. All actions on the part of the Supplier necessary for the authorization, execution, delivery of and the performance of all of its obligations under the Contract have been taken.
- 14.19 The Supplier has obtained all consents, approvals, orders or authorizations of, or registrations, qualifications, designations, declarations or filings with, any government authority or any other competent corporate authority required in connection with the execution, delivery and performance by the Supplier of the Contract, and to the knowledge of the Supplier, there is no reason to believe any of such consents, approvals, orders or authorizations of, or registrations, qualifications, designations, declarations or filings with, any government authority will be suspended, cancelled or revoked.
- 14.20 None of the Supplier or its designated agents or where applicable, the Sub-supplier is or has at any time been in violation of any law (including without limitation to, any laws relating to the establishment and the operations), which may have a material adverse effect on the ability of the Supplier to perform its obligations under the Contract.
- 14.21 Where applicable, each of the Supplier, its designated agents and the Sub-supplier has (i) all the necessary production and work safety facilities and equipment in accordance with the relevant regulatory standards for production safety, (ii) passed all safety inspections conducted by the relevant Government Authorities and (iii) not had any major accidents, fatalities or any serious injuries suffered by its personnel since its establishment and that to the knowledge of the Supplier, there is no reason to believe that its business operation will be subject to any closure order.
- 14.22 The Supplier warrants that it or any of its affiliates are not a party to any litigation or arbitration proceedings or to any dispute and no litigation or arbitration proceedings are threatened or pending either by or against the Supplier or any of its affiliates or any person for whose acts or defaults the Supplier may be variously liable and there are no facts known to the Supplier or any of its directors or officers which might give rise to any such proceedings or to any dispute or to any payment that will affect the performance of this Contract by the Supplier.
- 14.23 The Supplier is not subject to any order or judgment given by any court or governmental agency and has not been a party to any undertaking or assurance given to any court or governmental agency which is still in force nor are there any facts or circumstances which would be likely to result in the Supplier becoming subject to any such order or judgment or being required to be a party to any such undertaking or assurance that will affect the performance of this Contract by the Supplier.



### **Chapter 15 Additional Spare and Replacement Parts and Repairs to the Equipment**

- 15.1 The Supplier shall upon the Purchaser' s request at any time and from time to time promptly sell and supply to the Purchaser at reasonable prices derived from the prices quoted in the Contract Price, Additional Spare and Replacement Parts for the Equipment during the operation life of the Project, subject to the provisions of this Chapter.
- 15.2 If before the expiry of the period referred to in Clause 15.1 the Supplier intends to discontinue the supply of Additional Spare or Replacement Parts for the Equipment or any portion thereof, it shall forthwith give notice to the Purchaser of such intention and either:
- (i) afford the Purchaser the opportunity (which shall be exercised within \*\*\* of ordering at reasonable prices such quantities of Additional Spare or Replacement Parts as the Purchaser shall reasonably require in relation to the anticipated life of such Equipment or portion thereof; or
  - (ii) deliver to the Purchaser free of charge within the above said period of \*\*\* such drawings, documentation, software, patterns, tools, moulds, specifications and such other information and equipment as it may have in its possession and as the Purchaser shall require to enable the Purchaser to make or have made such Additional Spare or Replacement Parts, thereby ensuring as good a performance as initially planned and the Supplier shall grant to the Purchaser without payment of any royalty or charge full right and liberty to make or have made such Additional Spare or Replacement Parts as aforesaid.
- 15.3 If during the period referred to in Clause 15.1 the Supplier fails to fulfill the responsibilities in Clause 15.1 and 15.2, or becomes insolvent or commences to be wound up (not being a member' s voluntary winding up for the purpose of re-construction), then the Supplier shall, so far as it is legally entitled so to do and if so required by the Purchaser, as soon as reasonably practicable deliver to the Purchaser free of charge such drawings, documentation, software, patterns, tools, moulds, specifications and other information as are referred to in Clause 15.2 and the Purchaser shall be entitled to retain the same information for such time only as necessary for the exercise by the Purchaser of its rights under this Chapter and if the Supplier so requires the same shall be returned by the Purchaser to the Supplier in good order and condition (fair wear and tear excepted) and at the Purchaser' s cost and expense.
- 15.4 If the Purchaser shall exercise its right under Clause 15.3, the Supplier shall also grant to the Purchaser without payment of any royalty or charge full right and liberty to make or have made Additional Spare or Replacement Parts as aforesaid and for such purposes only to use, make and have made copies of all drawings, patterns, specifications and other information supplied by the Supplier to the Purchaser pursuant to the Contract.

15.5 In entering into the Contract, the Supplier undertakes to carry out such repairs to the Equipment as the Purchaser may require during the period referred to in Clause 15.1 and, other than in respect of repairs for which the Supplier may be liable under the Contract, under separate orders from the Purchaser on commercial terms to be agreed and based on the following principles:

- (i) prices will not include more than the Supplier's normal overhead recovery and margin for the type of Work in question;
- (ii) such prices will be presented to the Purchaser in such a manner as will clearly identify the various elements thereof, and
- (iii) the right of the Purchaser under Chapter 31 will be extended to cover agreements for repair to Equipment however made.

15.6 The Supplier shall ensure that its Sub-suppliers comply with the provisions of this Chapter.



## Chapter 16 Liability for Accidents and Damage

- 16.1 The Supplier shall fully indemnify, defend and hold harmless the Purchaser, the Purchaser's affiliates, officers, directors, agents and employees from and against any and all actual, direct or indirect losses, damages, liabilities, injury, actions, claims, costs and expenses (including the fees, disbursements and other charges of counsel reasonably incurred by the Purchaser in any action between the Supplier and the Purchaser or between the Purchaser and any third party in connection with any investigation or evaluation of a claim or otherwise) resulting from or arising out of any breach by the Supplier of any warranties, covenants or agreements in this Contract or other agreements in connection with this Contract, provided always that the same is due to any negligent act or omission of the Supplier or its Sub-suppliers and their respective servants or agents or materials or workmanship, subject to the followings:
- (i) In the event of loss of or damage to the Equipment which is due to the negligence, breach of statutory duty, omission or default of the Supplier's or its Sub-supplier's personnel whilst on Site the Supplier shall be liable to remedy such loss or damage in accordance with the provisions of Clauses 14.5 – 14.9 as if it was the result of defective materials, workmanship or design.
  - (ii) Subject to the provisions of Clause 16.2 the Supplier shall not be liable to the Purchaser for any loss, damage or injury to the extent that it is caused by or arise from the negligent act or omission of the Purchaser.
  - (iii) In the event of any claim being made against the Purchaser for which the Supplier may be liable under the provisions of this Clause 16.1, the Supplier shall be promptly notified thereof, and may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.
  - (iv) This clause is intentionally left blank.
  - (v) In the case of loss of or damage to the Equipment in transit in the place of storage or on the Site arising from or occasioned by causes for which the Supplier is not responsible under the Contract, in accordance with Clause 9.1 the Purchaser may instruct the Supplier to make good the same by repair or replacement. The price of such variation shall be determined in accordance with the provisions of Clause 15.5 and shall be revised to credit the Purchaser with all insurance (if any) recoveries for such loss or damage to the Equipment, to the extent that such recoveries have been received by the Supplier.
  - (vi) This clause is intentionally left blank.
  - (vii) The insurance and other protections provided or to be provided to the Supplier pursuant to Chapter 18 remaining in full force and effect

- 16.2 The liability of the Supplier to the Purchaser under Clause 16.1 shall terminate on the expiry of the period specified in Clauses 14.5-14.7.
- 16.3 Unless caused through the act, default or neglect of the Purchaser, the Purchaser shall have no liability whatsoever in respect of any damages or losses suffered by the Supplier, its employees, designated agent or Sub-supplier during the course of performing this Contract.

## Chapter 17 Licensing

- 17.1 The Supplier warrants that the Works carried out by the Supplier, its designated agents or where applicable, the Sub-supplier will have a level of safety consistent with the regulations established and approved by the appropriate authorities in the People' s Republic of China as included in the Contract and the safety standards issued by the country of origin of the Supplier.
- If certain parts of the Works do not fully comply with the above regulations or safety standards, the Supplier should promptly remedy any defect and justify the adequacy of safety level of the Works and make appropriate proposal for solving this issue to the Purchaser.
- 17.2 Should the licensing authorities in the People' s Republic of China request the Purchaser to provide information, the Purchaser will notify the Supplier, and the Supplier shall, free of charge, provide the information requested in relation to the Works carried out by the Supplier. If new studies under this Contract are required for safety justification, the cost shall be borne by the Supplier.
- 17.3 The Supplier shall, at its own expense, provide the Purchaser with the services of any relevant qualified specialists who are required for the due performance of this Contract and assisting the Purchaser in submitting the applications for the regulatory construction permits and operating licenses for the Project.

## Chapter 18 Insurance

18.1 This section is intentionally left blank.

## **Chapter 19 Taxes and Duties**

- 19.1 All taxes and duties in connection with and in the performance of the Contract levied by Chinese government on the Purchaser in accordance with the tax laws of People' s Republic of China and local laws/statutes and the agreement between the government of the People' s Republic of China and the government of the country which the foreign member of the Supplier or its Sub-suppliers is from for the reciprocal avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income shall be borne by the Purchaser.
- 19.2 All taxes and duties in connection with and in the performance of the Contract levied by Chinese government on the Supplier and its Sub-suppliers, in accordance with Chinese tax laws of People' s Republic of China, local laws/statutes and the agreement between the government of the People' s Republic of China and the government of the country which the foreign member of the Supplier is from for the reciprocal avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, shall be borne by the Supplier and where applicable, its Sub-suppliers.
- The Supplier shall be obliged to pay the relevant taxes directly to the Chinese tax authorities. In case as required by Chinese tax laws, the Purchaser is legally obliged to withhold, certain amount of taxes under this Contract and pay them to the relevant Chinese tax authorities, the Purchaser has the right to withhold and pay such amount of taxes to the relevant Chinese tax authorities. After receiving the tax receipts issued by the relevant Chinese tax authorities for the aforesaid taxes, the Purchaser shall submit them to the Supplier without undue delay. The Supplier shall take necessary measures to facilitate the withholding and payment of such taxes.
- 19.3 All taxes and duties arising outside PRC in connection with and in performance of the Contract shall be borne by the Supplier.

## Chapter 20 Force Majeure

- 20.1 Should either Party be prevented from performing any of its obligations under this Contract due to the event of Force Majeure (as defined in Clause 1.13), the time for performing those obligations under the Contract shall be extended by a period equivalent to the effect of such Force Majeure. The affected Party shall immediately notify the other Party of occurrence of such an event by fax and send by registered airmail a certificate issued by competent authorities or agency confirming the event of the Force Majeure within \*\*\* following its occurrence.

Upon occurrence of Force Majeure, the affected Party shall make his utmost efforts to take immediate and reasonable actions in order to minimize such effects and damages.

The Parties shall continue the performance of their other obligations under the Contract insofar as these are not directly affected by the event of Force Majeure occurrence.

- 20.2 The affected Party shall not be liable for any delay or failure in performing any of its obligations due to the event of Force Majeure. However, the affected Party shall inform the other Party by fax the termination or elimination of the event of Force Majeure as soon as possible.
- 20.3 Both Parties shall proceed with their obligations immediately upon the cease of the event of Force Majeure or the removal of the effects and the Delivery Date and the Schedule shall be extended correspondingly. Should the effect of the event of Force Majeure last for more than \*\*\*, both Parties shall promptly meet and discuss methods to resolve the difficulties arising from the event of Force Majeure.

## **Chapter 21 Vesting of the Equipment and Documentation**

- 21.1 Equipment supplied or intended to be supplied pursuant to the Contract shall become the property of the Purchaser at whichever is the earliest one of the following events:
- (i) when in accordance with the provisions of Chapter 5 the Equipment has been delivered;
  - (ii) when in the event of termination pursuant to Chapter 26, all amounts due and payable to the Supplier in respect thereof have been received by the Supplier.
- 21.2 In the event of any Equipment becoming the property of the Purchaser pursuant to the Contract and subsequently being rejected by the Purchaser pursuant to Clause 14.14 such Equipment shall forthwith upon such rejection cease to be the property of the Purchaser and become the property of the Supplier.
- 21.3 All Documentation used for the purpose of the Contract and other documents which are the property of the Supplier and are additional to the Documentation to be submitted in accordance with the Contract (and which shall include but not be limited to shop drawings) shall immediately vest in and become the property of the Purchaser upon an event of bankruptcy or in the event the Work on the Equipment is terminated in accordance with Chapter 24. The Purchaser shall be entitled to use any such designs, Documentation and other documents for the purpose of procuring Equipment not delivered in accordance with the Contract or for any other reasonable purpose.

## Chapter 22 Infringement

- 22.1 The Supplier warrants that it has the legal right and authority and has obtained all necessary permissions to supply to the Purchaser the Equipment, Documentation and Services in accordance with the terms of the Contract. The Supplier shall indemnify the Purchaser against all actions, claims, demands, costs, charges, and expenses arising from or incurred by reason of any infringement or alleged infringement of Intellectual Property rights by any third party for use of any Equipment supplied by the Supplier, but such indemnity shall not cover any use of the Equipment otherwise than for the purpose indicated by or reasonably to be inferred from the Contract or any infringement which is due to the use of any Equipment in association or combination with any other Equipment not supplied by the Supplier.
- 22.2 In the event of any claim being made or action brought against the Purchaser arising out of the matters referred to in the Clause 22.1, the Supplier shall be promptly notified thereof and shall at its own expense conduct all negotiations for the settlement of such claim or action, and any litigation that may arise therefore. The Purchaser shall have the right to be represented in any such action by advisory counsel of its own selection and at its own expense. The conduct by the Supplier of such negotiations or litigation shall be conditional upon the Supplier having first given to the Purchaser such reasonable security or collateral as shall from time to time be required by the Purchaser to cover the amount, as the case may be, of any compensation, damages, expenses, and costs for which the Purchaser may become liable. The Purchaser shall, at the request of the Supplier, afford all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable expenses incurred in so doing.
- 22.3 In the event that the Purchaser should at any time be of the opinion that the security or collateral provided pursuant to Clause 22.2 is inadequate or should the Purchaser reasonably be dissatisfied with the conduct by the Supplier of such litigation involving the Purchaser, the Purchaser shall have the right to assume responsibility for defense of such litigation at the expense of the Supplier without waiver of any rights and benefits provided under the Contract.
- 22.4 If the Supplier shall be prevented from carrying out its obligations under the Contract due to any infringement or alleged infringement of Intellectual Property rights, the Purchaser may treat such inability as a default by the Supplier.
- 22.5 The Purchaser on its part warrants that any design or instructions furnished or given by the Purchaser to the Supplier shall not be such as will cause the Supplier to infringe any letters patent, registered design, copyright, trade mark or trade name in the performance of the Contract.



- 22.6 The Supplier shall promptly give notice to the Purchaser if the Supplier has or acquires knowledge of any Intellectual Property rights under which a suit for infringement could reasonably be brought because of the use by the Purchaser of components, machinery, materials, compositions, process or methods, or their incorporation by the Supplier in the Equipment. Following notification to the Purchaser, the Supplier shall not incorporate in the Equipment, any such components, machinery, materials, compositions, processes or methods without the prior written approval of the Purchaser.

### **Chapter 23 Assignment**

- 23.1 The Parties agree that the benefits, rights and obligations of any Party under this Contract can be assigned to any third party, subject to the prior written approval by the other party and such approval shall not be unreasonably withheld.
- 23.2 Notwithstanding the Supplier assigning all or part of its rights and obligations under this Contract to any third party, the Supplier shall assume the full, overall and ultimate responsibility for the due performance of its obligations under this Contract.

## **Chapter 24 Supplier' s Default**

- 24.1 Without prejudice to any rights and remedies to which the Purchaser may be entitled, if Supplier neglects to perform the Contract with due diligence and expedition, or refuses or neglects to comply with any reasonable orders given to the Supplier in writing by the Purchaser in connection with the performance of the Contract, or contravenes the provisions thereof, or any stipulation in the Contract, the Purchaser may give notice in writing to the Supplier to make good the neglect, refusal, or contravention complained of.
- 24.2 Should the Supplier fail to comply with a notice given by the Purchaser in accordance with Clause 24.1 within \*\*\* from the date of service thereof in the case of a failure, neglect or contravention capable of being made good within that time, or otherwise within such time as may be reasonably necessary for making it good, then, and in such case the Purchaser may forthwith suspend, or terminate the Contract or any part thereof by notice in writing to the Supplier.

## Chapter 25 Bankruptcy

25.1 Without prejudice to any other rights or remedies to which the Purchaser may be entitled, if the Supplier become bankrupt or insolvent, or have a receiving order made against it, or compound with its creditors, or be a corporation commence to be wound up (not being a member's voluntary winding up for the purpose of amalgamation or reconstruction) or have a receiver or manager of its business appointed, the Purchaser may either:

- i) terminate the Contract forthwith by notice in writing to Supplier or to the receiver or liquidator or to any person in whom the Contract may become vested; or
- ii) give such receiver, liquidator, or other person the option of carrying out the Contract subject to his providing a guarantee for the due and faithful performance of the Contract up to an amount to be agreed.

## Chapter 26 Suspension and Termination

- 26.1 The Purchaser may, at any time, suspend the Work on the Equipment or any part thereof for any reason whatsoever on giving notice in writing to the Supplier specifying that portion of the Work to be suspended and the effective date of suspension. The Supplier shall suspend such Work on the effective date but it shall continue to carry out all other Work under the Contract.
- 26.2 In the event that the Purchaser suspends any Work in accordance with Clause 26.1 it shall then issue a Variation Order in accordance with Chapter 9 to amend the Contract Price and Delivery Dates of the supply so as to reflect the effects of such suspension, if any. The Contract Price revision shall be limited to the actual extra cost incurred and paid by the Supplier resulting from the said suspension, provided that the Supplier has taken all necessary steps to mitigate such cost.
- 26.3 Notwithstanding the foregoing, if the Purchaser suspends Work on the Equipment or any part thereof pursuant to Chapter 24, no Variation Order shall be issued and no revision of or adjustment to the Contract Price or Delivery Date shall be allowed.
- 26.4 The Purchaser may at any time authorize resumption of all or any portion of Work suspended as aforesaid by giving notice in writing to the Supplier specifying the Work to be resumed and the effective date of resumption.
- 26.5 The Purchaser may, at any time, terminate Work on the Equipment or any portion thereof for any reason whatsoever by giving written notice to the Supplier specifying the extent and the effective date of such termination. The Supplier shall terminate such Work on the effective date but it shall continue to carry out all other Work under the Contract.
- 26.6 In the event of the Purchaser terminating Work on the Equipment or any portion thereof (otherwise than in consequence of default or bankruptcy on the part of the Supplier), the Supplier shall be entitled to the payment to the extent of the followings:
- i) the Contract Price for the Equipment which is the subject of the notice of termination and calculated at the effective date of such notice;
  - ii) the actual reasonable and necessary net cost of materials (or cancellation charges in respect thereof) unused and ordered for the Equipment which shall have been delivered to the Supplier or of which the Supplier is legally liable to accept delivery, such materials becoming the property of the Purchaser upon such payment being made by the Purchaser to the Supplier; and
  - iii) any other actual reasonable and necessary net costs incurred and paid by the Supplier as a direct consequence of termination and approved by the Purchaser.

The above sum shall be offset by the outstanding balances, if any, due from the Supplier for advances previously paid by the Purchaser.

The Purchaser shall issue a Variation Order pursuant to Chapter 9 reducing the Contract Price in accordance with this Clause.

- 26.7 In the event of termination of Work on the Equipment or any portion thereof in accordance with Clause 26.5, the Supplier shall in respect of any undelivered Equipment, whether fully manufactured or is in the course of manufacturing and which is the subject of the termination, make such arrangements on behalf of the Purchaser as in all the circumstances may be reasonable to deliver to the Purchaser or its nominee or to store and insure in the name and to the reasonable satisfaction of the Purchaser such items of Equipment for their full replacement value against such risks as is practicable.
- 26.8 In the event of the Purchaser terminating Work on the Equipment or any portion thereof in accordance with the provisions of Chapter 24 or Chapter 25, the Purchaser, in addition to its rights under those Clauses, shall be entitled to take possession of and remove from the Supplier's premises as and when it shall be convenient for the Purchaser so to do, all Equipment, Documentation, drawings and specifications, the property in which has passed to the Purchaser pursuant to the Contract and the Supplier shall afford to the Purchaser all rights of access and all reasonable facilities to enable it to remove such Equipment, Documentation, drawings, and specifications as aforesaid. The Purchaser shall have the right to carry out the Work terminated as aforesaid by whatever means it deems most expedient and the Supplier shall be liable for and shall pay to the Purchaser the additional cost, if any, which the Purchaser may incur as a result of carrying out and completing such Work including all costs of removal as aforesaid.
- 26.9 In the event of any termination mentioned above:
- (i) the Supplier shall execute and deliver to the Purchaser all Documentation required by the Purchaser and take all reasonable steps to fully vest in the Purchaser the rights and benefits of the Supplier under existing agreements with vendors, Sub-suppliers and others related to the Contract;
  - (ii) the applicable provisions of the Contract shall continue in full force and effect as to all Work which is not terminated.

## **Chapter 27 Statute and Other Regulations**

- 27.1 The Supplier shall comply, and require compliance by its Sub-suppliers, with all applicable laws in all jurisdictions in connection with the Contract and in this context law includes any law (national, state, municipal, local or other) and any requirement, ordinance, rule or regulation of any governmental authority or agency.
- 27.2 Except as otherwise provided in the Contract, the Supplier shall obtain at its own expense all licenses to do business in the country or countries wherein any Work required by the Contract is performed and shall obtain all temporary permits and authorizations required by law for prosecution of such Work and shall give all required notices.

## Chapter 28 Liens

- 28.1 If at any time during the performance of the Contract there should be evidence of any lien or claim to which the Purchaser's property might be subject and which arises from failure of the Supplier, the Supplier shall maintain the Project schedule, defend or protect the title or supply to the Purchaser a replacement for the item of Equipment affected by the lien or claim. Such replacement by the Supplier shall in no way limit the Purchaser's rights under Chapter 14 in respect of delay and performance.
- 28.2 If any such lien or claim remains undischarged after completion or termination of the Works, the Supplier shall promptly refund to the Purchaser all amounts that the Purchaser may be compelled to pay in discharging such lien or claims, including all costs and reasonable legal fees.



## **Chapter 29 Independence of the Supplier**

- 29.1 Neither the Purchaser nor the Purchaser's representatives shall have authority to supervise the employees, representatives or Sub-suppliers of the Supplier. The Supplier shall have no authority to make any statements, representations or commitments of any kind or to take any action that shall be binding upon the Purchaser, except as provided for in the Contract.

## **Chapter 30 Conflict of Interest**

30.1 This Chapter is intentionally left blank.

### **Chapter 31 Business Ethics**

- 31.1 The Supplier and its agents are not expected or authorized to take any action on behalf of the Purchaser that would violate applicable laws. All financial statements, reports and invoices rendered shall properly reflect the facts about all activities and transactions handled for the account of the Purchaser. The Supplier shall immediately notify the Purchaser of any and all violations of this Clause upon becoming aware of such violation.

## Chapter 32 Confidentiality

- 32.1 Save as agreed by the Purchaser in writing, the Supplier, its designated agents and its Sub-suppliers shall, except as may be reasonably necessary for the Supplier to carry out the Work under the Contract, at all times keep confidential (i) the terms of this Contract and any other ancillary agreements or documents; (ii) the Purchaser's Intellectual Property rights including without limitation to the Purchaser's inventions, know-how and technical processes; (iii) any information concerning the organization, business, technology, safety records, investment, finance, transactions or affairs of the Purchaser or its directors, officers or employees (whether conveyed in writing, oral or in any other form and whether such information is furnished before, on or after the date of this Contract); and (iv) any other information or materials prepared by the Purchaser or its representatives that contains or otherwise reflects, or is generated from the above mentioned confidential information. In particular the Supplier shall not publish any information, drawing or photographs concerning the Equipment, the Project or the Contract except with the written consent of the Purchaser and subject to such reasonable conditions as the Purchaser may prescribe. The Supplier shall procure that each of its affiliates, designated agents, Sub-supplier shall comply with the obligations hereunder.
- 32.2 With regard to any software developed by the Supplier specifically for the Contract, the title thereto shall vest in the Supplier but the Supplier shall grant to the Purchaser the free and unfettered right to use and modify such software for its own use.
- 32.3 With regard to any software supplied under the Contract over which the Supplier or third parties hold title or other rights, the Supplier shall permit or procure for the Purchaser (as the case may require) the right to use and apply that software free of additional charge (together with any modifications, improvements or developments thereof) in the operation of the Equipment and in the operation of other equipment owned or used by the Purchaser.
- 32.4 With regard to any software such as is referred to in Clause 32.3, the Purchaser undertakes not to disclose or make available any part or parts thereof to any third party without the prior written consent of the Supplier.
- 32.5 The Supplier's permission referred to in Clause 32.3 shall be given (inter alias) to enable the Purchaser to disclose (under conditions of confidentiality satisfactory to the Supplier) programs and documentation for a third party to undertake the performance of services for the Purchaser in respect of such programs and documentation.

### Chapter 33 Availability of Information

- 33.1 The Purchaser' s duly authorized representatives shall have, during the performance of the Contract and for \*\*\* thereafter, access at all reasonable times to all the Supplier' s and its Sub-suppliers' personnel, accounts and records of all description, including but not limited to computer files, pertaining to the Contract to verify or review the quantity, quality, work program and progress of the Equipment, reimbursable costs, amounts claimed by the Supplier, estimates for proposed variations, and for any other reasonable purposes. The Supplier and its Sub-suppliers shall preserve all such accounts and records for a period of \*\*\*. The Purchaser' s duly authorized representatives shall have the right to reproduce any such accounts and records.
- 33.2 This Clause is intentionally left blank.
- 33.3 The Supplier shall include the necessary provisions in its sub-contracts to ensure that its Sub-suppliers comply with the provisions of this Chapter.

### **Chapter 34 Settlement of Disputes**

- 34.1 This Contract shall be governed by and construed in accordance with the laws of Hong Kong and any dispute or claim arising out of or in connection with or relating to the terms of this Contract, or the breach, termination or invalidity hereof shall be subject to the non-exclusive jurisdiction of the Courts of Hong Kong.

### **Chapter 35 Notices**

35.1 Except as otherwise provided in the Contract or agreed by the Parties during the performance thereof, all notices required by the Contract shall be in writing and shall be delivered to the Purchaser or the Supplier as appropriate at their office addresses as agreed by the Parties:

Each Party shall promptly notify the other Party of any modification to the above details.

35.2 The date of any notice shall be the date it is first received by the addressee or the office of the addressee, whichever is the earlier.

### **Chapter 36 Construction of Contract**

36.1 The construction, validity, interpretation, performance, implementation and all matters relating to this Contract and any amendment thereto shall be governed by the United Nation Convention for the International Sale of Goods. However, to the extent the United Nation Convention for the International Sale of Goods does not cover, the law of Hong Kong shall apply.

## Appendices

**Appendix B**

Appendix B-1 Scope of Supply

Appendix B-2 Technical Conditions

Appendix B-3 Technical Description

Appendix B-4 Quality Assurance

Appendix B-5 Inspection and Testing in Workshop

Appendix B-6 Performance Warranties

Appendix B-7 Sub-suppliers

Appendix B-8 Schedule

Appendix B-9 Codes Rules and Guides

Appendix B-10 Project coordination and management

Appendix B-11 Dossier of Attachments and Document Requirement

Appendix B-12 Equipment Localization

Appendix B-13 Safety Management Requirements

**Remark:** Appendices B shall form integral parts of the Contract.



**Scope of Supply****Equipment**

Each of the following equipment forms a complete system necessary for the normal operation of the Reactor. The system includes but not limited to the followings:

Name of Equipment	Q' ty	Remarks
1. Reactors (** electrodes design)* (each set includes the following parts)	***	*with complete accessories
2.1 Reactor cylinder		Refer to the drawing for details
2.2 Base-plate		
2.3 Electrodes		
2.4 Initial Electrodes		Refer to the schematic drawing provided by the purchaser; parts connected with the working media inside the Reactor will be silver-plated.
2.5 Mixed gas supply pipe		
2.6 Mixed gas exhaust pipe		
2.7 Reactor rack		
2.8 Leading poles		
2.9 The shielding cover of the reactor rack		
2.10 Lifting equipment specially designed for the reactor		[Total: *** pcs for *** reactors]
2.11 The ceramic insulation ring		
3.		
Reactor (** electrodes design)	***	*with complete accessories



- 
1. Seals, heat and electrical insulation will be provided for all the equipment parts. All the external connected flanges will be provided in companion.
  2. Valves: \*\*\* valves to be equipped on the bottom of reactor, specifications and suppliers of the valves should be provided by MSA, the purchaser make the choice and pay for it.
  3. MSA provides all the civil engineering and installation conditions of the reactor
  4. MSA provides full set of drawings of reactor, (include full set of the part, accessory, assembling drawings.) and the full set of technical document of design etc.

### **Spare parts**

\*\*\*

4. The Purchaser will buy the following spare parts for \*\*\* from the

---

Supplier:

\*\*\*

The Supplier will quote the prices for this lot of spare parts within \*\*\* from the date of this Contract.

5. The Supplier will provide the shop drawings of all the seals.

### **Documents**

The following technical manuals and documents will be written in English, provided in one (1) copy in print together with two (2) electronic edition in CD ROM. Metric systems will be used in the technical documentation. English will be the working language.

1. Technical documentation to be provided

\*\*\*



## Services

\*\*\*

### Onsite Service Schedule

<u>Equipment</u>	<u>Description</u>	<u>Persons</u> <u>xdays</u>	<u>Staff make-up</u>		
			<u>Title</u>	<u>persons</u>	<u>Days</u>
Reactor-set	Installation	***	Engineer	***	***
	Supervision		Technician	***	***
Reactor-set	Commissioning	***	Expert	***	***
			Engineer	***	***

## Technical Conditions

## 1. Equipment parameters

Reactor

Number of doubles: \*\*\*

Length of doubles: \*\*\*

External diameter of Reactor-cylinder: \*\*\*

\*\*\*

External diameter of the cooling cabinet: \*\*\*

Working media inside the reactor: \*\*\*

Working media inside the cooling cabinet: \*\*\*

Interior working pressure: \*\*\*

Interior working temperature: \*\*\*

Working pressure inside the cooling cabinet: \*\*\*

Working temp. in the cooling cabinet: \*\*\*

Design temperature inside cooling cabinet: \*\*\*

Number of power supply connections: \*\*\*

Number of material gas inlet jets: \*\*\*

Number of show windows: \*\*\*

## 2. Reactor Material Supply Data (for reference)

	<u>beginning</u>	<u>ending</u>	<u>average</u>
SiHCl <sub>3</sub> kg/h	***	***	***
H <sub>2</sub> Nm <sup>3</sup> /h	***	***	***
Mixed gas Nm <sup>3</sup> /h	***	***	***

---

3. Material list

**Stainless Steel Reactor**

Material List

\*\*\*

**Electrode**

Material List

\*\*\*



### **Technical Description**

#### **1. Deposition Reactors**

The Reactor consists of a cylinder type case and a base-plate. Cylinder-case and the base-plate are surrounded with a cooling cabinet. All surfaces, which are in direct contact with the process are stainless-steel, electropolished.

The following parameters and data have been considered:

##### **1.1 Concept and capacity**

\*\*\*

##### **1.2 Dimension**

\*\*\*

---

### 1.3 Design data

1. The design should meet both the current German/Europe standards and Chinese standards for manufacturing and import pressure vessel to China.
2. Design of pipes and flanges should conform to the metric system.

### 1.4 Reactor functionality

\*\*\*

**Notice:** Above mentioned time frame may be reduced by experienced operating parameters and well-trained operators

---

## Reactor-Construction

### 1.5 Base-plate

\*\*\*

## Reactor Armatures

### 1.6 Electrodes/Initial electrodes (designed by the purchaser)

\*\*\*

---

The filaments are put into this device with square connection.

1.7 Mixed-gas supply pipes

\*\*\*

1.8 Exhaust-gas pipe

\*\*\*

1.9 Heat insulation

The Reactor will be completely insulated with a heat protection system. The supplier shall provide design for the system.

This system will be provided by the purchaser

2. Design basis

\*\*\*

---

### **Standards:**

The whole set of reactor and documentation, should adopt current German / Europe standards and current Chinese standards, required for manufacturing and import of pressure vessels to China. The reactors are made in Germany.

The standards adopted during the inspection and acceptance will be the current German / Europe standards and the above mentioned Chinese standards.

Technical standards of manufacture are specified as follows:

1. Manufacturing specification acc.to AD-2000 rules (DIN ISO) and EPD 97/23 EG
2. General technical conditions of welded pressure Vessel AD2000 and DIN ISO
3. Welding technology acc.to DIN ISO
4. Filler material acc.to DIN ISO

---

5. Material standards acc.to DIN ISO

Stainless-steel  
DIN 17 440

C-steel  
DIN 17 155

Screw  
DIN 267/13

Nuts  
DIN 267/11

Flanges  
DIN 2505

6. Testing and Inspection

Ultrasonic test  
acc.to DIN ISO

Radiographic test  
acc.to DIN ISO

Color test  
acc.to DIN ISO

Hydraulic test  
acc.to DIN ISO

---

## **Appendix B-4**

### **Quality Assurance**

**This section is intentionally left blank**

## **Appendix B-5**

### **Inspection and Testing in Workshop**

After the equipment being manufactured, representatives from both parties will attend the inspection and acceptance of equipment at the work shop of the Supplier. The Supplier will provide an Inspection and testing manual which is evaluated by the purchaser.

Before packing and delivery, the Purchaser will dispatch a group of inspectors to inspect the equipment at the workshop of the Supplier.

The Supplier shall be responsible for the charge of transportation (including round trip air tickets), accommodations and staying in Germany for \*\*\* for a \*\*\* person inspection group dispatched by the Purchaser.

**Performance Warranties**

**1. Warranties values for technological performance .**

Average deposition rate (diameter): \*\*\*

Deposition diameter: \*\*\*

1 working cycle: \*\*\*

Polysilicon output of one reactor per working cycle: \*\*\*

Polysilicon production capacity of one reactor per year: \*\*\*

**Warranties values for equipment performance**

Reactor uptime: \*\*\*

Working time: \*\*\*

Working cycle: \*\*\*

Lifetime of the whole set: approx. \*\*\*, depending on professional operation and maintenance

2. The Performance Test will be carried out on worksite of the Purchaser, according to the items specified in Appendices 2 and 3.

3. Method of the Performance Test

3.1 Testing Plans

Within \*\*\* after the contract becomes effective, the Supplier will make out the plans for system commissioning and performance test. These plans will specify the analysis, and inspection, and the principles of the test, etc. These plans will be submitted to the Purchaser for approval before enforcement.

3.2 Performance Test

3.2.1 The test will be carried out according to the warranties values.

3.2.2 All the parameters collected during the performance test will be counted, calculated, and appraised.

3.2.3 Measures taken when the performance test fails

In case the warranties values are not fulfilled during the performance test, the Purchaser has the right to require the Supplier to repair the equipment and/or pay a penalty,

3.2.3.1 Polysilicon output of one reactor per working cycle (the warranted Values and related parameters are specified in Clause 1 of Appendix 2).



---

With \*\*\* continuous working cycles (\*\* deposition time) of one Reactor, the average output of the \*\*\* working cycles will be regarded as the tested production value.

3.2.3.2 For a decrease of \*\*\* (including \*\*\*), the Supplier shall be obligated to pay \*\*\* as the liquidated damages; for a decrease of \*\*\* (including \*\*\*), the Supplier shall be obligated to pay \*\*\* as the liquidated damages; for a decrease exceeding \*\*\* (including \*\*\*), the Purchaser has the right to demand the Supplier to pay \*\*\* as the liquidated damages, or to reject the equipment and meanwhile the Supplier is obliged to pay \*\*\* as the liquidated damages and refund the money.

3.2.4 The Supplier is not responsible for any interruption or delay, caused by Force Majeure as defined in Contract.

3.2.5 The Supplier is also not responsible for any non-performance , interruption or delay, caused by the followings:

- (1) if the Purchaser does not supply sufficient and qualified mixed-gas for the deposition process; and
- (2) if the Purchaser fails to provide sufficient and qualified utilities, like power-supply, thyristor power, process control, cooling-water, process exhaust-gas discharge.

Additional costs and expenses born by the Supplier by aforesaid 3.2.5.(1) and (2) will be reimbursed by the Purchaser.

**Schedule**

1. Equipment delivery schedule [*to be confirmed*]
  - (a) The Supplier shall complete the basic design and calculation of the new reactor \*\*\* by no later than end -\*\*\* and that the Supplier will provide the relevant design details and drawings to the Purchaser for necessary evaluation and reference. The Parties agree that the \*\*\* reactors for phase \*\*\* of the Purchaser' s silicon project shall adopt the design of \*\*\* and the \*\*\* reactor shall use the new design of \*\*\*.
  - (b) The Supplier shall provide an update from time to time in respect of the design and technical details of the new reactors for phase \*\*\* of the Purchaser' s silicon project.
  - (g) The Supplier shall deliver the first batch of \*\*\* Sets (i.e. \*\*\* to \*\*\* unit of \*\*\* design reactors with complete accessories by no later than \*\*\*, CFR Shanghai Seaport (or no later than \*\*\*, Ex Germany).
  - (h) The Supplier shall deliver the second batch of \*\*\* Sets (i.e. \*\*\* to \*\*\* unit of \*\*\* design reactors with complete accessories by no later than \*\*\*, CFR Shanghai Seaport (or no later than \*\*\*, Ex Germany).
  - (i) The Supplier shall deliver the third batch of \*\*\* Sets (i.e. \*\*\* to \*\*\* unit of \*\*\* design reactors with complete accessories by \*\*\* week of \*\*\*, CFR Shanghai Seaport, (or no later than \*\*\*, Ex Germany).
  - (j) The Supplier shall deliver the \*\*\* design reactor together with complete accessories by no later than \*\*\*, CFR Shanghai Seaport (or no later than \*\*\*, Ex Germany).
2. Technical Documentation delivery schedule
  - (a) Items from 1.1 to 1.8/1.14/1.17 mentioned in Documents of Appendix B-I shall be delivered to the Purchaser within four (4) weeks after the Contract Signing Date.

- 
- (b) For item 1.24 Assembly Drawings, preliminary version of the assembly drawings (with necessary revisions needed to be discussed in the first design meeting) will be delivered \*\*\* in advance of the first design meeting by email in pdf format, including reference drawing for the reactor platform.
  - (c) Items from 1.15/1.16/1.18/1.19/1.20/1.22/1.32/ mentioned in Documents of Appendix B-1 shall be delivered to the Purchaser within \*\*\* after the Contract Signing Date.
  - (d) The shop drawings of equipment (as-build) accord to item 1.23 will be delivered together with the reactor.
  - (e) All the remaining items in Documents of Appendix B-1 shall be delivered \*\*\* advanced the delivery time.



**Project Coordination and Management**

Design Liaison Meetings to be Held in Shanghai

Description				Participants	
	Topic	Week No.*	Days	The purchaser	MSA
			Duration		
No.1	Preliminary Assembly	Within 6	Ca. 1	X	X
	Drawing & “kick-off” specification	weeks	week		
	Final Assembly	To be determined	Ca. 1	X	X
No.2	Drawing & Specification	by the first meeting	week		
	Final & Detail Drawing	To be		X	X
No.3	& Specification Client Acceptance	defined by	Ca. 1 week		
		the second meeting			
No.x	If there' s a need	To be determined	–	X	X

\* From the Contract Signing Date.

---

## **Appendix B-11 Dossier of Attachments and document Requirement**

**This section is intentionally left blank**

---

## **Appendix B-12 Equipment Localization**

**This section is intentionally left blank**

## **Appendix B-13 Safety Management Requirements**

**This section is intentionally left blank**

## Appendix B-14 \*\*\* Design Reactors

All the sections of Appendix B for \*\*\* Design Reactor shall be furnished by the Supplier on a progressive basis and the last required document shall be provided by no later than \*\*\*.

---

DATED 17. Jan. 2008

**JIANGSU ZHONGNENG PHOTOVOLTAIC INDUSTRY**

**DEVELOPMENT CO., LTD.**

**( 江蘇中能光伏科技發展有限公司 )**

**and**

**MSA APPARATUSCONSTRUCTION FOR CHEMICAL EQUIPMENT LTD.**

**and**

**CHEMICAL EQUIPMENT ENGINEERING LIMITED**

\*\*\*\*\*

**SUPPLEMENTAL AGREEMENT**

**TO**

**GENERAL TERMS AND CONDITIONS OF CONTRACT**

**AND APPENDICES**

**(CONTRACT NO. : JSZN2003)**

\*\*\*\*\*



**THIS SUPPLEMENTAL AGREEMENT** is made the 17 day of January 2008.

**BETWEEN :-**

- (1) **JIANGSU ZHONGNENG PHOTOVOLTAIC INDUSTRY DEVELOPMENT CO., LTD.** ( 江蘇中能光伏科技發展有限公司) a company incorporated in the People' s Republic of China whose registered office is at [\*] (the "Purchaser");
- (2) **MSA APPARATUSCONSTRUCTION FOR CHEMICAL EQUIPMENT LTD.** a company incorporated in the United Kingdom whose principal place of business is at 82008 Unterhaching Isartalstr 50, Germany (the "Supplier"); and
- (3) **CHEMICAL EQUIPMENT ENGINEERING LIMITED** a company incorporated in [\*] whose registered office is at [\*] ("CEE").

**RECITALS :-**

- (a) The Purchaser and the Supplier have executed a general terms and conditions of contract and appendices (Contract No.:JSZN2003) on 27 June 2007 in relation to the supply of the Equipment, Engineering, Additional Spare and Replacement Parts, Special Tools, Documentation and Services and the Works associated with the Equipment by the Supplier to the Purchaser (the "Contract").
- (b) CEE is an associated company of the Supplier. The Supplier has appointed CEE as its agent to receive any payments payable by the Purchaser to the Supplier under the Contract and CEE has accepted such appointment.
- (b) The parties hereto have agreed to vary the terms of the Contract by executing this Supplemental Agreement.

**NOW IT IS AGREED** as follows :-

**1. INTERPRETATION**

- 1.1 Unless the context requires otherwise, words and expressions defined in the Contract shall have the same meanings when used in this Supplemental Agreement.
- 1.2 References herein to Clauses are to clauses in this Supplemental Agreement unless the context requires otherwise.

**2. PAYMENT UNDER THE CONTRACT**

- 2.1 The Supplier hereby appoints CEE as its agent to receive any payments payable by the Purchaser to the Supplier under the Contract and CEE hereby accepts such appointment at no cost.
- 2.2 The Supplier and the Purchaser hereby agree that any payments made by the Purchaser to CEE shall be deemed to be made to the Supplier in discharge of the Purchaser' s payment obligations under the Contract.

### **3. AMENDMENTS TO THE CONTRACT**

3.1 Clause 4.2 of the Contract shall be deleted and replaced with the following :-

“4.2 The Purchaser shall pay CEE (acting as an agent of the Supplier) the Contract Price stated in Chapter 3 in the following manner:

- (i) The Purchaser shall pay a sum of no more than \*\*\* to CEE by telegraphic transfer within \*\*\* from the date of the Purchaser' s receipt of the relevant invoices from the Supplier.
- (ii) The Purchase shall open and issue an irrevocable direct letter of credit by the bank in favor of CEE for the balance of the Contract Price.

3.2 Clause 4.3 of the Contract shall be deleted and replaced with the following :-

“4.3 The balance of the Contract Price shall be paid against the abovementioned letters of credit, upon presentation of the following documents by the Purchaser to CEE in respect of the actual pro rata value of each shipment, which are found in order:

- (a) Three (3) originals and three (3) duplicate copies of clean on board ocean Bill of Lading made out to order, blank endorsed, notifying the Purchaser and marked “FREIGHT PREPAID”, or one (1) original and four (4) duplicate copies of airway bill made out to order of the Purchaser;
- (b) Five (5) originals of manually signed commercial invoice indicating the amount to be paid and the itemized price;
- (c) Two (2) originals and three (3) duplicate copies of detailed packing list indicating the shipping weight, number and the date of the corresponding invoice;
- (d) Two (2) originals and three (3) duplicate copies of ex-works quality certificate issued by the manufacturer;
- (e) Two (2) copies of sight draft;
- (f) One (1) original and four (4) duplicate copies of certificate of origin issued by relevant authorities or agency of the manufacturer' s country;
- (g) Five (5) copies of fax advising the Purchaser of the shipment within forty-eight (48) hours after it is made;
- (h) One (1) original and four (4) copies of the Quarantine Certificate/Heat Treatment Certificate for the wooden packing materials or non-wooden packing declarations in case of ocean transport, or four (4) copies of the Quarantine Certificate/ Heat Treatment Certificate for the wooden packing materials or non-wooden packing declarations in case of air freight.”

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

3.3 Clause 4.4 of the Contract shall be deleted and replaced with the following :-

“4.4 Unless otherwise specifically provided in a Variation Order which increases or decreases the Contract Price, the amount thereof shall be added to or deducted from the amount of payment under Clause 4.2(ii), which are outstanding at the issuance of the Variation Order in question.”

3.4 Clause 4.6 of the Contract shall be deleted and replaced with the following :-

“4.6 The Supplier shall be solely responsible for arranging payments to its Sub-suppliers and all other persons as may be engaged by the Supplier in the performance of the Contract. The Supplier shall transfer payment to its Sub-suppliers within \*\*\* after CEE’s receipt of the payment from the Purchaser pursuant to Clause 4.2(i). The Supplier agrees that the Purchaser shall have the right to contact any of its Sub-suppliers directly at any time in order to check the validity of all invoices issued to the Purchaser and the status of production. In the case of any invalid invoice is found by the Purchaser, the Purchaser shall have the right to reject any payments and to make claims against the Supplier.”

#### **4. GOVERNING LAW**

4.1 This Supplemental Agreement shall be governed by and construed in accordance with the laws of the Hong Kong Special Administrative Region of the People’s Republic of China.

#### **5. MISCELLANEOUS**

5.1 This Agreement is supplemental to and amends the Contract and, save as expressly provided herein, all provisions in the Contract shall remain in full force and effect.

5.2 If any provision of the Contract is inconsistent with the changes contemplated hereunder or provided herein, the provisions of this Supplemental Agreement shall prevail to the extent contemplated hereunder.

SIGNED by

in the presence of :-



SIGNED by

in the presence of :-

SIGNED by

in the presence of :-

17.01.2008

**Contract**

**GENERAL TERMS AND CONDITIONS OF CONTRACT  
AND APPENDICES**

## Table of Content

Contract Form	1
General Terms And Conditions Of Contract	3
Chapter 1    Definitions	3
Chapter 2    Scope of Contract	6
Chapter 3    Contract Price	7
Chapter 4    Terms of Payment	8
Chapter 5    Delivery and Terms of Delivery	10
Chapter 6    Packing and Marking	14
Chapter 7    Documentation	17
Chapter 8    Mistakes in Information	18
Chapter 9    Variations and Omissions	19
Chapter 10    Coordination, Liaison and Project Management	21
Chapter 11    Safety Management and Quality Assurance	23
Chapter 12    Inspection at Manufacturer' s Premises and after Delivery	26

Chapter 13	Erection, Commissioning, Testing and Acceptance	29
Chapter 14	Warranties and Defects After Delivery	31
Chapter 15	Additional Spare and Replacement Parts and Repairs to the Equipment	34
Chapter 16	Liability for Accidents and Damage	36
Chapter 17	Licensing	38
Chapter 18	Insurance	39
Chapter 19	Taxes and Duties	41
Chapter 20	Force Majeure	42
Chapter 21	Vesting of the Equipment and Documentation	43
Chapter 22	Infringement	44
Chapter 23	Assignment and Sub-letting	46
Chapter 24	Supplier' s Default	47
Chapter 25	Bankruptcy	48
Chapter 26	Suspension and Termination	49
Chapter 27	Statute and Other Regulations	51

Chapter 28	Liens	52
Chapter 29	Independence of the Supplier	53
Chapter 30	Conflict of Interest	54
Chapter 31	Business Ethics	55
Chapter 32	Confidentiality	56
Chapter 33	Availability of Information	57
Chapter 34	Settlement of Disputes	58
Chapter 35	Notices	59
Chapter 36	Construction of Contract	60
Chapter 37	Security for Due Performance	61
Chapter 38	Effectiveness of the Contract and Miscellaneous	62



**Appendix A**

Appendix A-1 Price Breakdown

Appendix A-2 Bank Guarantee for Advance Payment \*\*\*

Appendix A-3 “Delivery Schedule”

**Appendix B**

Appendix B-1 “Technical Agreement”

**Contract Form**

Contract No.: ZNSH3001

Date of Signing: 2008.02.4

Place of Signing: Shanghai

This Contract is made on the day of 2008.02.4 between Jiangsu Zhongneng Photovoltaic Industry Development Co, Ltd, with offices at North of the 310 national highway, economic development zone, Xuzhou, China (hereinafter referred to as the “Purchaser”) as one Party and Tap Mate Limited (hereinafter referred to as the “Supplier”) with offices at Flat 1/E, Block 6, Kornhill Gardens, 1120 King’ s Road, Quarry Bay, Hong Kong as the other Party.

WHEREAS the Supplier has the capability and experience of manufacturing for 144 reactorsets (stainless steel).

WHEREAS the Supplier is willing to supply the Purchaser with the Equipment, Engineering, Documentation and Services and to perform the Works associated with the Equipment;

WHEREAS the Purchaser is willing to purchase the Equipment, Engineering, Documentation and Services and the Works associated with the Equipment to be provided by the Supplier;

WHEREAS the Supplier shall be and shall be deemed to be, an independent supplier and not the agent or employee of the Purchaser;

NOW THEREFORE, the two Parties authorize their representatives, following friendly consultations, to agree on the following terms and conditions and to sign this Contract.

The following documents shall be deemed to form the Contract between the Purchaser and the Supplier, and be read and constructed as part of the Contract, and shall be interpreted in the following order in case of discrepancy or ambiguity among the following documents:

Contract Form;

General Terms and Conditions;


Appendix A and B

SIGNED BY

For and on behalf of The Purchaser

**Jiangsu Zhongneng Photovoltaic Industry Development Co, Ltd**


By: \_\_\_\_\_  
(signature of authorized representative)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



For and on behalf of The Supplier

Tap Mate Limited (TAP-H008 002-002)

By: \_\_\_\_\_  
(signature of authorized representative)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



---

## General Terms And Conditions Of Contract

### Chapter 1 Definitions

In the Contract the following words shall have the meanings herein assigned to them:

- 1.1 “ATP” shall mean the starting date for the Project Schedule.
- 1.2 “Actual Delivery Date” shall have the meaning set forth under Clause 5.3 (applicable to Equipment and Special Tools), or Clause 5.14 (applicable to Documentation).
- 1.3 “Additional Spare and Replacement Parts” shall mean the spare and replacement parts which are not included in the Equipment.
- 1.4 “China” and “PRC” and “People’ s Republic of China” each means the People’ s Republic of China excluding, for the purposes of this Contract, Hong Kong, Macao Special Administrative Region and Taiwan.
- 1.5 “Contract” shall mean the agreement between the Purchaser and the Supplier, howsoever made, for the supply of Equipment, Engineering, Works, Documentation, Additional Spare and Replacement Parts, and the provision of Services, including all documents referred to in the said agreement which set out the rights and obligations of the Parties thereunder.
- 1.6 “Contract Price” shall mean the sum named in the Contract as the Contract Price, subject to such additions and deductions, as may be made in accordance with the Contract, to be paid to the Supplier in consideration for the supply and delivery of Equipment, Additional Spare and Replacement Parts, Documentation and the provision of Services and the fulfillment by the Supplier of all its other activities and obligations under the Contract.
- 1.7 “Delivery Dates” shall mean the applicable dates specified in the Contract for delivery of Equipment, Additional Spare and Replacement Parts and Documentation subject to such adjustments as may be made in accordance with the Contract.
- 1.8 “Documentation” shall mean calculation notes, drawings, programs, schedules, manuals, erection and commissioning data, acceptance tests procedures, and all other technical information required for the design, manufacture, erection, tests, operation and maintenance of the Equipment as defined in Appendix B-1 of the Contract.
- 1.9 “Effective Date” or “EOC” shall mean the day when the Contract becomes effective in accordance with the provisions of Clause 38.2 hereof.
- 1.10 “Engineering” shall mean the engineering set forth in Appendix B-1.

- 1.11 "Equipment" shall mean all or any parts of the system, machinery, apparatus, parts, materials, spare parts, consumables which are to be supplied by the Supplier in accordance with the Contract as defined in Appendix B-1 of the Contract.
- 1.12 "Final Delivery Date" or "FDD" shall mean, the Actual Delivery Date of the item of Equipment which is the last to be shipped according to the Appendix A-3, providing such Equipment is not shipped in advance of the Delivery Date without the prior approval of the Purchaser, in which case the Delivery Date shall apply. When the Final Delivery Date has been achieved, the Supplier shall request the Purchaser to issue a certificate of Final Delivery Date.
- 1.13 "Force Majeure" shall mean an occurrence such as war, serious fire, flood, typhoon, earthquake, which is unavoidable, unforeseeable, insurmountable.
- 1.14 "Month/Day" shall mean calendar month/day; "Week" shall mean seven calendar days.
- 1.15 "Overall Project Schedule" shall have the meaning set forth in Appendix B-1.
- 1.16 "Parties" shall mean collectively the Purchaser and the Supplier.
- 1.17 "Party" shall mean the Purchaser or the Supplier.
- 1.18 "Project" shall mean the project developed by the Supplier in the People' s Republic of China.
- 1.19 "Provisional Acceptance Certificate" and "PAC" shall have the meaning set forth under Clause 13.5.
- 1.20 "Purchaser" shall mean the Jiangsu Zhongneng Photovoltaic Industry Development Co, Ltd the registered address of which is at Xuzhou, Jiangsu Province.
- 1.21 "Services" shall mean instruction and services provided by the Supplier at various stages under this Contract and within the scope of Supply.
- 1.22 "Site" shall mean the place at north of the 310 national highway, economic development zone, Xuzhou, Jiangsu Province in the People' s Republic of China selected by the Purchaser.
- 1.23 "Specification" shall mean the technical requirements as defined in the Appendix B-1.
- 1.24 "Sub-supplier" shall mean any entity (other than the Supplier) named in the Contract for any part of the Work thereunder or any entity to whom any part of the Contract has been sub-let with the consent in writing of the Purchaser.
- 1.25 "Supplier" shall mean Tap Mate Limited, the registered address of which is at Flat 1/F., Block 6, Kornhill Gardens, 1120 King' s Road, Quarry Bay, Hong Kong.
- 1.26 "Variation Order" shall mean the serially numbered form issued by the Purchaser to the Supplier in accordance with Chapter 9.
- 1.27 "Warranty Period" shall mean the period within \*\*\* commencing on the Actual Delivery Date of the Equipment or \*\*\* after the issuance of PAC whichever is earlier.

- 
- 1.28 “Working Day” means a day (other than a Saturday, a Sunday or public holiday declared by Chinese governmental authorities).
- 1.29 “Work” shall mean the supply by the Supplier or the Sub-supplier of all Equipment, Documentation, Services and the performance by the Supplier or Sub-supplier of all its other activities and obligations under the Contract.
- 1.30 Where used in these General Terms and Conditions of Contract, “writing” or “written” shall mean any manuscript, type-written, or printed statement, under seal or hand as appropriate, but shall also include telegraphic, telex and fax communications which shall be submitted in the form of signed or sealed copies.
- 1.31 Words importing persons shall include firms and corporations.
- 1.32 Words importing the singular only shall include the plural and vice-versa where applicable.
- 1.33 “CFR” shall be interpreted and governed in accordance with Incoterms 2000 edition of the International Chamber of Commerce, unless otherwise provided in the Contract.

---

## Chapter 2 Scope of Contract

- 2.1 The Supplier shall supply to the Purchaser completely all Engineering, Equipment, Special tools, Additional Spare and Replacement Parts and Consumable, Documentation including interfaces, Services and other things of all kinds necessary for the carrying out, completion and maintenance of the Work in accordance with the Contract. The Supplier undertakes that if during the implementation of the Contract, it fails to supply any items caused by the Supplier's fault(s) which are required for the safe and reliable operation of the Equipment or for achieving the functions and performance as stipulated in the Contract, such items shall be supplied by the Supplier at no additional cost to the Purchaser.
- 2.2 The Equipment, Engineering, Documentation and Services supplied under the Contract shall be in full conformity with the Specifications, conditions, requirements, performance and limits of supply as defined in Appendix B-1.
- 2.3 The Equipment to be supplied by the Supplier shall conform to the requirements and the limits of supply stipulated in the Contract. The Supplier shall be responsible for providing the Purchaser with all the information in accordance with the schedule in Appendix B-1.
- 2.4 The Supplier shall send suitably experienced, healthy and competent personnel for on-Site Services specified in Appendix B-1 in order to ensure that the Equipment is erected correctly, and the dispatched personnel on Site shall abide by the Safety Management Agreement signed by the Parties in parallel with the Contract.
- 2.5 The Supplier shall make available Additional Spare and Replacement Parts in accordance with Chapter 15 and, if required to do so by Purchaser, shall carry out repairs to the Equipment in accordance with the provisions of Chapter 15.
- 2.6 Throughout the operation lifetime of the Project, the Supplier shall, free of any charge to the Purchaser, provide the Purchaser with new operating experience information obtained by the Supplier, and inform the Purchaser of any decided improvement in the technical and safety aspects where such improvement is applicable to the Equipment.
- 2.7 The Special Tools supplied by the Supplier shall meet the requirement for Site transportation, storage, protection, hoisting, erection, commissioning and maintenance of the concerned Equipment.
- 2.8 The Supplier shall also perform his other responsibilities and liabilities under the Contract.

---

### Chapter 3 Contract Price

- 3.1 The Contract Price, made up as shown hereunder and broken down as shown in Appendix A-1 to these General Terms and Conditions of Contract, unless the context otherwise provided, forms the sole basis of the compensation to be paid to the Supplier by the Purchaser in consideration for the supply of Equipment, Engineering, Work, Special Tools, Documentation, the provision of Services, packing, transportation and insurance and the fulfillment by the Supplier of all of its other obligations under the Contract.
- 3.2 The Contract Price is: USD\*\*\* (Say \*\*\* US DOLLARS ONLY), until price is: USD\*\*\* (Say \*\*\* US DOLLARS ONLY), which is broken down as shown in Appendix A-1 to these General Terms and Conditions of Contract. The Contract Price is subject only to such changes thereto as are specifically provided for under these General Terms and Conditions of Contract but is otherwise fixed and firm.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



## Chapter 4 Terms of Payment

- 4.1. In accordance with the following provisions of this Chapter, the Purchaser shall make payment to the Supplier. Such payments shall be made in USD (currency) by telegraphic transfer (T/T) through the Purchaser's Bank respectively to the account nominated by the Supplier. Payment shall be considered as effected at the date of making the payment by the Purchaser. Original payment document shall be sent by the Supplier directly to the Purchaser.

Should the dates of payment release fall into the legal holiday, the payment shall be effected on the following working day, and the deferment shall not be regarded as delay of the payment.

All banking charges incurred in the Purchaser's Bank shall be borne by the Purchaser. All banking charges incurred in the Supplier's Bank shall be borne by the Supplier.

- 4.2. The Purchaser shall make payment to the Supplier of the Contract Price stated in Clause 3.2 as follows:

- (i) \*\*\* of the Contract Price shall be paid as an Advance Payment (\*\*\* is for procuring materials) by the Purchaser to the Supplier within \*\*\* after the Contract's coming into effectiveness and after the Purchaser has received all the following documents from the Supplier and found them in order:
  - (a) One bank guarantee for the advance payment issued by the Supplier's Bank to the Purchaser's Bank for a total amount of \*\*\* of the Contract Price stated in Clause 3.2 and in the forms of Appendix A-2.
  - (b) One original of commercial invoice covering the amount of the payment.
- (ii) \*\*\* of the Contract Price shall be paid by the Purchaser to the Supplier \*\*\* before the Supplier makes the delivery in accordance with Appendix A-3, and within \*\*\* after the Purchaser has received all of the following documents:
  - One original of pro forma invoice covering the amount of the payment due.
- (iii) \*\*\* of the Contract Price for Equipment and Documentation shall be paid in respect of the Equipment, within \*\*\* after the Purchaser commissioning or within \*\*\* after the Supplier making delivery whichever is earlier, and after the Purchaser has received all of the following documents from the Supplier and found them in order:
  - (a) The relevant copy of Provisional Acceptance Certificate issued by the Purchaser in accordance with Clause 13.5;
  - (b) One original of commercial invoice covering the amount of the payment.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

(iv) \*\*\* of the Contract Price shall be paid , within \*\*\* after the issuance of PAC or \*\*\* commencing on the Actual Delivery Date of the Equipment whichever is earlier, and the Purchaser has received all of the following documents and found them in order from the Supplier:

(a) The copy of Final Acceptance Certificate issued by the Purchaser in accordance with Clause 14.16;

(b) One originals of commercial invoice covering the amount of the payment.

4.3. This clause is intentionally left blank.

4.4. Unless otherwise specifically provided in a Variation Order which increases or decreases the Contract Price, the amount thereof shall be added to or deducted from the amount of payment under Clause 4.2 with the same ratio, which are outstanding at the issuance of the Variation Order in question.

4.5. The Purchaser shall effect any payment within \*\*\* after receiving the appropriate invoices and supporting documentation in accordance with the provisions of this Chapter, unless the Purchaser considers such documentation is not in conformity with the Contract or disputes the amount of any invoices submitted by the Supplier whereupon the Purchaser shall notify the Supplier in writing stating its reasons within \*\*\*.

4.6. The Supplier shall be responsible for arranging payments to its Sub-suppliers and all other persons as may be engaged by the Supplier in the performance of the Contract.

4.7. If in accordance with the stipulations of Chapter 14 the Supplier is liable to pay liquidated damages to the Purchaser, the corresponding amounts shall be paid by the Supplier to the Purchaser within \*\*\* after receipt of the first written notice from the Purchaser stating the amount due or deducted from any remaining payment by the Purchaser.

## Chapter 5 Delivery and Terms of Delivery

- 5.1 All the Equipment supplied under the Contract shall be delivered by the Supplier under terms of CFR Site in accordance with the terms of this Chapter and the Schedule specified in Appendix A-3 hereunder.
- 5.2 The Equipment (single) is approximately \*\*\* metric tons in net weight, \*\*\* metric tons in gross weight and \*\*\* cubic meters in total volume.
- 5.3 Within two months after the EOC, the Supplier shall provide the Purchaser a forecast delivery schedule which shall meet the requirements of the Overall Project Schedule for the approval of the Purchaser. The delivery dates provided in such forecast delivery schedule approved by the Purchaser shall be the Delivery Dates for the Equipment.

In the above-mentioned forecast delivery schedule, the Supplier shall provide the Purchaser with the following updated information:

- A. Name of Equipment;
- B. Gross Volume;
- C. Gross Weight;
- D. Respective Delivery Schedule for the Equipment;
- E. Place of loading for CFR;
- F. Cargo package/packing list;
- G. Names, Weight Measurement and Drawings of the over-weight, over-sized Equipment, loose goods and bulk materials;

Whenever used in the Contract, the term Actual Delivery Date shall mean:

–Under CFR term: the date of unloading the Equipment from the carrying vehicle by the Supplier to the destination with the address as below:

Address: Jiangsu Zhongneng Photovoltaic Industry Development Co, Ltd, North of the 310 national highway, economic development zone, Xuzhou

- 5.4 This clause is intentionally left blank.
- 5.5 Under CFR term, the Supplier shall deliver the Equipment in accordance with the following provisions:
- 5.5.1. Not later than thirty (30) days before the readiness for delivery, the Supplier shall notify the Purchaser by fax of the following contents:
- a) Contract No.;
  - b) Date of readiness for the delivery;
  - c) Total volume;
  - d) Total gross weight / total number of packages;
  - e) Contract value of the equipment;

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

- f) Place of loading;
- g) Name, total gross weight and measurements of each piece exceeding \*\*\* metric tons in weight or \*\*\* meters in measurement;
- h) Name, weight of the dangerous and/or inflammable goods.

In the meantime the Supplier shall airmail via express mail the following documents in two (2) duplicate copies to the Purchaser:

- a) The packing list of the shipment covering Contract No., item No., name of the Equipment, specification, type, quantity, unit/total price, unit/total weight, unit/total volume, the overall dimensions of each package (length x width x height), total number of packages and Place of Loading.
- b) Overall packing sketch and drawings for each large piece exceeding \*\*\* metric tons in weight or \*\*\* meters in measurement;
- c) Description of any dangerous and/or inflammable goods indicating names, properties, special protective measures and handling methods in case of accident;
- d) Description of the special precautions for the Equipment that requires special storage and transportation.

5.5.2. Within two (2) hours after completion of each loading, the Supplier shall inform the Purchaser by fax of the following information: Contract No., name of Equipment, value of Equipment, actual loading quantity, total gross weight, total volume and the insurance policy number.

5.5.3. Before 7 working days of delivery the Equipment to the nominated destination described in Clause 5.3, the Supplier shall deliver by express mail one (1) original of the Cargo Receipt, quality certificate issued by relevant governmental authorities and packing list to the Purchaser.

5.5.4. The Supplier shall complete the delivery of Equipment in accordance with the Delivery Dates. Any delivery to be made by the Supplier prior to the specified time shall be subject to the prior written consent of the Purchaser, otherwise all responsibilities and cost and expenses thus incurred shall be borne by the Supplier.

5.5.5. If any Equipment contains dangerous and/or inflammable items, the Supplier shall submit to the Supplier's carrier a Chinese description in one (1) copy indicating the name, characteristics, special handling and protective measures in case of accidents in respect of such items. The Supplier shall instruct the carrier to indicate in the case No./container No., thereof.

5.5.6. The Supplier shall arrange the transportation, and inform the Purchaser. The Supplier shall keep close contact with the Supplier's carrier. Should the carrying vehicle or the date of arrival be changed, the Supplier shall inform the Purchaser in time.

5.5.7. This clause is intentionally left blank.

5.5.8. At the latest 7 (7) working days before the arrival of the carrying vehicle, the Supplier shall advise the Purchaser by fax of the expected date of arrival, name of carrier and other information necessary for the delivery.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

- 5.5.9 Provided that the Purchaser is not ready for delivery of the Equipment by the expected arrival date of the delivery, the Purchaser shall give notice to the Supplier before \*\*\* of the expected delivery date in written. The Supplier shall store such Equipment, and insure it against, and take reasonable measures to protect and preserve it from loss and damage. And within \*\*\* after the expected date of delivery, the storage charges, insurance premium and other costs thus incurred within the said \*\*\* shall be for the Supplier' s account. However, the storage charges and insurance premium from the \*\*\* day shall be borne by the Purchaser against the original documents issued by the relevant authority and being found in order. Nevertheless, the Supplier shall still be obliged to transport the Equipment at the Supplier' s own expense and risk according to the Purchaser' s notification of readiness for the delivery of the Equipment. In this case the Supplier shall bear no liquidated damage for delayed delivery.
- 5.5.10 Whatever the stipulation is in Incoterms 2000, the Supplier shall be responsible for the Equipment unloading from the carrying vehicle at the destination described in this contract.
- 5.5.11 If the Equipment is lost or damaged after the transfer of the risk to the Purchaser, the Supplier shall assist the Purchaser to apply to the insurance company for compensation and effect, upon the Purchaser' s request, the supplementary supply of the same Equipment and Document at the price derived from the Contract Price.
- 5.6 This clause is intentionally left blank.
- 5.7 This clause is intentionally left blank.
- 5.8 Documentation provided by the Supplier outside of People' s Republic of China shall be delivered under CFR Site terms.
- 5.9 Documentation provided by the Supplier within People' s Republic of China shall be delivered under CFR Site terms.
- 5.10 All Documentation to be supplied by the Supplier shall be delivered in accordance with the Schedule as shown in Appendix A-3 and B-1 under the Contract. In case the delivery dates are not defined in the Contract, their delivery should comply with the erection, test, commissioning, operation and maintenance plan of related Equipment.
- 5.11 The Supplier shall remain responsible for the contents of unopened Documentation, packages being in accordance with the Supplier' s appropriate detailed list of Documentation until such packages are opened. In the case of any shortage, loss or damage caused to the Documentation, the Supplier shall make supplementary delivery to the Site of the item or items lost or damaged within \*\*\* after receiving notification from the Purchaser, without any charge. Any item or items lost or damaged after transfer of the risk to the Purchaser or due to the Purchaser' s fault shall be replaced by the Supplier at the cost of the Purchaser.
- 5.12 The Supplier shall, one (1) week prior to the delivery of Documentation, notify the Purchaser of the number of cases, gross weight, Contract No. and the expected date of arrival of the Documentation to be delivered.

- 5.13 Within twenty four (24) hours after dispatching Documentation, the Supplier shall notify the Purchaser and its nominated carrier by fax of the Contract No., dispatching date, number of parcels, flight No., Airway Bill No., and approximate gross weight, and submit by courier service to the Purchaser and/or its nominated carrier the following documents:
- a) Two (2) copies of airway bill (marked with Contract No. and the consignee) or carrier' s receipt;
  - b) Two (2) copies of detailed list of Documentation;
  - c) Two (2) copies of pro-forma Invoice;
  - d) Two (2) copies of detailed packing list;
  - e) One original Certificate of fumigation treatment issued by concerned inspection organization or the statement of packing without wood for Document delivered from abroad.

- 5.14 The date of receiving the Documentation at Site shall be deemed as the Actual Delivery Date for Documentation provided by the Supplier within People' s Republic of China.

The delivery date of the final version of the Documentation shall be deemed as the Actual Delivery Date of the Documentation concerned.

## Chapter 6 Packing and Marking

- 6.1 The Supplier shall have Equipment strongly packed and shall take measures to protect the Equipment from moisture, mould, rain, rust, corrosion and shock, etc. taking into account the local climatic conditions and the nature of the Equipment. Such packing shall be suitable to withstand numerous handling, loading and unloading and long-distance air and/or sea and/or inland transportation to ensure the safe arrival of the Equipment at the Site without any damage or corrosion. The Supplier shall also provide all special frames, supports or fixtures necessary for handling and stowing the Equipment, and ensure them to meet the specified requirement of the further transportation, storage, protection and hoisting for the consequent equipment. The Supplier shall take such special measures as may be necessary to protect such things as the welding preparations of high pressure pipes, instrumentation, sockets and other fragile fittings if any.
- 6.2 In each package of Equipment a detailed packing list in 3 copies together with quality certificate issued by the Supplier and relevant administration shall be enclosed. The packing list shall specify:
- (i) for individual equipment:
    - (a) functional identification of equipment and designation;
    - (b) reference (coding number and title) of the drawing (assembly drawing or other) identifying the equipment;
    - (c) quality.
  - (ii) for bulk material:
    - (a) coding identification and designation of the relevant item;
    - (b) references (coding number and title) of the standardized document identifying the item;
    - (c) quantity and quality.

The packing list shall be presented and coded according to the applicable procedures.

- 6.3.1 The Supplier shall mark the following on the four adjacent sides of each package with indelible paint in conspicuous printed words:

- (i) Contract No.;
- (ii) consignee;
- (iii) destination;

- (iv) shipping mark;
- (v) gross/net weight (kg);
- (vi) measurement (length X width X height in m);
- (vii) case No./bale No.;
- (viii) name of Equipment;
- (ix) consignee code;
- (x) Supplier' s name.

- 6.3.2 In accordance with the characteristics and various requirements in loading, unloading and shipping equipment, the packing shall be conspicuously marked "Handle with care", "Right side up", "Keep dry", etc. in words, or with appropriate international trade practice and illustrations.
- 6.3.3 Should any packages weight 2 metric tons or more, its weight and hoisting position and with international trade practice and illustrative marks shall be clearly shown on two adjacent sides of each package so as to facilitate loading, unloading and handling.
- 6.3.4 Loose accessories in package or bundles shall be labeled by the Supplier, indicating Contract No., names of accessories and their location, number and accessory No. on assembly drawings.
- 6.3.5 For unpacked pieces of Equipment the above mentioned marking shall be indicated directly on Equipment or on tightly fastened metal labels. For large pieces proper handling frames and supports should be provided.
- 6.3.6 Should any Equipment be damaged or lost due to improper packing and/or inadequate protective measures, the Supplier shall be responsible for the repair, replacement and/or compensation in accordance with the Contract. If mistake of transportation of Equipment occurs due to wrong/poor packing or ambiguous marking, the Supplier shall bear additional expenses arisen thereof.
- 6.3.7 The Documentation to be provided by the Supplier shall be properly packed to withstand numerous handling, long-distance transportation and to be protected against damage from moisture and rain.
- 6.3.8 Three copies of a detailed list marking the Documentation coding number, title designation, revision and status of documents shall be enclosed in each parcel of the documentation.
- 6.4 Any item delivered pursuant to or in connection with the Contract and which remains the property of or is rented out by the Supplier shall be marked accordingly.
- 6.5 The Supplier shall request in due time from the Purchaser the necessary information for marking.



---

6.6 All mark described in this chapter shall be made in English.

---

## Chapter 7 Documentation

- 7.1 Both Parties shall deliver the Documentation to the other Party in accordance with Appendix A-3 and B-1. Final Documentation shall take into account the latest modifications made during on-Site Acceptance tests.
- 7.2 The Supplier shall submit Documentation to the Purchaser for review within the time specified in the Contract or, if no time is specified, then a reasonable time, such Documentation as may be called for therein. The review of Documentation by the Purchaser shall not release the Supplier from its any obligation under the Contract.
- 7.3 If the Supplier in order to comply with its obligations under the Contract shall wish to modify or correct any Documentation, which has already been supplied to the Purchaser, it shall submit for the review of the Purchaser, the revisions thereof.
- 7.4 The Purchaser and the Purchaser's Representative or the third party appointed or engaged by the Purchaser shall have the right, at all reasonable times to inspect at the premises of the Supplier and its Sub-suppliers all Documentation relating to any portion of the Equipment. All of the relevant people mentioned in this paragraph shall be subject to the confidential obligations under this contract.
- 7.5 Documentation and the Contract are intended to complement each other, so that anything shown in Documentation but not mentioned in the Contract, or vice-versa, is to be supplied as though specifically set forth in both. Any discrepancies in the Documentation or Contract shall be referred to the Purchaser before the Supplier proceeds with the manufacture of the relevant part of the Equipment. And in any time the Purchaser's decision or requirement shall prevail.
- 7.6 This clause is intentionally left blank.
- 7.7 All documents shall be provided in Chinese and shall refer to the metric system, except otherwise stipulated in the Contract.

---

## Chapter 8 Mistakes in Information

- 8.1 The Supplier shall be responsible for any discrepancies, errors or omissions in the Documentation and other information supplied by the Supplier under the Contract, whether such Documentation and other information has been reviewed or approved by the Purchaser or not, provided that such discrepancies, errors or omissions be not due to inaccurate documentation furnished to the Supplier by the Purchaser.
- 8.2 The Supplier shall at its own expense carry out any alterations or remedial Work necessitated by reason of such discrepancies, errors or omissions and modify Documentation accordingly. If such alterations, remedial Work or modifications are done by or on behalf of the Purchaser, the Supplier shall bear all costs reasonably incurred therein. The performance of its obligations under this Chapter shall not relieve the Supplier of its liability under Chapter 14.
- 8.3 The Purchaser shall be responsible for information supplied to the Supplier in writing by the Purchaser. The Purchaser shall issue a Variation Order in accordance with Chapter 9 for alterations necessitated by reason of inaccurate information so supplied to the Supplier, if the alterations affect the Supplier's costs.
- 8.4 The Supplier shall promptly bring to the attention of the Purchaser any matters that appear to be deficiencies, omissions, contradictions or ambiguities, or any doubt about the meaning or correctness of any information supplied to the Supplier by the Purchaser. The Purchaser shall then promptly instruct the Supplier how to proceed.

## Chapter 9 Variations and Omissions

- 9.1 The Supplier shall not alter any of the Works except as directed in writing by the Purchaser, but the Purchaser shall have the full power, subject to the provisions hereinafter contained, at any time during the execution of the Contract to alter, amend, omit, add to or otherwise vary any of the Works. The Supplier shall carry out such variations and be bound by the same conditions, so far as applicable, as though the said variations were an integral part of the Contract.
- 9.2 The Purchaser may from time to time in writing instruct the Supplier to submit, in such detail as the Purchaser may require and within a reasonable period of time, the proposed revision to the Contract Price and Delivery Dates.
- 9.3 If in lie opinion of the Supplier any proposed variation is likely to prevent it from or prejudice it in fulfilling any obligation under the Contract, it shall notify the Purchaser thereof in writing, and a change proposal shall be submitted by the Supplier at the same time, but none delay in performing any obligation under the variation issued by the Purchaser.
- 9.4 If the Supplier believes that any direction, instruction, decision or any other act or omission of the Purchaser affects the Supplier' s costs for performing the Works or the time required therefore, the Supplier shall promptly notify the Purchaser in writing, but none delay in performing any obligation under the variation is allowed. The Purchaser, if it agrees, will issue a Variation Order revising the Contract Price and Delivery Dates as required, provided however that no Variation Order shall be allowed if:
- a) the act of the Purchaser affected the Supplier' s performance in a manner consistent with the Contract or was necessitated by the Supplier' s failure to comply with a requirement of the Contract; or
  - b) the Supplier' s performance was adversely affected by the Supplier' s fault, negligence or failure to comply with the stipulations of the Contract; or
  - c) the Supplier did not promptly notify the Purchaser in writing, due to which the Purchaser could not make recourse to the liable third party.
- 9.5 Such revision to the Contract Price shall be ascertained and determined in the following manner:
- (i) where options and alternatives are defined and priced in the Contract, the amounts stated therefore;
  - (ii) for on-Site Services adjustment in accordance with the provisions of Appendix A-1 and B-1 to the Contract;
  - (iii) where they are not so defined and priced, the amounts shall be agreed by the Parties in accordance with one or more of the methods stated below:
    - (a) on a lump-sum basis, determined from an estimate produced by the Supplier on a basis consistent with the Contract;

- (b) on a lump-sum basis, based on unit prices and/or unit rates which stated in the Contract;
- (c) on the basis of costs which the Contract so provides;

where they are not so defined and priced, the amounts shall be discussed and agreed by both Parties.

Due account shall be taken of any partial execution of Work which may be rendered useless by any such variation or omission, and of any sums which may be recoverable by the Supplier from third parties.

Detailed itemized price shall be submitted by the Supplier, and inquiry/quotation documents with his Sub-suppliers shall also be provided to support the related price. All these shall be treated as the supporting documents for the issuance of Variation Order.

Except with the prior agreement of the Purchaser, the Supplier' s submission of change proposal shall be made not later than 14 days after receipt of the Purchaser' s instruction.

- 9.6 In case both Parties cannot reach an agreement on commercial issues of a Change Proposal, the Supplier shall carry out the Work under the variations of the Purchaser in order to secure the progress of the Project. Both Parties shall continue the discussions on the Change Proposal mentioned above, and then a final agreement shall be reached under the Contract' s condition. In case of the variation is critical for both Parties, the two Parties shall reach an agreement before carrying out the Variation.
- 9.7 If the Supplier fails to carry out the relating Works under the variation of the Purchaser in order to secure the progress of the Project, the Purchaser is entitled for a self-execution, and the Supplier will be responsible for any consequences arising therefrom.
- 9.8 A Variation Order shall be issued after the Purchaser has agreed the Supplier' s submission and shall be on a standard form entitled "Variation Order" which shall be the sole method for revising Delivery Dates, the Schedule and/or the Contract Price.

---

## Chapter 10 Coordination, Liaison and Project Management

- 10.1 The Supplier shall liaise and work in coordination with the Purchaser's project management team in the People's Republic of China.
- 10.2 Unless specifically stated to the contrary in the Contract, the cost of undertaking such liaison shall be, and shall be deemed to be, covered by the prices included in the Contract. The Supplier further undertakes that it (and its Sub-suppliers where applicable) shall fulfill its obligations but it is expressly agreed between the Parties that the Supplier is not liable for any of the obligations of any other suppliers engaged by the Purchaser; in the event that the Supplier considers that its fulfillment of its obligations is being impeded by any other supplier engaged by the Purchaser, it shall promptly bring such matter to the attention of the Purchaser's Project Director.
- 10.3 Project Director shall be the person so nominated by the Purchaser from time to time by the issue of a written notice to the Supplier. When issuing any such notice the Purchaser shall also notify the Supplier of the power that it has delegated to its Project Director and all acts, instructions and decisions subsequently given by the Project Director in accordance with such delegated powers shall be deemed to be acts, instructions and decisions of the Purchaser.
- 10.4 The Purchaser shall have the right to withdraw or amend any delegation given to its Project Director pursuant to Clause 10.3 by the issue of written notice in advance to the Supplier.
- 10.5 The Project Director shall have the right to re-delegate any of the powers vested in him by the Purchaser (other than the power to approve any variation or to change any previously established date for the fulfillment of an obligation by the Supplier under the Contract) by the issue of written notice to the Supplier and all acts, instructions and decisions subsequently given by any person within the powers delegated to him by the Project Director shall be deemed to be acts, instructions and decisions of the Project Director.
- 10.6 The Project Director shall have the right to withdraw or amend any re-delegation of his powers pursuant to Clause 10.5 by the issue of written notice in advance to the Supplier.
- 10.7 Within one month after Signing of Contract, the Supplier shall submit details of its proposed contract management organization for the Project Director's review. Such details shall consist of an organization chart and a brief job description for key personnel, and show the powers and authorities vested in those shown in the Supplier's contract management organization as having direct contact with the Purchaser, the Project Director (including his delegates pursuant to Clause 10.5), and the

Purchaser's other representatives including the Overall Designer engaged by the Purchaser for the purposes of the Project. In the event of it being agreed that changes should be made to the Supplier's organization chart, the Supplier shall forthwith submit a modified organization chart to the Project Director.

- 10.8 Whenever the Supplier considers that the previously reviewed contract management organization should be changed without prejudice to the interests of the Project, or where the need for change has become unavoidable, it shall forthwith submit details of its proposed revised contract management organization to the Project Director for review as if it were the original proposed contract management organization.
- 10.9 The Purchaser shall have the right to issue copies of the Supplier's contract management organization details to its other suppliers engaged for the purposes of the Project.
- 10.10 So as to enable the Purchaser to exercise its rights under the Contract with regards to access relating to the Works being undertaken by the Supplier's Sub-suppliers, the Supplier shall provide the Project Director with the necessary details of the Sub-suppliers' organizations.
- 10.11 The Supplier undertakes that throughout its contract management organization it shall only use suitably qualified and experienced personnel and that where such personnel are a point of direct contact with the Purchaser, including the Project Director and any of his delegates and representatives, they shall be fluent both in the English and Chinese language.
- 10.12 Each Party shall provide such facilities as is required under the Contract so as to facilitate the coordinated working procedures and each Party shall be responsible for ensuring that the acts of its employees, agents and other representatives under the Contract shall not prejudice the best interests of the Project. In particular, but without limitation, without prior notice to the Purchaser the Supplier shall not enter, nor permit its Sub-suppliers to enter, into any negotiations with any government entity or agency to develop variances or revisions to any law which has direct application to the Contract and which could adversely affect the best interests of the Purchaser.
- 10.13 The activities required to be provided by the Supplier include the attendance by the Supplier's personnel at periodic coordination meetings, monthly progress meetings and meetings on special issues. The host shall provide meeting facilities and prepare meeting documents concerned.

## Chapter 11 Safety Management and Quality Assurance

### Part 1: Safety Management

- 11.1 The Supplier shall abide by the compulsive design standards and codes which shall be noted in the design document and the Contract. In case of no such standards and codes in existence, the Supplier shall make sure as required by the Product Quality Law of People's Republic of China the design and the product be safe to human health and lives, and property as well.
- 11.2 Considerations shall be made to ensure the safety and protection of the product in erection and operation. The Supplier shall highlight the safety related information in the design documentation and provide instructions in accident prevention.
- 11.3 In case of the application of new structure, material or state of arts, the Supplier shall provide relevant safety suggestions to the construction personnel.
- 11.4 The Supplier shall do the best in enhancing the intrinsic safe performance of the product.
- 11.5 The Supplier shall provide the Purchaser with the information on the hazards and safety instructions in regard of the transport, erection, commissioning, operations and maintenance of the Equipment.
- 11.6 The manufacturer shall follow the design and make sure the quality and safety performance of the Equipment in operation lifetime.
- 11.7 Appropriate safety signs and marks on the product and/or the package of the product shall be provided as required by the Product Quality Law of People's Republic of China.
- 11.8 The product containing radioactive sources or toxic and hazardous substance shall bear outstanding warning signs on the surface and the packages, and the Supplier shall make statement on the shipping document and provide safe storage instruction and precautions to the Purchaser.

### Part 2: Quality Assurance (hereinafter referred to as the "QA")

- 11.9 The Supplier shall establish and implement a Quality Management System which shall comply with ISO 9001:2000 Standard.
- 11.10 The Supplier shall establish a Project Quality Assurance Program (hereinafter referred to as the "Program") for this Contract after taking into account scope and nature of the Contract, Specifications, quality warranties and quality control requirements and prepare management procedures and work instruction to meet the contract requirements, if necessary.
- 11.11 The Supplier shall submit to the Purchaser its generic "quality management manual" for review, and Program and management procedures specific for the project for approval.



- 11.12 The Supplier shall submit to the Purchaser documents and records in line with requirement prescribed in Appendices. And the Supplier shall ensure the validity of these documents and records provided to the Purchaser regardless of the Purchaser's review. In the event that the Purchaser discovers that any quality related documents do not conform to the requirements of the Contract, the Purchaser shall have the right to require revision by the Supplier.
- All quality related documents and records relevant to the contract shall be available to the Purchaser's representatives for reference and review at the location where the corresponding activity is performed. At the Purchaser's request, if needed on a case-by-case basis, the Supplier shall provide a copy of such quality-related documents. The Purchaser shall have the right to make copies of all documents and records submitted by the Supplier and distribute such copies to its representatives for their use.
- 11.13 The Supplier shall evaluate its sub-suppliers in line with documented procedure and submit to the Purchaser the qualification report for approval before signing of relevant contracts according to the requirements of Purchaser's Project Procedures. When it is necessary, the Purchaser shall have right to perform sources evaluation on selected sub-suppliers with supplier. The Supplier shall establish and maintain up to date the list of qualified sub-suppliers in which the status of qualification, QA standard applied and scope of contract shall be indicated. The list of qualified sub-supplier, modification to this list and associated supporting documents shall, be submitted to the Purchaser for review.
- The Supplier shall strictly supervise the implementation of its sub-supplier's QA/QC activities according to the requirements of the applicable QA/QC documents.
- 11.14 The Quality Plans for this Contract shall be established and implemented by the Supplier in accordance with the requirement of Appendix B-1.
- 11.15 The Supplier shall handle non-conformance related to this Contract in accordance with the provisions described in Appendix B-1. The non-conformance list of this Contract shall be established and up-dated.
- 11.16 The Purchaser's representative has the right to access to the Supplier and its sub-supplier's premises for its QA and QC activities. The Supplier shall provide to the Purchaser's representative with convenience and necessary assistance to carry out such QA and QC activities. The Purchaser reserves the right to stop the Supplier's activities when significant conditions adverse to quality arise and the Supplier shall take all necessary corrective actions promptly to resolve the conditions into satisfaction of the Purchaser prior to resumption of the activities.
- 11.17 The Purchaser shall have the right to participate in the internal and external QA audit as observer/auditor and kick-off meetings arranged by the Supplier. The Supplier shall inform the Purchaser of the schedule in advance.

---

Conclusions, findings and corrective actions of QA audit report related to this Contract shall be transmitted to the Purchaser.

- 11.18 The representative of the Purchaser shall have access to the Supplier' s and its sub-suppliers premises for surveillance and inspection if safety related activities concerned.
- 11.19 The Supplier shall include in its sub-contracts the necessary provisions to ensure that all sub-suppliers of this contract comply with the provisions of this chapter, and to entitle the Purchaser with the same right to sub-suppliers as to the Supplier under this contract.
- 11.20 All QA and QC activities carried out by the Purchaser and the inspecting and witnessing safety related activities carried out by the Purchaser to the Supplier and its sub-suppliers shall not alleviate or free the Supplier from its obligations and legal responsibilities under the contract.

## Chapter 12 Inspection at Manufacturer' s Premises and after Delivery

- 12.1 During manufacture, the Supplier shall be responsible for all inspection, examination and testing ("In-factory Acceptance Tests") of the Equipment to be supplied under the Contract and the costs thereof, including that of its Sub-suppliers, prior to completion. Such inspection and examination shall be in accordance with the standards and codes stipulated in the Contract, or where standards and codes are not specifically defined, in accordance with appropriate and generally accepted practice for the Equipment in question.
- 12.2 During manufacture, the Purchaser or its representative shall be entitled at all reasonable times to inspect and examine, on the Supplier' s premises, the materials and workmanship of Equipment to be supplied under the Contract and to witness the inspection, examination and tests carried out by the Supplier. If part of the said Equipment is being manufactured on other premises the Supplier shall obtain for the Purchaser equivalent authorization as if the said Equipment were being manufactured on the Supplier' s premises. Such inspection, examination and witnessing shall not release the Supplier from any of its obligation under the Contract.
- 12.3 During manufacture, the Supplier shall monthly submit manufacture progress reports on forms as approved by the Purchaser at suitable time. Such monthly reports shall show the actual progress completed as of date of the reports plotted against the schedule as given in the Contract, and shall be broken down so as to indicate status of purchased materials, detailed shop schedule, shipping dates, and the like as required in accordance with the Contract.
- 12.4 For any tests to be performed on the premises of the Supplier, the Supplier shall provide free of charge such assistance, labor, materials, electricity, fuel stores, apparatus and instruments as may be requisite and as may be reasonably required to carry out such tests efficiently.
- 12.5 If during manufacture, when inspecting, any Equipment or any part thereof is found to be not in accordance with the Contract, or in any other way defective, then the Supplier shall promptly replace or re-manufacture the Equipment or part thereof so affected, or remedy the defect or non-conformance. Unless otherwise authorized by the Purchaser, the Supplier shall re-perform within a reasonable time and upon the same terms and conditions such inspection, examination or test, at the expense of the Supplier. No such replacement, re-manufacture, remedy and associated inspection, examination or tests shall be regarded as a Force Majeure occurrence.
- 12.6 Should the Supplier fails to comply with the requirements of Clause 12.5 above the Purchaser shall have the right to remove the portion of the Equipment concerned from the Supplier and to have the defect remedied by and the test re-performed by the means the Purchaser shall decide, at the Supplier' s expense.

- 12.7 The Supplier shall ensure that it and its Sub-suppliers maintain good and clear record systems so as to be able to store and recover the manufacturing and testing history of the Equipment and of its major components.
- 12.8 This clause is intentionally left blank.
- 12.9 This clause is intentionally left blank.
- 12.10 After completion of the In-factory Acceptance Tests, if the performance warranties which are specified in the Appendix B-1 and which shall be detailed in the Acceptance Test Procedures have all been achieved, if the operation of all the Equipment has been normal all along the in-factory availability period and if the known defects have been remedied, a certificate of In-factory Acceptance in two copies shall be signed and issued by the Purchaser. However, the Supplier shall not deliver the Equipment without In-factory Acceptance certificate.
- 12.11 The In-factory Acceptance Tests and the In-factory availability period shall not release the Supplier from its other obligations under the Contract.
- 12.12 At an appropriate time, after arrival of Equipment at the Site, the Purchaser shall organize the opening of cases, inspection of packing and Equipment and such non-destructive testing as it considers necessary (all being hereinafter referred to as "open-package inspection"), to establish the extent of any shortage or visible damage, to check the Equipment against shipping documentation and to check quality and specifications against the requirements of the Contract. The Supplier is entitled to send its representatives at its own expense to join in the open-package inspection. The Purchaser shall inform the Supplier of the date and nature of inspection or test \*\*\* prior to the open-package inspection. If the representatives of the Supplier cannot reach the Site in time, the Purchaser shall have the right to open the package and conduct the inspection independently. After the Supplier has staff on Site, notice of \*\*\* in advance shall be given to the Supplier's Site staff who may join in such inspection.
- 12.13 Should any shortage, damage or failure to meet quality standards and specifications stipulated in the Contract, be found affecting the delivered Equipment, during the open-package inspection by the Purchaser and/or the Supplier, a detailed record shall be made and signed by representatives of the Parties. The record shall be sent to the Supplier after the Purchaser conduct the inspection independently as stated in Clause 12.12, if the Supplier disagrees on the record, the comments shall be sent to the Purchaser within \*\*\* after receipt, otherwise it shall be deemed that the Supplier accepted the record. This record shall be taken as conclusive evidence for the Purchaser to claim replacement or repair from the Supplier, where the said shortage, defect, damage or failure is due to the fault of the Supplier.
- 12.14 If the Parties cannot agree on the results of the open-package inspection or on any other means of testing to verify condition of the Equipment as received at Site then either Party may submit the results to the local Branch of General Administration of Quality Supervision, Inspection and Quarantine of China for re-examination and the expenses thereof shall be borne by the

liable Party. Any claim against the Supplier by the Purchaser shall then rely upon the certificates issued by the same local Branch of General Administration of Quality Supervision, Inspection and Quarantine of China.

- 12.15 Where it is found liable therefore under the Contract, the Supplier shall replace missing parts free of charge to the Purchaser, or repair, or if the Purchaser considers the repair might cause potential defects or reduce the integrity of the Equipment, replace damaged parts free of charges to the Purchaser at the Site immediately after receiving the certificate of claim from the Purchaser and shall be responsible for the risk and freight therefore to the erection Site and also the repeat inspection fee of the Purchaser. If the Supplier disputes the claim, its objection shall be raised within \*\*\* after receiving the certificate of claim. Consultation shall then take place between the Parties. If the objection is raised later than \*\*\*, the Purchaser's claim shall be upheld.
- 12.16 Replacement or repair performed by the Supplier under Clause 12.15 shall be carried out as soon as practicable by and at the expense of the Supplier and if required urgently airfreight shall apply.
- 12.17 The open-package inspection and tests mentioned above shall not release the Supplier from its liabilities under Chapter 14 of this Contract.
- 12.18 The lists of standards and codes applicable to the inspection of Equipment to be provided by the Supplier and the delivery dates therefore are set out in the Appendices of the Contract. If the aforementioned standards and codes are not delivered in time or delivered incompletely, the Purchaser shall be entitled to inspect the Equipment according to the existing standards or codes of a third party chosen by the Purchaser.

## Chapter 13 Erection, Commissioning, Testing and Acceptance

- 13.1 The erection, commissioning and performance test of the Equipment supplied under the Contract shall be organized and executed by the Purchaser. The Supplier shall provide Documentation, technical assistance, advice and supervision at the Site so as to enable the Purchaser to complete the Contract and put it into operation in accordance with the Appendix B-1.
- 13.2 The responsibilities of the Site Supervision provided by the Supplier at the Site are as follows:
- (i) Assist the Purchaser or its erection contractor to review and to prepare its erection procedures and review with the Purchaser or its erection contractor its erection programs and methods, and provide assistance to the erection contractor when required during the execution of the erection activities;
  - (ii) Supervise mechanical and electrical erection and provide surveillance of the erection contractor's erection quality and where required by the Purchaser certify, that quality of erection conforms to the technical requirements of the Supplier;
  - (iii) Assist the Purchaser to prepare and perform the correct commissioning and performance test program and procedures;
  - (iv) Provide advice to the Purchaser on the conduct of start-up activities, to assist where necessary on resolution of technical matters and where required by the Purchaser certify, the compliance with the Supplier's requirements.
- 13.3 During the various stages of erection, commissioning and performance test both Parties shall duly cooperate with each other. In case of any technical problems arising, the Supplier shall advise the Purchaser and analyze the causes and find the solution immediately. Additionally, necessary technical documents shall be provided by the Supplier at no cost to the Purchaser.
- 13.4 After completion of the erection of the Equipment, the commissioning, performance test, pre-operational test, demonstration run, and acceptance under the Appendices of the Contract shall be carried out without unreasonable delay. The purpose of the above activities is to verify whether the Equipment meets the warranties and technical performances specified in the Contract.
- 13.5 After completion of the commissioning, performance test, pre-operational test, demonstration run, if the operation of all the Equipment is normal and the warranties and technical performances of the Equipment have all been achieved, and all the known defects are remedied, the Equipment shall be deemed acceptable. Then a certificate of provisional acceptance (hereinafter called "Provisional Acceptance Certificate") in two original copies shall be signed by both Parties and issued by the Purchaser, one original copy to be retained by each Party.

- 
- 13.6 Notwithstanding the provisions of Clause 13.3, if the pre-operational test, commissioning, demonstration run and performance test of the Equipment cannot meet the requirements of one or more items of warranties or technical performance due to the Supplier' s fault, the provisions of Chapter 14 shall apply.
- 13.7 If the commissioning, performance tests pre-operational test, demonstration run are delayed, the Supplier shall fulfill its responsibilities as defined in 13.2 at any time upon the Purchaser' s request. The delay of the tests mentioned above shall not release the Supplier from its obligations under this Chapter.
- 13.8 The Provisional Acceptance Certificate of the Equipment under this Chapter shall not release the Supplier from its liabilities under the Contract.

## Chapter 14 Warranties and Defects After Delivery

- 14.1 The Supplier warrants that all Equipment supplied shall be brand-new, of the quality required by the Contract. The Supplier further warrants that the Equipment shall satisfy the requirements of the interfaces and comply with the standards, codes, and Specifications specified in the Contract, with the objective of assuring long term, safe, reliable and efficient operation, and easy maintenance.
- 14.2 Notwithstanding the provisions of Clause 14.1, the Supplier shall promptly notify the Purchaser of any improvement measures related to reliability or efficiency taken or proposed in the light of experience feedback from its own activities or from any other customers. At any time up to the end of the Warranty Period, the Supplier shall be obligated to implement any such improving measures (if required to do so by the Purchaser) free of charge to the Purchaser where such implementation is necessary to ensure reliability of the Equipment to the level envisaged by the Contract or its safe operation.
- 14.3 The Supplier warrants the delivery of the Equipment in compliance with the scope of supply stipulated in Chapter 2. During the implementation of the Contract, if any item is omitted which is required for safe and reliable operation or convenient maintenance or for achieving the performance stipulated in the Contract, the Supplier shall supply such item or make the necessary adjustment at no additional cost to the Purchaser.
- 14.4 The Supplier warrants that the Documentation shall be complete, clear and correct and shall meet the requirements of transportation, storage, acceptance testing, operation, maintenance, management, quality control etc. under the Contract.
- 14.5 The Supplier shall be responsible for making good any defect in or damage to any portion of the Equipment which may appear or occur under proper use during the Warranty Period and which arises from defective materials, workmanship, manufacturing design (施工图设计) (other than a design furnished by the Purchaser and for which the Supplier has disclaimed responsibility) or the wrong instructions of the Supplier's technical personnel or an error in the Documentation.
- 14.6 If any such defect shall appear or damage occur, for which the Supplier is responsible, the Purchaser shall immediately inform the Supplier thereof stating in writing the nature of the defect or damage. The Supplier shall promptly repair or, if the Purchaser considers that repair might cause potential defects or reduce the integrity of the Equipment, shall replace the defective or damaged part of the Equipment, at the Supplier's expense including all costs of removal, insurance, reinstallation, packing, transportation to and from Site and if required urgently shall be freighted by air. If required by the Supplier, the Purchaser shall provide such labor, tools, materials and workshop facilities as are available at the Site and shall be reimbursed for all reasonable expenses incurred in so doing.



- 14.7 Where any defect or damage for which the Supplier is responsible under Clause 14.5 arises after the Equipment has been put into service, then for the repaired or replaced parts of the Equipment, together with any other parts which cannot be used as a consequence of the said defect or damage, the Warranty Period shall be extended until \*\*\* after the repaired or replaced portion of the Equipment has been put back into service by the Purchaser.
- 14.8 Upon pursuant to this Chapter the Supplier shall supply a part in replacement of a defective or damaged part, the defective or damaged part shall become the property of the Supplier, and shall be disposed of by the Supplier at its own expense.
- 14.9 If any defect or damage be not remedied within a reasonable time, the Purchaser may proceed to do the Work at the Supplier' s risk and expense without affecting the Supplier' s other liabilities under the Contract or otherwise.
- 14.10 The Supplier shall make available the Equipment for delivery by the relevant Delivery Dates therefore stated in the Contract. If the Supplier fails to make available the Equipment or any portion thereof by the relevant Delivery Date therefore it shall pay to the Purchaser as liquidated damages for delay \*\*\*
- \*\*\*
- The liquidated damages for delay shall be up to \*\*\* delayed batch of Equipment.
- \*\*\*
- 14.11 In the event of any defect which may delay the safe and reliable erection commissioning and testing being discovered through an open package inspection, for which the Supplier is responsible, then, in addition to its obligation to repair the said defect or to replace the Equipment in question in accordance with Chapter 12, the Supplier shall also be reliable to pay liquidated damages for delay in accordance with Clause 14.10 as if the Delivery Date thereof was the date when the defect was discovered and the Actual Delivery Date thereof was the date when the Supplier remedied the defect at the Site.
- 14.12 This clause is intentionally left blank.:
- 14.13 In the event of the Equipment or any part of it failing to achieve its warranted performance as specified in Appendix B-1 during the acceptance tests carried out pursuant to Chapter 13, the Supplier shall take all steps to correct the deficiencies as

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

soon as possible. If the Equipment fails to be ready by the time stated in the *Contract* for its acceptance tests, the Supplier shall pay the Purchaser the sum of \*\*\*, which sum shall be constructed as liquidated damages. Such liquidated damages shall not exceed \*\*\* for such portion of the Equipment which should be tested. This stipulation shall not affect the Purchaser's any other rights under the Contract.

- 14.14 Notwithstanding payment by the Supplier or deduction by the Purchaser of liquidated damages from the payment due for the Supplier's failure to achieve the warranted performance specified in the Contract, after the Supplier has been allowed to take remedial measures for up to \*\*\* after the carrying out of relevant performance test pursuant to Chapter 13, then the Purchaser shall be entitled to reject the Equipment, and in the event of such rejection the Supplier shall at its own cost promptly replace the same or, if the Purchaser so decides, repay to the Purchaser all amounts paid in respect of the rejected Equipment plus interest at the time agreed by the Purchaser and the Supplier shall pay any losses caused by rejecting the Equipment.
- 14.15 Liquidated damages incurred for delay or failure to achieve warranted performance shall be paid by the Supplier to the Purchaser as stipulated in clause 4.7.
- 14.16 Before the expiry of the, Warranty Period, the Purchaser shall carry out an overall final inspection of the Equipment. The Supplier shall at its own expense dispatch its personnel to participate in the inspection and the Purchaser shall provide to the Supplier reasonable access to the Equipment. If the overall final inspections of the Equipment are delayed, the Supplier shall fulfill its responsibilities as defined in this Clause 14.16 at any time upon the Purchaser's request. The Supplier shall deal promptly with any defect that are revealed, thereby. As soon as the defects revealed within the Warranty Period have been remedied, the Purchaser shall issue a final acceptance certificate (hereinafter referred to as the "Final Acceptance Certificate") for the Equipment in two original copies (each Party will hold one original copy), thereby confirming that the Equipment is accepted by the Purchaser.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

## Chapter 15 Additional Spare and Replacement Parts and Repairs to the Equipment

- 15.1 The Supplier shall upon the Purchaser' s request at any time within the lifetime period of the Equipment promptly sell and supply to the Purchaser at reasonable prices derived from the prices quoted in the Contract Price, Additional Spare and Replacement Parts for the Equipment during the operation Lifetime of the Project, subject to the provisions of this Chapter.
- 15.2 If before the expiry of the period referred to in Clause 15.1 the Supplier intends to discontinue the supply of Additional Spare or Replacement Parts for the Equipment or any portion thereof, it shall forthwith give notice to the Purchaser of such intention and either:
- (i) afford the Purchaser the opportunity (which shall be exercised within \*\*\*) of ordering at reasonable prices such quantities of Additional Spare or Replacement Parts as the Purchaser shall reasonably require in relation to the operation lifetime of such Equipment or portion thereof; or
  - (ii) deliver to the Purchaser free of charge within the above said period of \*\*\* such drawings, documentation, software, patterns, tools, moulds, specifications and such other information and equipment as it may have in its possession and as the Purchaser shall require to enable the Purchaser to make or have made such Additional Spare or Replacement Parts, thereby ensuring as good a performance as initially planned and the Supplier shall grant to the Purchaser without payment of any royalty or charge full right and liberty to make or have made such Additional Spare or Replacement Parts as aforesaid.
- 15.3 If during the period referred to in Clause 15.1 the Supplier fails to fulfill the responsibilities in Clause 15.1 and 15.2, or becomes insolvent or commences to be wound up (not being a member' s voluntary winding up for the purpose of re-construction), then the Supplier shall, so far as it is legally entitled so to do and if so required by the Purchaser, as soon as reasonably practicable deliver to the Purchaser free of charge such drawings, documentation, software, patterns, tools, moulds, specifications and other information as are referred to in Clause 15.2 and the Purchaser shall be entitled to retain the same information for such time only as necessary for the exercise by the Purchaser of its rights under this Chapter and if the Supplier so requires the same shall be returned by the Purchaser to the Supplier in good order and condition (fair wear and tear excepted) and at the Purchaser' s cost and expense.
- 15.4 If the Purchaser shall exercise its right under Clause 15.3, the Supplier shall also grant to the Purchaser without payment of any royalty or charge full right and liberty to make or have made Additional Spare or Replacement Parts as aforesaid and for such purposes only to use, make and have made copies of all drawings, patterns, specifications and other information supplied by the Supplier to the Purchaser pursuant to the Contract.

- 
- 15.5 In entering into the Contract, the Supplier undertakes to carry out such repairs to the Equipment as the Purchaser may require during the period referred to in Clause 15.1 and, other than in respect of repairs for which the Supplier may be liable under the Contract, under separate orders from the Purchaser on commercial terms to be agreed and based on the following principles:
- (i) prices will not include more than the Supplier's normal overhead recovery and margin for the type of Work in question;
  - (ii) such prices will be presented to the Purchaser in such a manner as will clearly identify the various elements thereof, and
  - (iii) the right of the Purchaser under Chapter 31 will be extended to cover agreements for repair to Equipment however made.
- 15.6 The Supplier shall ensure that its Sub-suppliers comply with the provisions of this Chapter.

## Chapter 16 Liability for Accidents and Damage

16.1 The Supplier shall indemnify the Purchaser in respect of all damage or injury and all actions, claims and costs in connection therewith arising out of, in the course of or caused by the carrying out of the Contract provided always that the same is due to any negligent act or omission of the Supplier or its Sub-suppliers and their respective servants or agents or materials or workmanship, subject to the following:

- (i) In the event of loss of or damage to the Equipment which is due to the negligence, breach of statutory duty, omission or default of the Supplier's or its Sub-supplier's personnel whilst on Site the Supplier shall be liable to remedy such loss or damage in accordance with the provisions of Clauses 14.5 - 14.9 as if it was the result of defective materials, workmanship or design.
- (ii) Subject to the provisions of Clause 16.3 the Supplier shall not be liable to the Purchaser for any loss, damage or injury to the extent that it is caused by or arise from the negligent act or omission of the Purchaser.
- (iii) In the event of any claim being made against the Purchaser for which the Supplier may be liable under the provisions of this Clause 16.1, the Supplier shall be promptly notified thereof, and may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

The conduct by the Supplier of such negotiations or litigation shall be conditional upon the Supplier having first given to the Purchaser such reasonable security as shall from time to time be required by the Purchaser to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses and costs for which the Purchaser may become liable. The Purchaser shall, at the request of the Supplier afford all available assistance for any such purpose, and shall be repaid all reasonable expenses incurred in so doing. The Purchaser shall not make statements which might be prejudicial to such negotiations and litigation unless legally required to do so.

- (iv) If at any time the Purchaser is of the opinion that the security provided pursuant to (iii) above is inadequate or should the Purchaser be dissatisfied with the conduct by the Supplier of such litigation involving the Purchaser, the Purchaser shall have the right and option to assume responsibility for the defense of such litigation without waiver of any of the rights and benefits provided under this Contract.

- (v) In the case of loss of or damage to the Equipment in transit, in the place of storage or on the Site arising from or occasioned by causes for which the Supplier is not responsible under the Contract, in accordance with Clause 9.1 the Purchaser may instruct the Supplier to make good the same by repair or replacement. The price of such variation shall be determined in accordance with the provisions of Clause 15.5 and shall be revised to credit the Purchaser with all insurance recoveries for such loss or damage to the Equipment, to the extent that such recoveries have been received by the Supplier.
  - (vi) In the event of loss of or damage to any property of the Purchaser other than Equipment at the Site or in vicinity thereof which is due to the negligence, breach of statutory duty, omission or default of the Supplier arising out of or in the course of or caused by the carrying out of the Contract, the Supplier's liability shall be the actual loss or damage sustained.
  - (vii) The insurance and other protections provided or to be provided by the Supplier pursuant to Chapter 18 remaining in full force and effect.
- 16.2 The liability of the Supplier to the Purchaser under Clause 16.1 shall terminate on the expiry of the period specified in Clauses 14.5 - 14.7.
- 16.3 The Supplier shall hold harmless and shall waive all rights of recourse against the Purchaser for liability at law for loss of or damage to property and accidental bodily injury caused by negligence, omission or default of the Purchaser's employees, agents which may occur at the Supplier's and its Sub-suppliers' factories or premises and arise out of or in connection with the implementation of the Contract.

---

## Chapter 17 Licensing

- 17.1 The Supplier warrants that the Works will have a level of safety consistent with the regulations established and approved by the appropriate authorities in the People' s Republic of China as included in the Contract and the safety standards issued by the country of origin of the Supplier.
- If the Works in a few areas do not fully comply with the above regulations or safety standards, the Supplier should justify the adequacy of safety level of the Works and make appropriate proposal for solving this issue to the Purchaser.
- 17.2 Should the licensing authorities in the People' s Republic of China request the Purchaser to provide information, the Purchaser will notify the Supplier, and the Supplier shall, free of charge, provide the Information requested on the Works. If new studies under this Contract are required for safety justification, the cost shall be borne by the Supplier.
- 17.3 The Supplier shall, at its own expense, provide the Purchaser with the services of qualified specialists in licensing which are related to Works, for assisting the Purchaser in the presentation of applications for the construction permits and operating licenses for the Project.

---

## Chapter 18 Insurance

### 18.1 Supplier' s Obligations

The Supplier shall provide the Purchaser with such assistance and information as the Purchaser may reasonably require to effect and maintain the insurance as required in this Chapter 18 and any other insurance which the Purchaser chooses to effect, by himself and at its own costs, in connection with the Contract. Further the Supplier shall disclose all relevant information material (e.g. the full replacement value of the equipment and materials) to the insurer and shall promptly advise the Purchaser of any material change thereto.

The Supplier shall with all due diligence conform to the terms, conditions and warranties of the insurance policies and all reasonable requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents.

Furthermore, the Supplier shall be responsible for and shall indemnify and hold harmless the Purchaser in respect of any breach of condition, breach of warranty, non-disclosure of material information, misrepresentation, fraud or any intentional act or gross omission caused by the Supplier which arise out of the performance of the Chapter 18 and result in the avoidance of the insurance by the insurer.

The Supplier shall bear the loss or damages within the retained liability (deductible or excess) where loss or damage is in consequence of any gross negligence or omission or intentional act of the Supplier or its Sub suppliers, agents or other representatives or of the personnel of any of them or in consequence of the defective material, workmanship or design executed by the Supplier or its Sub suppliers.

### 18.2 Supplier' s Insurance

#### 18.2.1 Insurance for Equipment in Supplier Premises

The Supplier and its Sub-suppliers where applicable shall insure and keep insured at their own expense all Equipment throughout the period of manufacturing for an amount sufficient to provide for claims on a replacement value basis under a policy of Fire, Explosion, Flood, Storm, and, where obtainable, Terrorist Attacks insurance until the commencement of loading prior to the dispatch of such Equipment from the factory or warehouse of the Supplier and as appropriate its Sub-suppliers.

The above insurance shall be in such a manner as will fully protect the interest of the Purchaser in any such Equipment. The Supplier and its Sub-suppliers where applicable shall arrange for the benefit of their respective insurance to be extended to the Purchaser so as to cover the Purchaser' s interest in any Equipment.



#### 18.2.2 Employer' s Liability Insurance

The Supplier shall at his own cost insure or cause to be insured against the liability to his own employees and those of his Sub-suppliers under an Employer' s Liability Insurance policy or a statutory insurance program.

#### 18.2.3 Supplier' s Obligations

The Supplier shall, at the request of the Purchaser, produce for inspection the insurance policies showing that sufficient insurance has been effected as required in the captioned clause. Upon demand by the Purchaser, the Supplier shall produce for inspection the receipts for the current premium in respect of the said insurance.

#### 18.2.4 The Supplier shall have an insurance policy at its own expense covering the inland transportation from Supplier' s workshop to Purchaser' s project site.

#### 18.3 Insurance in General

If the Supplier shall fail to effect and keep in force the insurance referred to in this Chapter 18, the Purchaser may after giving appropriate prior notice, effect and keep in force any such insurance and pay such premium as may be necessary for that purpose and recover the cost of the same from the Supplier whether by way of deduction or otherwise.

The securing of any insurance policy by the Purchaser shall not relieve the Supplier from any liability arising from or connected with its failure to take out or maintain the insurance policies in compliance with this Chapter 18.

---

## Chapter 19 Taxes and Duties

- 19.1 All taxes and duties in connection with and in the performance of the Contract levied by Chinese government on the Purchaser in accordance with the tax laws of People' s Republic of China and local laws/statutes and the agreement between the government of the People' s Republic of China and the government of the country which the foreign member of the Supplier or its Sub-suppliers is from for the reciprocal avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income shall be borne by the Purchaser.
- 19.2 All taxes and duties in connection with and in the performance of the Contract levied by Chinese government on the Supplier and its Sub-suppliers, in accordance with Chinese tax laws of People' s Republic of China, local laws/statutes and the agreement between the government of the People' s Republic of China and the government of the country which the foreign member of the Supplier is from for the reciprocal avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, shall be borne by the Supplier and its Sub-suppliers.
- The Supplier shall be obliged to pay the relevant taxes directly to the Chinese tax authorities. In case as required by Chinese tax laws, the Purchaser is legally obliged to withhold, certain amount of taxes under this Contract and pay them to the relevant Chinese tax authorities, the Purchaser has the right to withhold and pay such amount of taxes to the relevant Chinese tax authorities. After receiving the tax receipts issued by the relevant Chinese tax authorities for the aforesaid taxes, the Purchaser shall submit them to the Supplier without undue delay. The Supplier shall take necessary measures to facilitate the withholding and payment of such taxes.
- 19.3 All taxes and duties arising outside PRC in connection with and in performance of the Contract shall be borne by the Supplier.

---

## Chapter 20 Force Majeure

20.1 Should either Party be prevented from performing any of its obligations under this Contract due to the event of Force Majeure (as defined in Clause 1.13), the time for performing those obligations under the Contract shall be extended by a period equivalent to the effect of such Force Majeure. The affected Party shall immediately notify the other Party of occurrence of such an event by fax and send by registered airmail a certificate issued by competent authorities or agency confirming the event of the Force Majeure within \*\*\* following its occurrence.

Upon occurrence of Force Majeure, the affected Party shall make his utmost efforts to take immediate and reasonable actions in order to minimize such effects and damages.

The Parties shall continue the performance of their other obligations under the Contract insofar as these are not directly affected by Force Majeure occurrence.

20.2 The affected Party shall not be liable for any delay or failure in performing any of its obligations due to the event of Force Majeure. However, the affected Party shall inform the other Party by fax the termination or elimination of the event of Force Majeure as soon as possible.

20.3 Both Parties shall proceed with their obligations immediately upon the cease of the event of Force Majeure or the removal of the effects and the Delivery Date shall be extended correspondingly. Should the effect of the event of Force Majeure last for more than \*\*\*, both Parties shall promptly meet and discuss methods to resolve the difficulties arising from the event of Force Majeure.

---

## **Chapter 21 Vesting of the Equipment and Documentation**

- 21.1 Equipment supplied or intended to be supplied pursuant to the Contract shall become the property of the Purchaser at whichever is the earliest one of the following events:
- (i) when in accordance with the provisions of Chapter 5 the Equipment has been delivered;
  - (ii) when in the event of termination pursuant to Chapter 26, all amounts due and payable to the Supplier in respect thereof have been received by the Supplier.
- 21.2 In the event of any Equipment becoming the property of the Purchaser pursuant to the Contract and subsequently being rejected by the Purchaser pursuant to Clause 14.14 such Equipment shall forthwith upon such rejection cease to be the property of the Purchaser and become the property of the Supplier.
- 21.3 All Documentation used for the purpose of the Contract and other documents which are the property of the Supplier and are additional to the Documentation to be submitted in accordance with the Contract (and which shall include but not be limited to shop drawings) shall immediately vest in and become the property of the Purchaser upon an event of bankruptcy or in the event the Work on the Equipment is terminated in accordance with Chapter 24. The Purchaser shall be entitled to use any such designs, Documentation and other documents for the purpose of procuring Equipment not delivered in accordance with the Contract or for any other reasonable purpose.
- 21.4 This Chapter shall not release any obligations of the Supplier and the Purchaser under this Contract.

---

## Chapter 22 Infringement

- 22.1 The Supplier warrants that it has the right and permission to supply to the Purchaser the Equipment, Documentation and Services in accordance with the terms of the Contract. The Supplier shall indemnify the Purchaser against all actions, claims, demands, costs, charges, and expenses arising from or incurred by reason of any infringement or alleged infringement of patent, copyright, trade mark or trade name by the use of any Equipment supplied by the Supplier (excluding the infringements caused by the Purchaser), but such indemnity shall not cover any use of the Equipment otherwise than for the purpose indicated by or reasonably to be inferred from the Contract or any infringement which is due to the use of any Equipment in association or combination with any other Equipment not supplied by the Supplier.
- 22.2 In the event of any claim being made or action brought against the Purchaser arising out of the matters referred to in the Clause 22.1, the Supplier shall be promptly notified thereof and shall at its own expense conduct all negotiations for the settlement of such claim or action, and any litigation that may arise therefore. The Purchaser shall have the right to be represented in any such action by advisory counsel of its own selection and at its own expense. The conduct by the Supplier of such negotiations or litigation shall be conditional upon the Supplier having first given to the Purchaser such reasonable security as shall from time to time be required by the Purchaser to cover the amount, as the case may be, of any compensation, damages, expenses, and costs for which the Purchaser may become liable. The Purchaser shall, at the request of the Supplier, afford all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable expenses incurred in so doing.
- 22.3 In the event that the Purchaser should at any time be of the opinion that the security provided pursuant to Clause 22.2 is inadequate or should the Purchaser reasonably be dissatisfied with the conduct by the Supplier of such litigation involving the Purchaser, the Purchaser shall have the right to assume responsibility for defense of such litigation at the expense of the Supplier without waiver of any rights and benefits provided under the Contract.
- 22.4 If the Supplier shall be prevented from carrying out its obligations under the Contract due to any infringement or alleged infringement of patent, copyright, trademark or trade name, the Purchaser may treat such inability as a default by the Supplier.
- 22.5 The Purchaser on its part warrants that any design or instructions furnished or given by the Purchaser to the Supplier shall not be such as will cause the Supplier to infringe any patent, registered design, copyright, trade mark or trade name in the performance of the Contract.

---

22.6 The Equipment manufactured based on the requirements of the Purchaser belongs to the Purchaser, which shall be used only in the Purchaser' s existing projects or other related projects. Without the prior written approval by the Purchaser, the Supplier shall not manufacture or use the same Equipment for any other third party.

---

## Chapter 23 Assignment and Sub-letting

- 23.1 Any request of the Supplier to subcontract any of his obligations under the Contract to any third party shall be subject to the prior qualifications and written approval made by the Purchaser. The Purchaser shall reserve the right to review the Sub-supplier selection and the documents.
- 23.2 Any subcontract shall not release the Supplier from any liability or obligation, including schedule control, quality control and quality warranties under the Contract.
- 23.3 The Supplier shall take full and overall responsibility for the coordination, proper, effective and reliable interfacing for the supplies from different Sub-suppliers and for the interfaces between the Equipment supplied by him and by its Sub-suppliers.

---

## Chapter 24 Supplier' s Default

- 24.1 Without prejudice to any rights and remedies to which the Purchaser may be entitled, if Supplier neglects to perform the Contract with due diligence and expedition, or refuses or neglects to comply with any reasonable orders given to the Supplier in writing by the Purchaser in connection with the performance of the Contract, or contravenes the provisions thereof, or any stipulation in the Contract, the Purchaser may give notice in writing to the Supplier to make good the neglect, refusal, or contravention complained of.
- 24.2 Should the Supplier fail to comply with a notice given by the Purchaser in accordance with Clause 24.1 within \*\*\* from the date of service thereof in the case of a failure, neglect or contravention capable of being made good within that time, or otherwise within such time as may be reasonably necessary for making it good, then, and in such case the Purchaser may forthwith suspend, or terminate the Contract or any part thereof by notice in writing to the Supplier.



---

## Chapter 25 Bankruptcy

Without prejudice to any other rights or remedies to which the Purchaser may be entitled, if the Supplier become bankrupt or insolvent, or have a receiving order made against it, or compound with its creditors, or be a corporation commence to be wound up (not being a member's voluntary winding up for the purpose of amalgamation or reconstruction) or have a receiver or manager of its business appointed, the Purchaser may either:

- i) terminate the Contract forthwith by notice in writing to Supplier or to the receiver or liquidator or to any person in whom the Contract may become vested; or
- ii) give such receiver, liquidator, or other person the option of carrying out the Contract subject to his providing a guarantee for the due and faithful performance of the Contract up to an amount to be agreed.

## Chapter 26 Suspension and Termination

- 26.1 The Purchaser may, at any time, suspend the Work on the Equipment or any part thereof for any reason whatsoever on giving notice in writing to the Supplier specifying that portion of the Work to be suspended and the effective date of suspension. The Supplier shall suspend such Work on the effective date but it shall continue to carry out all other Work under the Contract.
- 26.2 In the event that the Purchaser suspends any Work in accordance with Clause 26.1 it shall then issue a Variation Order in accordance with Chapter 9 to amend the Contract Price and Delivery Dates of the supply so as to reflect the effects of such, suspension, if any. The Contract Price revision shall be limited to the actual extra cost incurred and paid by the Supplier resulting from the said suspension, provided that the Supplier has taken all necessary steps to mitigate such cost.
- 26.3 Notwithstanding the foregoing, if the Purchaser suspends Work on the Equipment or any part thereof pursuant to Chapter 24, no Variation Order shall be issued and no revision of or adjustment to the Contract Price or Delivery Date shall be allowed.
- 26.4 The Purchaser may at any time authorize resumption of all or any portion of Work suspended as aforesaid by giving notice in writing to the Supplier specifying the Work to be resumed and the effective date of resumption.
- 26.5 The Purchaser may, at any time, terminate Work on the Equipment or any portion thereof for any reason whatsoever by giving written notice to the Supplier specifying the extent and the effective date of such termination. The Supplier shall terminate such Work on the effective date but it shall continue to carry out all other Work under the Contract.
- 26.6 In the event of the Purchaser terminating Work on the Equipment or any portion thereof (otherwise than in consequence of default or bankruptcy on the part of the Supplier), the Supplier's sole right shall be payment of the sum of:
- i) the Contract Price for the Equipment which is the subject of the notice of termination and calculated at the effective date of such notice;
  - ii) the actual reasonable and necessary net cost of materials (or cancellation charges in respect thereof) unused and ordered for the Equipment which shall have been delivered to the Supplier or of which the Supplier is legally liable to accept delivery, such materials becoming the property of the Purchaser upon such payment being made by the Purchaser to the Supplier; and
  - iii) any other actual reasonable and necessary net costs incurred and paid by the Supplier as a direct consequence of termination and approved by the Purchaser.

The above sum shall be offset by the outstanding balances, if any, due from the Supplier for advances previously paid by the Purchaser.

The Purchaser shall issue a Variation Order pursuant to Chapter 9 reducing the Contract Price in accordance with this Clause.

- 26.7 In the event of termination of Work on the Equipment or any portion thereof in accordance with Clause 26.5, the Supplier shall in respect of Equipment not already delivered whether fully manufactured or still in the course of manufacture and which is the subject of the termination, make such arrangements on behalf of the Purchaser as in all the circumstances may be reasonable to deliver to the Purchaser or its nominee or to store and insure in the name and to the reasonable satisfaction of the Purchaser such items of Equipment for their full replacement value against such risks as is practicable.
- 26.8 In the event of the Purchaser terminating Work on the Equipment or any portion thereof in accordance with the provisions of Chapter 24 or Chapter 25, the Purchaser, in addition to its rights under those Clauses, shall be entitled to take possession of and remove from the Supplier's premises as and when it shall be convenient for the Purchaser so to do, all Equipment, Documentation, drawings and specifications, the property in which has passed to the Purchaser pursuant to the Contract and the Supplier shall afford to the Purchaser all rights of access and all reasonable facilities to enable it to remove such Equipment, Documentation, drawings, and specifications as aforesaid. The Purchaser shall have the right to carry out the Work terminated as aforesaid by whatever means it deems most expedient and the Supplier shall be liable for and shall pay to the Purchaser the additional cost and losses, if any, which the Purchaser may incur as a result of carrying out and completing such Work including all costs of removal as aforesaid.
- 26.9 In the event of any termination mentioned above:
- (i) the Supplier shall execute and deliver to the Purchaser all Documentation required by the Purchaser and take all reasonable steps to fully vest in the Purchaser the rights and benefits of the Supplier under existing agreements with vendors, Sub-suppliers and others related to the Contract;
  - (ii) the applicable provisions of the Contract shall continue in full force and effect as to all Work which is not terminated.

---

## **Chapter 27 Statute and Other Regulations**

- 27.1 The Supplier shall comply, and require compliance by its Sub-suppliers, with all applicable laws in connection with the Contract and in this context law includes any law (national, state, municipal, local or other) and any requirement, ordinance, rule or regulation of any governmental authority or agency.
- 27.2 Except as otherwise provided in the Contract, the Supplier shall obtain at its own expense all licenses to do business in the country or countries wherein any Work required by the Contract is performed and shall obtain all temporary permits and authorizations required by law for prosecution of such Work and shall give all required notices.

---

## Chapter 28 Liens

- 28.1 If at any time during the performance of the Contract there should be evidence of any lien or claim to which the Purchaser' s property might be subject and which arises from failure of the Supplier, the Supplier shall maintain the Project schedule, defend or protect the title or supply to the Purchaser a replacement for the item of Equipment affected by the lien or claim. Such replacement by the Supplier shall in no way limit the Purchaser' s rights under Chapter 14 in respect of delay and performance.
- 28.2 If any such lien or claim remains undischarged after completion or termination of the Works, the Supplier shall promptly refund to the Purchaser all amounts that the Purchaser may be compelled to pay in discharging such lien or claims, including all costs and reasonable legal fees.

---

## **Chapter 29 Independence of the Supplier**

Neither the Purchaser nor the Purchaser's representatives shall have authority to supervise the employees, representatives or Sub-suppliers of the Supplier. The Supplier shall have no authority to make any statements, representations or commitments of any kind or to take any action that shall be binding upon the Purchaser, except as provided for in the Contract.

---

## Chapter 30 Conflict of Interest

- 30.1 The Supplier shall exercise reasonable care and diligence to prevent any actions or conditions, which could result in a conflict with the Purchaser' s best interests. This obligation shall apply to the activities of the employees and agents of the Supplier in their relations with the employees, and their families, of the Purchaser, vendors, Sub-suppliers and third parties arising from the Contract and performance of the Works thereunder.
- 30.2 The Supplier' s efforts shall include, but not be limited to, establishing precautions to prevent its employees or agents from making, receiving, providing, or offering gifts, payments, loans, substantial entertainment or other considerations for the purpose of influencing individuals to act contrary to the Purchaser' s best interests. The Supplier shall immediately notify the Purchaser of any and all violations of this Clause upon becoming aware of such violation and shall indemnify and save harmless the Purchaser from any loss, cost, or claim as a result of the Supplier' s failure to exercise due care in the observance of the requirements of this Clause.

---

## Chapter 31 Business Ethics

The Supplier and its agents are not expected or authorized to take any action on behalf of the Purchaser that would violate applicable laws. All financial statements, reports and invoices rendered shall properly reflect the facts about all activities and transactions handled for the account of the Purchaser. The Supplier shall immediately notify the Purchaser of any and all violations of this Clause upon becoming aware of such violation.



---

## **Chapter 32 Confidentiality**

- 32.1 The Supplier and its Sub-suppliers shall at all times treat the Contract and everything contained therein as private and confidential except as may be reasonably necessary for the Supplier to carry out the Work under the Contract. In particular the Supplier shall not publish any information, drawing or photographs concerning the Equipment, the Project or the Contract except with the written consent of the Purchaser and subject to such reasonable conditions as the Purchaser may prescribe.

---

## Chapter 33 Availability of Information

- 33.1 The Purchaser's duly authorized representatives shall have, during the performance of the Contract and for \*\*\* thereafter, access at all reasonable times to all the Supplier's and its Sub-suppliers' personnel, accounts and records of all description, including but not limited to computer files, pertaining to the Contract to verify or review the quantity, quality, work program and progress of the Equipment, reimbursable costs, amounts claimed by the Supplier, estimates for proposed variations, and for any other reasonable purposes. The Supplier and its Sub-suppliers shall preserve all such accounts and records for a period of \*\*\*. The Purchaser's duly authorized representatives shall have the right to reproduce any such accounts and records.
- 33.2 This Clause is intentionally left blank.
- 33.3 The Supplier shall include the necessary provisions in its sub-contracts to ensure that its Sub-suppliers comply with the provisions of this Chapter.

---

## Chapter 34 Settlement of Disputes

- 34.1 All disputes arising from, or in connection with the performance of the Contract, shall be settled through friendly discussion between the two Parties. In case no agreement is reached, the disputes shall be submitted to China International Economic and Trade Arbitration Commission (CIETAC) [Shanghai Branch 上海分会] for arbitration. The tribunal shall be composed of three arbitrators. The arbitration shall be conducted in Beijing in accordance with CIETAC arbitration rule. The rendered award is final and binding on both Parties.
- 34.2 Notwithstanding any reference to arbitration, both Parties shall continue to perform their respective obligations under the Contract except the part under Arbitration.
- 34.3 Unless otherwise awarded by the Arbitration, the arbitration fee shall be borne by the losing party.

## Chapter 35 Notices

35.1 Except as otherwise provided in the Contract or agreed by the Parties during the performance thereof, all notices required by the Contract shall be in writing and shall be delivered to the Purchaser or the Supplier as appropriate at their office addresses set forth below:

(i) The Purchaser: Jiangsu Zhongneng Photovoltaic Industry Development Co, Ltd

Address: North of the 310 national highway, economic development zone, Xuzhou (徐州市经济开发区310国道北侧)

Telephone: 021-68862588

Fax: 021-68863996

E-mail:

(ii) The Supplier: Tap Mate Limited

Address: Flat 1/F., Block 6, Kornhill Gardens, 1120 King' s Road, Quarry Bay, Hong Kong

Telephone: 00852-2805 2708

Telefax: 00852-2805 2913

E-mail: Dongfeng@morimatsu.cn

Each Party shall promptly notify the other Party of any modification to the above details.

35.2 The date of any notice shall be the date it is first received by the addressee or the office of the addressee, whichever is the earlier.

---

## **Chapter 36 Construction of Contract**

The construction, validity, interpretation, performance, implementation and all matters relating to this Contract and any amendment thereto shall be governed by the United Nation Convention for the International Sale of Goods. However, to the extent the United Nation Convention for the International Sale of Goods does not cover, the law of People' s Republic of China shall apply.

This Contract is written in Chinese and English. Both language versions shall be equally authentic. If there is any conflict, ambiguity or discrepancy between the Chinese version and the English version, the English version shall prevail.

---

## Chapter 37 Security for Due Performance

37.1 The Supplier shall, within \*\*\* after signing of the Contract, furnish to the Purchaser the advance payment security in the amount of \*\*\* in the form specified in Appendix A-2 to the Contract.

In case the Supplier fails to furnish the advance payment security in accordance with this Clause, the Purchaser may, without prejudice to any other rights or remedies provided under this Contract, terminate the Contract and the Supplier shall be liable for and pay to the Purchaser \*\*\* as liquidated damages, and bear the additional cost or loss that the Purchaser may incur.

37.2 In case the Supplier fails to fulfill any of his obligations under the Contract, the Purchaser has the right to claim against the Supplier with the advance payment security.

37.3 The security for advance payment shall be denominated in a currency as defined in Chapter 3, and shall be in the form of a bank guarantee issued by reputable banks, in the form provided in Appendix A-2 to the Contract. The advance payment security shall be transmitted from the Supplier' s Bank to the Purchaser' s Bank via the SWIFT system.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

## Chapter 38 Effectiveness of the Contract and Miscellaneous

- 38.1 The Contract is made in [2] copies. Each Party shall keep an original of the Contract, the General Terms and Conditions of the Contract including Appendices that is signed by all Parties.
- 38.2 The Contract shall become effective upon fulfillment of the following conditions,
- (i) Signing of Contract by the authorized representatives of all Parties;
  - (ii) Duly chopped with the company seals of all Parties.
- 38.3 These Terms and Conditions, by their nature, shall survive the cancellation, termination, expiration, or abandonment of this Contract, such as Clauses of Chapters 15, 22, 28, and 32.

**Appendix A**

Appendix A-1 Price Breakdown

Appendix A-2 Bank Guarantee for Advance Payment (10%)

Appendix A-3 “Delivery Schedule”

**Appendix B**

Appendix B-1 “Technical Agreement”



## Appendix A-1 Price Breakdown

### QUOTATION OF DEOXIDIZE FURNACE Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.

Provided by: Tap Mate Limited

Date: 2008-01-08  
FRQ No.: 08-01-08  
Our Ref. No.: B07-JSZN-A41

No.	Item No.	Main Material	Qty.	Unit Wt.(Kg)	Tot. Wt.(Kg)	Breakdown Price (USD)						Sub- total	Total Price (USD)	Remark
						Design & Document	Material	Fab.	Packing	Spares				
1	Deoxidize furnace	OCr17Ni12M o2/0Cr18Ni9	***	***	***	***	***	***	***	***	***	***		
2	Diaphragm valve	assembly parts	***									***	***	
Total			***										***	

Charges for inland transport, commodity inspection, customs clearance, (RMB)

\*\*\*

Jiangsu Xuzhou Site Franco Price

\*\*\*

The final preferential price is \*\*\* USD

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

L/G Draft

Date:

To: Jiangsu Zhongneng Photovoltaic Industry Development Co., Ltd.

310 national highway, economic development zone, Xuzhou, Jiangsu Province,

China

Tel: 0086-2168863908

Fax: 0086-2168863908

Dear Sirs,

We understand from our customers, Messrs Tap Mate Limited, hereinafter called "SELLER", that on                      you have concluded with them a Contract No.                      for the supply of 144 Reactorsets (stainless steel) in the total value of USD                      ,                      say USD                      only.

According to the term of the said Contract, the SELLER shall provide you with a bank guarantee in your favor for the sum of USD (being \*\*\* of the total Contract Price) as a guarantee to secure the fulfillment of obligations under the said Contract.

We, The Bank of Tokyo-Mitsubishi, UFJ, Ltd Hong Kong Branch, hereby irrevocably undertake to pay to you any amount up to and not exceeding USD                      (say USD                      only), on your first demand presenting through your banker and against your written declaration stating that SELLER has failed to comply with his obligations under the said Contract.

Payment under this Guarantee will be made at the counters of The Bank of Tokyo-Mitsubishi, UFJ, Ltd Hong Kong Branch.

This Guarantee shall remain valid until the Contract delivery date(s) of the Goods and /or Service has been issued by you or latest on                      .

Our obligations under this Guarantee will cease upon the expiry date and any claim thereunder must be received by us on or before 4:00 pm on that date.

This Guarantee and all rights, obligations and liabilities arising hereunder shall be construed according to the laws of the People' s Republic of China and the venue for any claim thereunder, or for the enforcement thereof, shall be exclusively at the courts of Shanghai, the People' s Republic of China.

This Guarantee shall be returned to us for cancellation as soon as it expires.

Yours faithfully,

For and on behalf of

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

**Appendix A-3**  
**Delivery Schedule**

(Deoxidize Furnace 3<sup>rd</sup> Phase)

Regarding the delivery date of the deoxidize furnace (3<sup>rd</sup> phase) of the buyer, both parties have reached the following conditions through discussions:

\*\*\*

10. What' s been specified above is the delivery plan for the \*\*\* deoxidize furnaces in total.

The abovementioned delivery plan also includes the preparation and confirmation of shop drawings, purchase of materials, as well as the planning of production and the review of the Seller by the buyer.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

## **Appendix B-1**

### **Technical Agreement**

Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.  
Polysilicon Deoxidize Furnace Project

### **Technical Agreement**

Party A: Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.

Party B: TAP MATE LIMITED

Date: Jan. 22, 2008

1. General:
2. Specifications and Standards to be Followed in Fabrication and Inspection
3. Design and Drawing
4. Party A Shall Provide the Following Polysilicon Deoxidize Furnace Specifications and Technical Requirements to Party B as Design Basis.
5. Material and Material Management
6. Fabrication Environment
7. Fabricating and Processing Requirement
8. Welding Process
9. Nondestructive Flaw Detection of Welding Seam and Dimensional Check
10. Hydraulic Test
11. Surface Treatment after Fabrication and Pre-delivery Inspection
12. Inspection and Supervision
13. Delivery Status
14. Packaging and Transport
15. Spares
16. Technical Document Delivery of Party B

Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. (hereinafter referred to as Party A) and TAP MATE LIMITED (hereinafter referred to as Party B) have reached the following agreement in connection with the polysilicon deoxidize furnace project of Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.:

## 1. General

1.1 This agreement is applicable to the fabrication, testing, inspection and acceptance of the deoxidize furnace of Party A.

1.3 The material, fabrication and inspection shall not only satisfy this technical agreement but also the standards, specifications and technical documents quoted on the drawing. Unless otherwise specified, standards, regulations and technical specifications shall be on the basis of the latest version released before the order date (contract effective date) and the relevant amendment as well as supplement.

1.5 Party B shall not divulge the name, item number, material, design parameter, drawing and other relevant technical documents to any other third party, in the event of violation, Party A shall have the right to take any legal action necessary against Party B.

1.6 Party B may publicize this batch of equipments as part of its sales achievements on condition that the provision of Article 1.5 is not violated.

## 2. Specifications and Standards to Be Followed in Fabrication and Inspection

The fabrication, inspection and acceptance of the deoxidize furnace shall comply with the requirements of the following standards and specifications:

*Pressure Vessel Safety and Technical Supervision Regulation*

\*\*\*

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

### 3. Design and Drawing

3.1 Party A shall provide the engineering drawing and technological parameters as required by the project.

3.2 Party B shall carry out the detailed shop drawing design in accordance with the *Pressure Vessel Safety and Technical Supervision Regulation* and GB150-1998 *Steel Pressure Vessels*, and provide Party A with design calculation.

3.4 The overall shop drawing and design calculation provided by Party B shall come into effect after signed and confirmed by Party A.

4. Party A shall provide the following polysilicon deoxidize furnace specifications and technical requirements on which Party B will be based in device shop drawing design.

#### 4.1 Technological Requirements

Number of silicon rods: \*\*\*

Length of silicon rod: \*\*\*

Outside diameter of deoxidize furnace: \*\*\*

Outside diameter of cooling jacket: \*\*\*

Actuating medium of the deoxidize furnace: \*\*\*

Actuating medium of the cooling jacket: \*\*\*

Working pressure in the furnace: \*\*\*

Inwall working temperature: \*\*\*

Working pressure in the cooling jacket: \*\*\*

Working temperature in the cooling jacket: \*\*\*

Design temperature of the cooling jacket: \*\*\*

Number of power connections: \*\*\*

---

Number of nozzles connected to the raw gas: \*\*\*

Number of windows: \*\*\*

## 4.2 Design Basis

### 4.2.1 Atmospheric Conditions

\*\*\*

4.2.2 The work areas are protected from earthquakes with intensity VII.

### 4.2.3 Power condition

### 4.2.4 Cooling water

Supply pressure: \*\*\*

Supply temperature: \*\*\*

Water quality circulating & makeup water turbidity \*\*\*

Circulating water turbidity \*\*\*

Annual fouling resistance \*\*\*

### 4.2.5 Compressed air conditions:

\*\*\*

Pressure

\*\*\*

Dew Point:

\*\*\*

### 4.2.6 Nitrogen Conditions:

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



---

Pressure

\*\*\*

Oxidecontent

\*\*\*

Volumerate of total carbon-containing compound converted into CH4

\*\*\*

Volume rate of vapor

\*\*\*

#### 4.3 Main Equipment Component Requirement

\*\*\*

#### 4.4 Appearance and Dimension

\*\*\*

#### 4.5 Equipment Description

\*\*\*

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

4.6 Deoxidize Furnace Feeding Conditions (for reference)

	Start	End	Average
SiHC13 kg/h	***	***	***
H2 Nm3/h	***	***	***
Mixed gas Nm3/h	***	***	***

4.7 Design and Capability

\*\*\*

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

#### 4.8. Performance assurance

##### 4.8.1 Technical performance assurance

\*\*\*

##### 4.8.2 Equipment Performance Assurance

\*\*\*

4.8.3 Overall equipment life: about \*\*\* years, depending on the appropriateness of professional operation and maintenance

#### 5. Material and Material Management

5.1 All materials (including welding material) shall meet the requirements specified on the drawing and the attached material purchasing specification, the material quality certificate shall also be provided.

##### 5.2 Material Management:

5.2.1 After the material arrived in plant, the inspection department shall carry out inspection and reinspection in accordance with the ASME standard and SMS2302 *Purchase and Material Management Regulation*, and have the material tracking number, material brand and work order number marked with a marker pen in accordance with the 2<sup>nd</sup> edition of SMS2108-2002 *Procedure for Product Identification and Traceability*, keep the record in the relevant document and use them accordingly.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

5.2.2 Special materials shall be stored separately from other materials; the storage environment shall be kept clean, underlay timbers below the materials and cover the materials with plastic cloth for protection.

5.2.3 Before the equipment fabrication, the surface of materials shall be protected with sticking films from scratches and contaminations in fabrication.

## 6. Fabrication Environment

6.1 The welding and assembly of polysilicon deoxidize furnace equipment shall be carried out in special workshop. It's prohibited to weld or assemble in ferrous atmosphere so as to avoid ferric ion contamination.

6.2 The use of ferrous tools shall be avoided, unless there's a austenite stainless steel or other nonmetal isolated layer between the ferrous tool surface and the austenite stainless steel metal.

6.3 The carbon steel components shall be painted with anti-rust material before entering the workshop, except for locations that is \*\*\* from both sides of the welding joint.

6.4 In order to check whether the welding environment is up to spec., a "Cu (Phen)" test shall be performed in the welding environment to make sure the content of ferrous ion in the welding environment is compliant with the requirement.

6.5 All onsite operators must wear clean white cotton uniforms, shoe covers or clean rubber shoes, all of these shall be kept clean and stored in a clean wardrobe.

## 7. Fabricating and Processing Requirement

7.1 The fabrication and processing of all process steps shall be carried out in accordance with the specified items on the process acceptance report by the operator, the inspection shall be carried out in accordance with the specified items on the process acceptance report by the inspector, the inspection marking and records shall be kept properly, move to the next process step only after the present one is qualified and accepted. Implement the special process according to the related regulations.

7.2 In the fabrication process, in case there's component failed in one process step inspection or testing, it shall then be handled in accordance with the SMS2310 *Regulation of Non-conformity Items Management*.

### 7.3 Cutting and Divided Edge Treatment

---

#### 7.4 End Closure

\*\*\*

#### 7.5 Shell Forming and Welding

\*\*\*

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

## 7.7 Shell Circular Seam Assembly

\*\*\*

## 7.8 Inside Assembly of Vessel

\*\*\*

## 8. Welding Process

8.1 The welding process shall be implemented in accordance with SMS2204-1999 *Welding Control and Inspection Regulation*.

8.2 All welding documents including WPS and PQR shall comply with JB4708-2000 and JB/T4709-2000.

\*\*\*

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

## 9. Nondestructive Flaw Detection of Welding Seam and Dimensional Check

9.1 Nondestructive flaw detection and check shall be done in accordance with the Appendix A of SMS2110-1999 *Nondestructive Testing, Regulation of Pressure Vessels* (1<sup>st</sup> edition) and JB/T4730-2005 *Nondestructive Testing of Pressure Vessels*.

9.2 Nondestructive flaw detection and check shall be implemented in accordance with the work drawing and the related standards.

9.3 The dimensional check shall be implemented in accordance with SMS2111-2002 *Testing, Measuring and Testing Equipment Control Procedure* (2<sup>nd</sup> edition).

9.4 Dimensional check shall be implemented in accordance with the work drawing and the related standards.

## 10. Hydraulic Test

\*\*\*

## 11. Surface Treatment after Fabrication and Pre-delivery Inspection

\*\*\*

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

## 12. Inspection and Supervision

\*\*\*

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



13. Delivery Status

\*\*\*

14. Packaging and Transport

\*\*\*

15. Spares

15.1 The physical dimension of the spares will be determined according to the final drawing and specification at the third design liaison meeting.

15.2 The Seller shall provide the spares for commissioning free of charge. The quantity of spares used in commissioning shall be decided by the Seller, however, it shall satisfy the needs of commissioning.

15.3 The Buyer has come up with the following list of wearing parts based on the past experience, they shall be provided by Party B free of charge.

<u>Name</u>	<u>Qty. (per furnace)</u>
Deoxidize furnace flange - furnace floor filler plate	***
Deoxidize furnace flange - cooling pan gasket	***
Electrode sealing kit	***
Nozzle sealing kit	***

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

All other sealing elements (including eyelet)

\*\*\*

Eyelet glass

\*\*\*

Furnace floor fixing forcer

\*\*\*

Electrode

\*\*\*

Silicon core graphite adapter

\*\*\*

## 16. Party B Technical Document Delivery

16.1 The technical document includes: quality certificate, safety&quality supervision and testing assessment released by the local technical supervision agency, conformity certificate, raw material quality inspection report, raw material reinspection report, welding process regulation and assessment report, appearance quality and physical dimension testing report, nondestructive flow detection report, heat treatment records, pressure test, paint report etc.

16.2 Copies of document: Party B shall provide two sets of work drawing and calculation sheet within \*\*\* after both parties signed the contract, after they' re signed and approved by Party A, Party B start the fabrication accordingly, Party B shall provide Party A with two complete sets of as-built drawings (one set of original and one set of duplicate) after delivery, within \*\*\* after the equipment' s delivered, two complete sets of quality certificates (one set of original and one set of duplicate) within \*\*\* after the equipment is delivered.

Note 1: This technical agreement is a guidance document of the polysilicon deoxidize furnace project of Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd., the more detailed process document shall be generated in accordance with the work drawing of every equipment.

Note 2: The SMS series of documents appeared in this agreement are of the internal quality management documents of TAP MATE LIMITED. The TAP MATE LIMITED has the ultimate power of interpretation.

The Technical Agreement is made of two originals and will be effective after signed by both parties; it bears the same legal force as the Business Contract.



Party A: Jiangsu Zhongneng Polysilicon  
Technology Development Co., Ltd.

Rep.:

Date:

Tel:

Fax:



Party B: TAP MATE LIMITED

Rep.:

Date:

Tel:

Fax:



---

## GUARANTY AGREEMENT

This Guaranty Agreement (hereinafter referred to as “Guaranty Agreement”) shall be signed and entered on [Feb. 4, 2008] in Shanghai by and between:

**Purchaser: Jiangsu Zhongneng Photovoltaic Industry Development Co, Ltd.**

**Address:** North of the 310 national highway, economic development zone, Xuzhou, China

**Guarantor: SHANGHAI MORIMATSU CHEMICAL EQUIPMENT CO., LTD.**

**Address:** No. 29 JinWen Road, Pudong New Area, Shanghai 201323, CHINA

**Supplier: TAP MATE LIMITED**

**Address:** Flat 1/F., Block 6, Kornhill Gardens, 1120 King’ s Road, Quarry Bay, Hong Kong

Purchaser, Guarantor and Supplier are hereinafter collectively referred to as “the Parties” and each individually as “a Party”.

**Whereas,** the Purchaser and the Supplier has entered into a Purchase Contract (hereinafter referred to as “Purchase Contract”) in Shanghai on [Feb. 4, 2008] with the contract number of [2NSH3001]. Based on this Purchase Contract, Supplier shall supply the Purchaser with 144 reactorsets (stainless steel) and Equipment, Engineering, Documentation and Services and to perform the Works associated with the Equipment;

---

**Whereas**, the fabrication will be performed at the plant of Shanghai Morimatsu Chemical Equipment Co., Ltd (the Guarantor), who executes the Purchase Contract on behalf of Tap Mate Ltd and undertake jointly and severally all the responsibilities and obligations under the Purchase Contract.

**Whereas**, Supplier, a legal entity duly established and validly existing under the People' s Republic of China ("China" or "PRC") with its principal place of business at Flat F, 1/F., Block 6, Komhill Gardens, 1120 King' s Road, Quarry Bay, Hong Kong, and the Guarantor, a corporation organized and existing under the Laws of the People' s Republic of China, registered and located at No. 29 JinWen Road, Pudong New Area, Shanghai 201323, CHINA.

**NOW THEREFORE**, the Parties authorize their representatives, following friendly consultations, to agree on the following terms and conditions and to sign this Guaranty Agreement.

Guarantor hereby irrevocably guarantees and promises to undertake severally all responsibilities and obligations under the Purchase Contract (including the liabilities for breach of the contract), if the Supplier is failed to execute and perform, for any reason, any of its obligations under the Purchase Contract (including without limitation, timely delivery, quality guarantee in accordance with the contract, liabilities for breach of the contract, etc.). Supplier and Guarantor shall be bound by this Guaranty Agreement.

---

Guarantor and Supplier hereby further warrant and represent that:

1. Guarantor, a corporation organized and existing under the Laws of the People' s Republic of China, shall inform Purchaser timely of any events or facts which have changed or may change the status, position of Guarantor.
2. Guaranty under this Guaranty Agreement shall be joint and several guaranty liability. Guarantor shall undertake immediately all liabilities under the Purchase Contract which the Supplier shall execute and perform upon a written notice by the Purchase (including execute fully the Purchase Contract and/or the liabilities for breach of the contract). Supplier and Guarantor shall warrant that they and each the successor and assignee will undertake jointly and severally the obligations to execute the Purchase Contract fully.
3. The Purchase Contract and this Guaranty Agreement shall be independent and effective each other.
4. The guaranty term under this Guaranty Agreement shall be started from the effectiveness of this Guaranty Agreement, and ended at the date on which all obligations and responsibilities of the Supplier under the Purchase Contract have been completed fully.

5. This Guaranty Agreement and its interpretation shall be governed by and construed in accordance with the laws of the People's Republic of China. The settlement of any disputes arising out of or in connection with this Guaranty Agreement shall be executed in accordance with the agreement of arbitration stated in the Purchase Contract. This Guaranty Agreement shall become effective at the date of signing by the legal representative or the authorized representative of each Purchaser, Guarantor and Supplier.

**SIGNED BY**

**For and on behalf of The Purchaser**

**Jiangsu Zhongneng Photovoltaic Industry Development Co, Ltd**

由/By: \_\_\_\_\_  
(授权代表签字/signature of authorized representative)  
姓名/Name: \_\_\_\_\_  
职位/Title: \_\_\_\_\_



**保证人**

**For and on behalf of The Guarantor**

上海森松化工成套设备有限公司  
SHANGHAI MORIMATSU CHEMICAL EQUIPMENT CO., LTD.

由/By: \_\_\_\_\_  
(授权代表签字/signature of authorized representative)  
姓名/Name: \_\_\_\_\_  
职位/Title: \_\_\_\_\_



结添有限公司  
Tap Mate Limited



由/By: \_\_\_\_\_  
(授权代表签字/signature of authorized representative)

姓名/Name: \_\_\_\_\_

职位/Title: \_\_\_\_\_



**Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd**

**Phase III Polysilicon Project**

**Sales Contract**

**for**

**[Reactors (\*\* electrodes design)]**

Buyer: Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd

Seller: Xi'an Nuclear Equipment Co., Ltd

Contract No.: JSZN3014

---

## Content

<b>1 Definition</b>	7
<b>2. Subject matter</b>	9
<b>3. Scope of provision</b>	10
<b>4. Contract price</b>	10
<b>5. Payment</b>	11
<b>6. Delivery and transportation</b>	12
<b>7. Packing and mark</b>	15
<b>8. Technical service and liaison</b>	17
<b>9. Quality supervision and inspection</b>	18
<b>10. Installation, commissioning, single machine trial run, combined test run with water, feed and trial, and acceptance</b>	22
<b>11. Warranty and claim</b>	24
<b>12. Insurance</b>	26
<b>13. Expenses of taxation</b>	26
<b>14. Outsourcing</b>	26
<b>15. Modification, amendment and termination of Contract</b>	26

<b>16. Liability for breach of Contract</b>	27
<b>17. Force majeure</b>	29
<b>18. Settlement of dispute</b>	29
<b>19. Effectiveness of Contract</b>	29
<b>20. Miscellaneous</b>	30
<b>Page for signature and seal</b>	32
Attachment I Technology Agreement	
Attachment II Break-down Price List	
Attachment III Confidentiality Agreement	

## Sales Contract

The contract is concluded by the two parties as follows on Jan. 10, 2008 in Xuzhou.

Jiangsu Zhongneng Polysilicon Development Co., Ltd (Buyer), with legal address at Northern side of 310 State Highway, Economic Developing Zone, Xuzhou City.

Xi' an Nuclear Equipment Co., Ltd (Seller), with legal address at 5 Weibin Street, Xujiawan, North Suburb of Xi' an.

To fulfill phase III supply and relevant technical service obligation for Reactors (\*\*\*) electrodes design), spare parts and components, and special tools of Jiangsu Zhongneng Polysilicon Development Co. Ltd, Buyer will purchase from the Seller, and the Seller will sell the Buyer equipments listed hereunder (including attachments) and supply with technical service, technical materials, spare parts and components and special tools, etc as stipulated herein. Therefore, bound by law and in line with provisions of existing laws and regulations of China, both parties agree to conclude the following articles.

### 1 Definition

Meaning of following words in the contract and attachments are defined as bellows.

- 1.1 The “Buyer” refers to Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd, including agent, successor and consignee of the legal person.
- 1.2 The “Seller” refers to Xi' an Nuclear Equipment Co., Ltd, including agent, successor and consignee of the legal person.
- 1.3 “Contract” ‘ refers to all parts contained in the contract and attachments.
- 1.4 “Contract price” refers to provision described in Article 4 hereof.
- 1.5 “Effective date” refers to effective date described in Article 19 hereof.
- 1.6 “Technical materials” refers to design, manufacture, manufacturing supervision, inspection, installation, commissioning, checking and acceptance, performance test and technical guidance relating to contract equipments and the project, requiring documents (including drawing, explanations, standard, statement and manual, various software, etc.) applied in project operation and maintenance as specified in Attachment I hereof.

- 
- 1.7 “Contract equipment(s)” refers to machines, equipments, materials, special tools, spare parts and components and various goods, detailed content and requirements are listed and prescribed in Attachment I hereof.
  - 1.8 “Manufacturing supervision” refers to the buyer itself assigns (or entrust the qualified Manufacturing Supervision Unit to assign) representative to supervise quality of key parts of contract equipments supplied by the seller, implements documentation validation and field validation. The quality supervision will not relieve the responsibility of the Seller upon quality of contract equipment.
  - 1.9 “Performance acceptance test” refers to test carried out as per provisions of attachment I hereof to test the performance guarantee value as specified in attachment I hereof.
  - 1.10 “Preliminary inspection and acceptance” refers to the joint inspection and acceptance carried out by the Buyer upon each set of equipment when the result of performance acceptance test shows that equipment has reached the guarantee value provided in attachment I hereof.
  - 1.11 “Final inspection and acceptance” refers to inspection and acceptance by the Buyer regarding each set of contract equipment upon expiration of guarantee period.
  - 1.12 “Day, month and year” refers to day, month and year of the Gregorian calendar; each “day” refers to 24 hours, while “week” refers to 7 days.
  - 1.13 “Project” refers to the Phase III 1,500t/y polysilicon project by Jiangsu Zhongneng Silicon Technology Development Co., Ltd.
  - 1.14 “Technical service” refers to the full-process service of technical instruction, cooperation and training etc. with respect to engineering design, equipment manufacturing supervision, inspection, civil work, installation, commissioning, inspection and acceptance, performance acceptance test, running and repair related to the contract equipment and furnished by the Seller.
  - 1.15 “Site” refers to the location for installing contract equipment for the Buyer to the north part of No. 310 National Highway through Jiangsu Xuzhou Economic & Technical Development Zone.
  - 1.16 “Spare parts and components” refers to spare parts for equipment provided as per the Contract, including accompanying spare parts and components as well as spare parts and components sufficient for \*\*\* running of the equipment (detailed amount shall be subject to technical agreement).

- 
- 1.17 “Single unit trial running”, “water inter-linkage” and “loaded trial running” refers to single unit trial running, water inter-linkage and loaded trial running in accordance with relevant state standard and any modification thereof.
- 1.18 “Project” refers to Phase III 1,500t/y polysilicon project by Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.
- 1.19 “Written document” refers to any manuscript, printed document or typed document or document bearing seal and/or signature.
- 1.20 “Subcontractor” or “Sub-supplier” refers to any legal person or any successor thereof to which the Seller subcontract any part of goods supply within the scope as specified in the Contract.
- 1.21 “The Last batch of delivery” refers to that after the batch of delivery, the total value of the delivered contract equipment would amount to over 98% of contract equipment price, and the rest undelivered equipments would not influence the installation, commissioning,, single unit trial running, water inter-linkage, loaded trial running and performance acceptance test of contract equipment.
- 1.22 “Equipment fault” refers to condition when the contract equipment (incl. parts, raw materials, cast and forged parts, original parts etc) cannot meet the performance and quality criterion provided in the Contract and/or cannot satisfy the requirement of project stability, reliability, safety and economic operation.

## **2. Subject matter**

Equipment ordered against the Contract will be used by Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. The Seller shall provide equipment, technical materials and service etc. to the Buyer as per the prescribed conditions and time hereof.

### **2.1 Equipment name, type and quantity**

Equipment name: Reactor (\*\*\*) electrodes design)

Equipment type: see attachment I.

Quantity: \*\*\*.

### **2.2 Equipment provided by the Seller shall be brand-new, technologically advanced, mature and reliable.**

### **2.3 See technical agreement (which is Attachment I hereof) for technical spec, technology, economic indicator and performance of the equipment, technical material and technical service provided by the Seller etc.**

2.4 Where it's deemed necessary by the Buyer, the Seller shall dispatch appropriate, experience, healthy and capable staff to provide technical service to ensure the correct installation, commissioning, maintenance and operation of contract equipment, and staff dispatched thereby to site shall comply with safety management agreement signed by the parties, which is related to the Contract.

2.5 The Seller shall provide accompanying spare parts and components to the Buyer as provided in the Contract and prepare spare parts and components as provided in Article 3 hereof; in addition, where required by the Buyer, the Seller shall repair equipment as provided herein.

2.6 During the term of the Project, the Seller shall provide any new operation experience and info obtained to the Buyer for free and inform the Buyer any confirmed improvement in terms of technology and safety, if the same is applicable to the equipment.

2.7 Special tools provided by the Seller shall meet requirements in terms of transportation, storage, protection, lifting, installation, commissioning and maintenance of equipment on site.

2.8 The Seller shall perform its other responsibilities and duties otherwise provided hereunder.

### **3. Scope of provision**

3.1 See attachment I for the scope of provision hereof.

3.2 Both parties hereto agree that the scope of provision shall be subject to attachment I, which has included all contract equipment, technical materials (as-built drawing, general assembly drawing, instruction, qualification certificate, material list and list of spare parts etc.), special tools, spare parts and components and technical service (training included). However, in case of any omission and shortage during contract performance which is not listed in the delivery list and proven to be included in the scope of goods supply, or which is necessary to meet the performance guarantee value with respect to contract equipment in attachment I, the same shall be supplemented by the Seller under the requirement of the Buyer for any deficient equipment, technical material, special tool, spare parts and components etc. without any additional cost to the Buyer.

### **4. Contract price**

4.1 The contract price, namely the total contract price, is RMB\*\*\*, including the transportation fee of RMB\*\*\* (in words: RMB\*\*\*).

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

The Contract price include expenses of contract equipment (incl. spare parts and components), technical material and technical service etc, tax, packing cost, freight and miscellaneous fees and premium relating to the contract equipment etc.

4.2 See attachment II for break-down price of the total contract price; in case of any conflict between the total contract price and the sum of break-down price, the total contract price shall prevail. The total contract price shall remain unchanged during the effective contract term.

4.3 The Seller agreed to provide spare parts and components required to meet various indicators provided in attachment I hereof to the Buyer within \*\*\* upon the effectiveness of the Contract based upon the following conditions:

4.4 Price shall be subject to attachment II; in case relevant price is unavailable in attachment II, market price of the spare parts and components at the time when the Contract comes into effect shall be applied.

4.5 Time of goods supply: upon the signature of the Contract, the Seller shall ensure to deliver goods from \*\*\* upon receiving advance payment, and deliver all equipment to the project site of the Buyer prior to the end of \*\*\*.

4.6 Other articles shall be subject to the friendly negotiation of both parties hereto.

## **5. Payment**

5.1 The currency applied in the Contract shall be RMB.

5.2 Term of payment: T/T

5.3 Payment

5.3.1 Advance Payment

The Buyer shall pay \*\*\* of the total contract price as advance payment to the Seller within \*\*\* upon the contract conclusion, and the Seller shall provide receipt of the payment (one original and four photocopies).

5.3.2 Delivery Payment

After equipment has been manufactured, the Buyer shall, within \*\*\* upon receiving the delivery notice from the Seller, pay \*\*\* of the total contract price as the delivery payment, while the Seller shall provide receipt of the payment to the Buyer (one original and four photocopies).

5.3.3 Payment of inspection & acceptance sum

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



After goods have been delivered to site and all equipments of the Seller have been inspected and commissioned to be qualified, or within \*\*\* upon delivery of goods (the earlier shall apply), and when the Buyer has received VAT invoice equaling to \*\*\* total contract price (specific invoice for transportation fees), the Buyer shall pay \*\*\* commissioning fee of the total contract price to the Seller within \*\*\*, while the Seller shall provide relevant receipt thereof (one original and four photocopies).

#### 5.3.4 Payment of quality guarantee fee

Remaining \*\*\* of the total contract price will be retained as quality guarantee fee, which will be paid within \*\*\* by the Buyer upon the expiry of the quality guarantee period of equipment. In the event of any quality problem, the Buyer shall be entitled to deduct the quality guarantee fee as provided hereto in case the quality problem as discovered is attributable to the Seller.

### 6. Delivery and transportation

6.1 Delivery term and sequence of contract equipment shall meet the requirement of project construction, equipment installation progress and sequence as well as the requirements in attachment III to ensure the project progress.

#### 6.2 Delivery term, location and receiving unit

6.2.1 Delivery term: the Seller shall prior to \*\*\* deliver all goods to site of the Buyer, while any advance delivery prior to this date shall be subject to the written approval of the Buyer, or else all responsibilities and costs thus occurred shall be undertaken by the Seller.

6.2.2 Delivery location: the Buyer will be responsible for unloading under the direction of the Seller.

6.2.3 Receiving unit: Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd; Tel.: 0516-85868888-6668,6667, fax: 0516-83152982

6.4 Within 30 days upon the effectiveness of the Contract, the Seller shall provide production arrangement plan to the Buyer as provided in attachment I of the Contract, including making the name of each batch of goods, primary delivery plan, list of overall goods and overall packing list under the Contract \*\*\* before the commencement of goods delivery, the Seller shall inform the Buyer of the content provided in Article 6.6 by telex or fax (“delivery notice”).

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

6.5 However, in case of any damage, deficiency, shortage or condition inconsistent with the specified quality standard and regulations in the Contract found after opening box, the delivery date of the batch of goods shall be subject to the date when the Seller corrects its noncompliance.

6.6 The Seller shall go through the transportation tool plan required for delivering contract equipment to the carrier, be responsible for the transportation and insurance etc. of contract equipment from the Seller's premises to the delivery destination, including all expenses related therewith.

6.7 Upon the preparation of each batch of equipment and within \*\*\* from the dispatch of transportation vehicle, the Seller shall inform the Buyer of the following content by telex or fax:

- (1) Contract number;
  - (2) Equipment number;
  - (3) Preparation and dispatch date of equipment;
  - (4) Name, code and price of goods;
  - (5) Gross weight of goods;
  - (6) Total volume of goods;
  - (7) Total pieces packaged;
  - (8) Name of carrier, delivery station/port name, vehicle number/vessel number and packing number;
  - (9) Name, weight, volume and piece of each goods over \*\*\* in weight or over \*\*\* in dimension. For each piece of such equipment/part, the specific gravity and lifting position shall be marked, including sketch map thereof.
  - (10) For special articles (flammable, explosive and toxic articles and other hazardous substances, equipment or articles having special requirements on environmental elements like temperature etc. and vibration during transportation), name, nature, special protective measures, preservation manner and treatment of incidents etc. shall be specially marked.
- 6.7 For articles uncovered in attachment I (excl. spare parts and components listed in Article 4.4 hereof), the Seller shall deliver the same in combination with the project progress if required by the Buyer.
- 6.8 In case of any equipment (or parts) damage or potential equipment (parts) fault caused or existed by reason attributable to the Seller during the guarantee term, and which has been replaced by spare parts and components in storage, the Seller shall supplement the spare parts and components for free, deliver to the destination station/port designated within \*\*\* at the latest and inform the Buyer of it.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

6.9 The Seller shall, subject to provision in attachment I, provide technical material meeting requirement of project design, supervision, construction, commissioning, test, inspection, training, operation and maintenance to the Buyer by several batches. The Seller shall, as per provision in attachment I hereof, provide technical material for each set of equipment (one origin and four copies) as per attachment I. In addition, the Seller shall, within seven days upon the effectiveness of the Contract, list the submission progress schedule of the above technical material (fundamental material provided in Article 8.1 is excluded) as per content of attachment I and regulation of attachment III for the examination of the Buyer, and make proper modification as required by the Buyer.

6.10 Technical material normally will be delivered by mail or express. Upon submitting technical material to postal office or express company, the Seller shall inform within \*\*\* the Buyer and the Project of the mailing date and mail sheet number for the technical material delivered, detailed list of technical material, pieces and pages, weight and contract number etc. in the form of fax or telex. Technical material shall be mailed to the address of the Buyer as provided in the Contract.

6.11 The date of the Buyer's onsite acceptance of documents shall be deemed as the actual delivery date of documents provided by the Seller. The date of delivery of final version of documents shall be deemed as the actual delivery date of relevant documents. Such delivery date may serve as a basis for calculating default penalty for any delayed delivery of documents. In case any insufficiency, missing or damage without any fault of the Buyer shall be discovered in any technical data when inspected by the representative of the Buyer or of the Seller, the Seller shall within \*\*\* (for emergent circumstance, within \*\*\*) upon receiving any notification signifying the same from the Buyer make up the insufficiency, the missing or the damaged for free. In case any insufficiency, missing or damage with fault of the Buyer should be discovered, the Seller shall within \*\*\* (for emergent circumstance, within \*\*\*) upon receiving any notification signifying the same from the Buyer make up the insufficiency, the missing or the damaged for free.

6.12 The Seller shall notify the Buyer of the delivery date in a written form \*\*\* in advance. The Buyer may send a representative or representatives to the factory of the Seller and to loading stations of the Seller to inspect packing quality and supervise loading conditions. In case such representatives of the Buyer fail to participate in such inspections on schedule, the Seller shall have right to dispatch the equipments. Inspections and/or supervisions of such representatives as aforesaid shall not exempt any responsibility of the Seller.

6.13 In case any of the equipments should be damaged or missing prior to delivery, the Seller shall as per provisions of article 11 of the Contract be responsible for repairing and/or replacing immediately. In case the Contract equipments should be damaged or missing during the course of transportation, the Seller shall be responsible for contacting the carrier and its insurance company and shall repair or make up the equipment for free so as to meet requirements of engineering progress.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

## 7. Packing and mark

7.1 Any and all equipments as may be delivered by the Seller shall have proper packing suitable for long-distance transportation, multiple delivery and loading & unloading as per provisions of GB191-73 packing, storage and delivery instructions and marks as well as relevant provisions of competent national authorities. Packing materials provided by the Seller shall be able to keep goods sound and safe during the transportation, loading and unloading and shall be provided with measures relating to reducing vibration and anti-shock. In case such packing materials as to be provided by the Seller can not keep the equipments inside them safe and sound, the Seller shall settle relevant issues in the designing structures of the equipments. Packing shall be provided as per characteristics of equipments with protection measures regarding to anti-damp, mildew-proof, rust prevention and anti-corrosion, ensuring that the equipments may be delivered to the site without any damage and corrosion. Before packing, the Seller shall inspect and clean the equipments as per the whole set of equipments, making sure that no residual remains and ensuring the completeness of components and spare parts.

7.2 The Seller shall mark clear the numbers of components and spare parts in the packing boxes and bales as per the assembly drawings.

7.3 The Seller shall on both sides of each packing box use fade-proof oil paint to print the following marks conspicuously in Chinese:

- (1) Contract number;
- (2) Destination station/port;
- (3) Consigner and consignee;
- (4) Name of equipments, equipment number, and drawing number;
- (5) Box number/bale number;
- (6) Gross weight/net weight (kg);
- (7) Volume (length \* width \* height, in mm)

For goods exceeding two tons (inclusive), the Seller shall on the side of the packing boxes mark the center of gravity and lifting point with proper signs and patterns as normally adopted for transportations for giving assistance to loading, unloading and handing. As per characteristics of goods and in line with requirements on loading & unloading and transportation, the packing boxes shall be clearly printed with “Handle with care”, “Keep upright” and/or “Caution against rain”, “Caution against damp”, etc.

7.4 As to nude pack goods, the Seller shall employ metal labels or directly mark relevant particulars as aforesaid. For large pieces, sufficient racks or stow woods shall be provided.

7.5 For each piece of packing box, detailed packing list and qualification certificate including names of equipments, quantity, price, equipment number, and drawing number shall be provided. For outsourced packing boxes, a factory qualification certificate and a specification shall be provided within them. Another two lists regarding packing boxes shall be mailed.

7.6 Spare parts and components set forth in Attachment I shall be respectively packed in sets and shall be made clear outside the packing boxes and shall be delivered for a single time.

7.7 Spare parts and components shall be packed respectively and marked with particulars as provided in article 7.2 and article 7.3. Special tools shall also be separately packed.

7.8 Loosened components of equipments of various kinds shall be properly packed in boxes with appropriate sizes and shall as possible be delivered for a single vehicle so as to reduce costs.

7.9 Grid type boxes and/or similar packing shall be properly packed and shall be able to prevent from being stolen and from being damaged by other articles or rainwater.

7.10 Any and all ports of any pipe, pipeline, valve and other equipments shall be protected by protection covers or be protected in any other method.

7.11 The Seller and/or any subcontractor of the Seller shall not employ a same box number to mark any two boxes.

7.12 As to any goods with clear and clean processing surfaces requiring for special packing, the processing surface shall be protected by employing excellent and durable protection layers (never employ oil paint) so as to prevent from rust and/or damage before installation.

7.13 Any and all technical data as to be delivered by the Seller to the Buyer shall employ such packing as may be able to suitable for long-distance transportation and with such functions like multiple deliveries, rainwater proof and damp proof.

The cover of each bale of technical data shall specify the following particulars:

- (1) Contract number;
- (2) Consignor and consignee;
- (3) Destination station/port;
- (4) Gross weight;
- (5) Box number/bale number.

Each bale of technical data shall be enclosed with two copies of lists in details, signifying the serial number, document number, name and pages.

7.14 In case goods should be damaged or missing due to improper packing of the Seller or improper storage, regardless of the time of discovery, the Seller shall when confirmed repair, replace or indemnify as per the Contract. In case any goods should be damaged or missing during the course of transportation, the Seller shall be responsible for contacting with the carrier department or the insuring company; as such, the Seller shall as possible make up such goods so as to meet the requirements of construction works.

7.15 The Buyer shall within \*\*\* after checking out the equipments return dedicated railway packing boxes, packing racks, etc. to the Seller, at expenses of the Seller.

## **8. Technical service and liaison**

8.1 The Seller shall within \*\*\* upon taking effect of the Contract submit the Buyer in the manner of a mail with an organization plan for implementation of the service works stipulated in article 8.2 and shall make such organization plan in duplicate for verification by the Buyer who shall make relevant modifications as per requirements of the Buyer.

8.2 Details of expenses for technical liaison meeting, times, quorum and place are provided in Attachment I and the tender documents as submitted by the Seller (in case of any discrepancy between the two, provisions of the Attachment I shall prevail).

8.3 The Seller shall when necessary invite the Buyer to attend technical design of the Seller and explain issues relating to such technical design to the Buyer.

8.4 In case of any major issue requiring for immediate research and negotiations of the parties, any party may convene a meeting and the other party under normal circumstances shall attend the meeting.

8.5 As to each meeting and any other contact modes, the parties shall prepare conference summaries or liaison summaries and summaries so made shall be executed by the both parties. In case any clause of the Contract should be modified, such modification shall be approved by legal representatives or authorized representatives of the parties before taking effect.

8.6 The Buyer shall have right to distribute any and all data (supplied by the Seller) in connection with the Contract equipments to each party relating to the Project or work and such distributions shall not be deemed as an infringement or infringements, provided that the Buyer shall not supply the same to any third party without any connection with the Project or work.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

8.7 As to any and all data affixed with words “Confidential documents”, whether of the Buyer or of the Seller, the parties shall bear confidentiality responsibilities.

8.8 Where any subcontractor of the Seller requests for any technical services regarding the Contract equipments or needs to conduct onsite works, the Seller shall be responsible for organization of such subcontractors at its own expenses with the content of the Buyer.

8.9 The Seller shall bear any and all responsibilities regarding supply of equipments (including subcontracting and outsourcing), equipment and technical interface, technical services, technical data, etc. If any designing drawings submitted by the designing institutions should have any mistake, the Seller shall not be held responsible.

8.10 As to other equipments & devices required for connection with the Contract equipments, the Seller shall be responsible for providing interfaces and technical cooperation and shall not make the Buyer bear any extra expense arisen there from other than the Contract price.

8.11 Any and all onsite technicians as may be appointed by the Seller shall be full of practical experiences and competent for works for the project. Roll call of such technicians shall be submitted to the Buyer within \*\*\* upon taking effect of the Contract for verification by the Seller.

Details regarding technical services are provided in Attachment I.

## **9 Quality supervision and inspection**

### **9.1 Quality supervision**

9.1.1 The Seller shall within \*\*\* upon taking effect of the Contract provide the Buyer with a list regarding standards on design, manufacturing and inspection of the Contract equipments. Standards on design, manufacturing and inspection shall comply with provisions of Attachment I hereof.

9.1.2 The Buyer shall entrust a competent supervision unit to conduct manufacturing supervision of equipments, inspections on manufacturing supervision and for equipments leaving factory, and to get to know conditions regarding equipments installation, inspection, trial run and packing quality of equipments and to sign for confirmation. Standards for manufacturing supervision and inspection shall be those set forth in Attachment I. The Seller shall coordinate with such works for manufacturing supervision and during the process of manufacturing supervision provide relevant data and standards without delay for free.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

9.1.3 Details of range of manufacturing supervision and specific projects for manufacturing supervision inspection/witness are provided in Attachment I.

9.1.4 The Seller shall provide the following items for the stationed representative and manufacturing supervision representative as may be entrusted by the Buyer;

9.1.4.1 At feeding for the Contract equipments, production plan for the whole set of equipments together with actual production schedule for each month and inspection plan for each month;

9.1.4.2 For \*\*\* in advance, contents regarding manufacturing supervision and schedule on inspections;

9.1.4.3 Standards (including factory standards), drawings, data and workmanship in connection with manufacturing supervision of the Contract equipments, and records on actual technological process and inspections (including interim inspection records and/or inconsistency reports) together with relevant documents and copies as provided in Attachment I (documents as provided shall not be reproduced at discretion or be taken away from the working site).

9.1.4.4 Conveniences relating to work and life of the manufacturing supervision representative.

9.1.5 Generally, manufacturing supervision inspection/witness (usually onsite witness) shall not affect the normal production process (excluding stoppage and inspection for any major failure discovered) of the plant, and shall be conducted by taking into consideration of the actual production process of the Seller's plant. In case the manufacturing supervision representative should fail to be presented at the site on schedule notified by the Seller, works for tests in the plants of the Seller may go on being conducted and conclusions of such tests shall be effective, provided that the manufacturing supervision representative shall be entitled to after that be informed of such tests, review and reproduce inspection reports and tests conclusions (namely, witness of documents).

9.1.6 In case the manufacturing supervision representative should during manufacturing supervision find out any quality problem or inconformity to standards or packing requirements, the manufacturing supervision representative shall have right to put forward suggestions and decline to make its signature temporarily. The Seller shall then take relevant improvement measures so as to ensure an excellent quality level of equipments to be delivered. Whether the manufacturing supervision representative requests or knows or not, the Seller shall have responsibility to actively and punctually notify the manufacturing supervision representative with any and all

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



major quality defects and problems discovered during the course of manufacturing of the Contract equipments and shall not seek to conceal such issues, nor shall the Seller handle such issues at discretion without notifying the supervision unit.

9.1.7 Whether the manufacturing supervision representative participates in manufacturing supervision and/or leaving factory inspection, and/or the manufacturing supervision representative assists in manufacturing supervision and/or leaving factory inspection, when reports regarding manufacturing supervision and inspections have been signed, such facts shall not be deemed as an exemption of any responsibility regarding to quality warranty of the Seller as provided in the Contract, nor shall any responsibility for the Contract equipments of the Seller be released.

## 9.2 Factory inspection and onsite opening-box inspection

9.2.1 Any and all Contract equipments/components (including subcontracting and outsourcing) to be provided by the Seller shall during the period of manufacturing be strictly inspected and tested and any and all inspections, tests and assembly shall be formally recorded. Eligible equipments may be delivered out of the factory only when all works as aforesaid have been completed. Any and all recording documents so prepared complete with qualification certificate shall act as part of technical data be mailed to the Buyer for filing. As such, the Seller shall also along with accompanied documents provide qualification certificate and quality certificate documents.

9.2.2 The Buyer shall conduct opening-box inspections upon arrival of equipments and shall notify the Seller of the date for such opening-box inspections \*\*\* in advance. The Seller shall as per requirements specified in such notifications as may be served by the Buyer dispatch relevant inspection personnel to the site of the Buyer to attend such inspection works, inspecting the packing and extrinsic features as well as making clear the numbers as per waybill and packing list, together with specifications and quality. In case any discrepancy with fault of the Seller (as confirmed by representatives of both parties) should be discovered, such case shall be handled and settled by the Seller. The Buyer shall provide conveniences regarding work and life of the inspection personnel of the Seller. When the inspection personnel of the Seller fails to arrive at the site punctually, the Buyer shall have right to conduct opening-box inspections by itself. In such circumstances, any and all inspection conclusions as well as records shall be equally effective to both parties respectively and may serve as valid evidences for lodging any claims by the Buyer against the Seller. In case the Buyer fails to conduct inspections within \*\*\* after arrival of the equipments, the equipments shall be deemed to have passed inspections.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

9.2.3 During onsite inspections, in case any damage, defect, insufficiency or inconformity in any equipment with fault of the Seller (including causes like improper transportation) should be discovered, such issues shall be recorded and shall be signed by the representatives of both parties respectively and each party shall hold one copy of such records which may serve as evidences for the Buyer to request for repairing and/or replacing and/or compensation against the Seller. In case the Seller entrusts the Buyer to repair any damaged equipment, expenses for repairing shall be borne by the Seller; in case any damage or insufficiency with fault of the Buyer should be spotted, the Seller shall upon receipt of a notification from the Buyer provide or replace relevant components without delay, at the Buyer's own expenses.

9.2.4 In case the Seller should have any objection against any of the requirements regarding repairing, replacement and/or claim made by the Buyer, the Seller shall within \*\*\* upon receipt of a written notification signifying the same from the Buyer or within \*\*\* upon getting informed of such issues send representative(s) to the site of the Buyer to re-check, at expenses of the Seller itself; otherwise, the requirements as aforesaid shall take effect upon being made.

9.2.5 In case no consensus regarding inspection records should be reached by the parties in any joint inspections, the Buyer shall entrust a competent quality inspection institution to conduct such inspections. Inspection results so made shall be binding upon both parties and the expenses for such inspections shall be borne by the party with fault.

9.2.6 The Seller shall upon receipt of a claim lodged by the Buyer as per provisions of the article 9.2.2 to article 9.2.5 of the Contract shall repair, replace or make up the insufficiency as per provisions of article 9.2.7 without delay and any and all expenses so incurred regarding manufacturing, repairing and freight as well as insurance premium shall be borne by the responsible party. As to any of the claims, the Buyer may deduct an equivalent sum to the compensation payable from Seller against the performance guarantee or quality bond or the following payment.

9.2.7 The time for repairing or replacing of equipments or components with fault of the Seller shall not be later than \*\*\* with the principle of not affecting construction schedule after discovery of defects, damages or insufficiency; unless otherwise specified by the parties, the Buyer shall have right to handle such cases as per provisions of article 11.

9.2.8 The time for lodging claims regarding the specifications, models and quantity of equipments arrived shall not be later than \*\*\* after arrival of such equipments.

9.2.9 Any and all inspections as provided from article 9.2.1 to article 9.2.7 shall refer to onsite inspections of equipments arrived at the site. In case no problem should be discovered or the Seller has as per requirements of claims replaced or repaired, quality assurance responsibility of the Seller under the Contract shall not be deemed to be rescinded.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

## **10. Installation, commissioning, single machine trial run, combined test run with water, feed and trial, and acceptance**

10.1 Installation, commissioning, single machine trial run, combined test ran with water, feed and trial, operation and maintenance of the Contract equipments shall be conducted by the Buyer as per the technical data, inspection standards, drawings and specifications. Onsite technicians of the Seller shall give instructions for works over the whole process of installation and commissioning and shall for key working processes sign their names so as to confirm (without due cause shall not decline signing their names). Details of key working processes are provided in Attachment I. During the process of installation and commissioning, in case the Buyer fails to follow instructions of the technical data and of onsite technicians of the Seller and any failure should occur, the Buyer shall be solely responsible for such failure (excluding any failure out of any defect in the equipments); in case any failure should occur when instructions of technical data and/or instructions of onsite technicians of the Seller has been followed or when the equipments having such failures have been confirmed by the onsite technicians of the Seller, the Seller shall be liable for responsibilities accordingly.

10.2 Works regarding acceptance and inspections of such equipments installed shall be conducd as per requirements of Attachment I.

10.3 The Seller shall upon completion of installation of Contract equipments send relevant personnel to the site of the Buyer for instruction works and shall settle any and all problems involving equipments without delay. The Seller shall conduct such works by basing on the principle of keeping all works on schedule and the time for doing such works shall not exceed \*\*\*; otherwise, it shall be treated as a delay of working period.

10.4 Acceptance inspections on performance of equipments shall be conducted as per requirements of Attachment I after completion of installation of all equipments for each complete set of equipments and such performance inspections shall be performed by the Buyer and shall be attended by the Seller. After completion of such inspections, if the Contract equipments reach the guaranteed indexes as provided in Attachment I, the Buyer shall within \*\*\* sign the preliminary acceptance certificate regarding the Contract equipments countersigned by the Seller and such certificate shall be made in duplicate with the Seller and the Buyer respectively holing one copy.

In case the Contract equipments fail to reach one guaranteed index or several guaranteed index provided in the Attachment I to the Contract, such circumstance shall be handled as per provisions of article 10.6 and article 11.7.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

10.5 Basing on the precondition as not to affect safe and reliable operation of the Contract equipments, in case any minor defect should be discovered, the Seller shall within the period as requested by the Seller rectify such minor defects for free and the Buyer may then agree to countersign a preliminary acceptance certificate.

10.6 In case in the first performance acceptance inspection the Contract equipments fail to reach one or several guaranteed indexes as provided in Attachment I to the Contract, the parties shall then jointly seek causes to as to make clear the parties respective responsibilities. Then the party with the major responsibility for such failure shall take further measures. The second acceptance inspection shall be conducted \*\*\* after the first acceptance inspection.

10.7 After the second acceptance inspection, in case any major performance index still fails to meet the provisions set forth in Attachment I to the Contract, the parties shall jointly research the case and find out the reasons so as to make clear the responsibilities involved:

In case it is not with the fault of the Buyer, then the case shall be handled as per provisions of article 11.7.

In case it is all with the fault of the Buyer, the Contract equipments shall be deemed to have past the preliminary acceptance inspection. In such circumstances, the representative of the Buyer shall within \*\*\* sign the preliminary acceptance certificate regarding the Contract equipments countersigned by the representative of the Seller. Such certificate shall be formulated in duplicate with the Seller and the Buyer holding one copy respectively. The Seller shall then still have obligations to seek proper measures with the Buyer so as to ensure that the Contract equipments may meet the guaranteed indexes.

10.8 In case the Contract equipments operate stably while the performance acceptance inspection should be delayed for over \*\*\* with fault of the Buyer, the Buyer shall then within \*\*\* sign the preliminary acceptance certificate regarding the Contract equipments countersigned by the Seller.

10.9 Whether the performance acceptance inspection regarding the Contract equipments is performed for once or twice, the Buyer shall after formulation and issuance of the preliminary acceptance certificate within \*\*\* when all claims have been settled issue a final acceptance certificate as per provisions of article 11.4.

10.10 The preliminary acceptance certificate issued by the Buyer as per provisions of article 10.4 and article 10.7 only proves that the performance and parameters regarding the Contract equipments as provided by the Seller can be accepted as per requirements of the Contract as of the time of issuance of the preliminary acceptance certificate and shall not be regarded as an evidence for exemption of any responsibility of the Seller for any potential defect of the Contract equipments. As such, the final acceptance certificate can not be regarded as an evidence for exemption of any responsibility of the Seller for any potential defect of the Contract equipments. Potential

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

defect provided herein shall refer to any defect can not be discovered in the process of manufacturing, trial ran and performance acceptance inspections. In case any of such defects should be discovered, the Seller shall repair or replace as per provisions of article 6.8 and article 11.3.1 of the Contract.

10.11 At any time during the performance of the Contract when the Seller asks for any inspection, test, re-test, repairing or replacing for any failure with fault of the Seller, the Buyer shall properly arrange works so as to coordinate with the Seller in doing such works as aforesaid. The Seller shall then be responsible for any and all expenses for repairing or replacing as well as for personnel of the Seller so incurred. In case any rework should be caused by the Seller who entrusts construction personnel of the Buyer to process and/or repair and/or replace equipments, or caused by mistakes of designing drawings (other than those provided by its designing institution(s)) provided by the Seller or improper instructions of technicians of the Seller, the Seller shall pay to the Buyer with a payment according to the formula provided below: (any and all expenses shall be calculated as per the rate when the expenses incurred)

\*\*\*

## **11. Warranty and claim**

11.1 Quality warranty period or Warranty period refers to a period lasting for \*\*\* commencing from the date of preliminary signing and issuing of acceptance certificate or a period lasting for \*\*\* commencing from the date of the last delivery of equipments (whichever is earlier). However, the Warranty period shall as per provisions of article 11.6 and article 11.8 of the Contract be extended accordingly. Particulars of the Warranty period shall be implemented as per relevant provisions of the Contract.

11.2 The Seller hereby undertakes that the Contract equipments are of up to the moment, being latest and mature in technology which employs the first class workmanship and materials, excellent in quality, safe and reliable in type selection of equipments, economical in operation and convenient in maintenance. The Seller shall ensure the completeness, integrity, correctness and accuracy of technical data as may be provided complete with attachments to the Contract and such technical data are able to meet the requirements of design, installation, commissioning, operation and maintenance of the Contract equipments.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

11.3.1 During the period of performance of the Contract, in case any defect in the equipments or any misstate in the technical data as provided by the Seller should be discovered, or any reworking and/or out-of-use due improper instruction or omission of technicians of the Seller, the Seller shall without delay replace or repair them for free and indemnify the Buyer for any and all losses so incurred. In case of replacement or repairing, the Seller shall assume any and all expenses so caused and the Seller shall within \*\*\* upon being proved to be the fault of the Seller replace or repair them.

11.3.2 In case any damage in any equipment should be caused by improper operation, installation and/or commissioning by the Buyer who fails to follow requirements of the technical data, drawings, specifications and instructions of onsite technical service personnel of the Seller, the Buyer shall be responsible for repairing and/or replacing such equipments, provided that the Seller shall as soon as possible provide such spare parts as may be needed and for any emergent spare part requested by the Buyer, the Seller shall arrange the fastest way of transportation. Any and all expenses so incurred shall be borne by the Buyer.

11.4 When the Warranty period expires, the Buyer shall within \*\*\* submit the Seller with a final acceptance certificate regarding expiration of the Contract equipments, provided that during this period the Seller shall complete any and all claims and/or compensation as may be lodged by the Buyer prior to expiry of the Warranty period. Notwithstanding such provisions, the Seller shall not be responsible for any loss arising from any improper maintenance and/or erroneous operation and/or normal depreciation.

11.5 During the Warranty period, in case any defect in the equipments should be discovered yet such defects not conform to provisions of the Contract but with fault of the Seller, the Buyer shall have right to lodge a claim against the Seller. Should the Seller have any discrepancy upon a claim so lodged, such case shall be handled as per provisions of article 9.2.4. Otherwise, the Seller shall upon receipt of claim documents from the Buyer immediately and gratuitously repair, replace or entrust the Buyer to arrange a major overhaul and indemnify the Buyer accordingly.

11.6 In case any stoppage of Contract equipments or deferred installation should be caused by replacement or repairing of equipments with defects with fault of the Seller, the Warranty period shall then be extended accordingly with extended period equivalent to the time so deferred.

11.7 In case the equipments without fault of the Buyer fail to reach one or several warranted indexes as provided in Attachment I hereof in the secondary acceptance tests, the Seller shall be liable for any and all responsibilities specified in article 15 of the Contract.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

11.8 In case during the Warranty period any defect in the Contract equipments should be discovered with fault of the Seller, the Quality warranty period of such equipment shall be recommenced after elimination of such defects.

## **12. Insurance**

12.1 The Seller shall for the purpose of the Contract equipments as per transportation methods such as water carriage, land carriage and air transportation take transportation all risks policy with an insured amount as \*\*\* of prices of delivered Contract equipments in favor of the Seller and the Buyer, and the insured zone shall be from the warehouses of the Seller to the site for delivery of equipments.

## **13. Expenses of taxation**

13.1 Any and all expenses of taxation relating to the Contract to be paid by the Seller as per provisions of relevant laws, regulations and rules on expenses of taxation shall be borne by the Seller.

13.2 Contract price includes tax. Any and all expenses of taxation of any and all equipments, technical data, service, transportation, insurance, imported equipments/spare parts, etc. shall be covered by the Contract price and shall be borne by the Seller.

## **14. Outsourcing**

14.1 The Seller shall independently manufacture any and all components within goods supplying scope and in case the Seller needs subcontract or outsourcing, the Seller shall with regard to the specific contents and scale of proposed subcontract and outsourcing acquire consent of the Buyer in advance.

14.2 When such consent of the Buyer has been obtained, the Seller shall prior to negotiations with its subcontractors submit a roll call regarding the subcontractors for such portion of equipments/components complete with materials regarding qualification of the subcontractors to the Buyer, and the Buyer shall upon receipt of such documents as submitted by the Seller verify the same within \*\*\* and in case of any discrepancy, the Buyer shall replay in writing.

14.3 Any and all technical services and/or technical coordination for the outsourced equipments/components shall be handled as per provisions of article 8.10, article 8.11 and article 8.12.

14.4 The Seller shall with regard to the outsourced equipments and/or components be liable for any and all responsibilities under the Contract.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

## 15 Modification, amendment and termination of Contract

15.1 After taking effect of the Contract, each party hereto shall not out of its own discretion modify any content (including attachments hereof) of the Contract. Nonetheless, any party may with regard to any content of the Contract propose for any modification, amendment, cancellation and/or supplementation. Such proposal shall be made in a written form to the other party. In case any change to be made should involve Contract price and delivery schedule, proposal for such change shall at the same time specify clear such particulars as may be involved in Contract price and/or delivery schedule. Such change shall be agreed by both parties and signed by legal representatives or authorized agents (subject to be authorized by the legal representative in writing) of the parties before taking effect.

15.2 In case of any of the following circumstances, the Buyer shall be entitled to terminate the Contract:

- (1) the Seller fails to as per provisions of the Contract provide performance security or performance guarantee;
- (2) equipments with fault of the Seller fail to reach the major performance guarantee indexes provided in Attachment I to the Contract in the secondary performance tests as previously provided in article 10.7;
- (3) delivery of equipments by the Seller more than \*\*\* overdue or delivery of technical data and/or supplying of technical service more than \*\*\* overdue;
- (4) as to any other breaches by the Seller, the Seller fails to rectify such breaches within \*\*\* upon receipt of a notification signifying the same from the Buyer as per requirements of the Buyer;
- (5) any inaccuracy or falsehood should be discovered in any part of the bidding documents submitted by the Seller or in the event that the Business license of the Seller or such license for production of equipments and/or components under the Contract should be revoked or the Seller breaches provisions of any other contract as may be entered into by and between the Seller and the Buyer; and
- (6) such any other circumstances as legally regulated.

15.3 In case the Seller becomes bankruptcy, involves any change of property right (such as merger, recombination, disorganization, cancellation, etc.) or insolvency, or for rights and interests of the Seller's creditor(s) operates businesses under bankruptcy, the Buyer shall be entitled to terminate the Contract immediately upon a notification to the Seller or the bankruptcy & liquidation management party or the owner of the Contract or negotiate with such bankruptcy management party, liquidating party or the owner of the Contract as per the practical conditions and perform some parts of the Contract agreed by the Buyer.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



## 16. Liability for breach of Contract

16.1 If any deferred delivery of equipments shall be with fault of the Seller, such fact shall constitute a breach of the Contract and the Seller shall indemnify the Buyer for any and all loss so incurred, namely, \*\*\* and the days so delayed shall be calculated as of the date of delivery requested by the Buyer up to date of delivery of qualified equipments to such destination as may be designated by the Buyer. In case the Seller should fail to delivery equipments for \*\*\* overdue, the Buyer shall be entitled to terminate the Contract and request the Seller to pay the Buyer with a default penalty. In case the accumulated default penalty should be less than \*\*\*, the Seller shall pay the Buyer with a default penalty equivalent to \*\*\*.

16.2 In case the Seller fails to as per provisions of the Attachment I and Attachment III deliver technical data for design and for construction works on schedule, the Seller shall for each \*\*\* overdue pay the Buyer with a default penalty as \*\*\* for each batch of delivery of equipments and the delayed time shall be calculated as per provisions of article 6.11.

16.3 In case the Seller expressly makes clear or the Seller's actions indicate that the Seller will not perform its obligations under the Contract, the Buyer may before expiry of the Contract request the Seller to assume relevant liabilities for breach of Contract and the Seller shall pay the Buyer with a default penalty as \*\*\*.

16.4 In case the Buyer should fail to make payment on schedule with fault of the Buyer, such fact shall constitute a breach of the Contract and the Buyer shall indemnify the Seller for any and all loss so incurred, namely, \*\*\*. The Delivery period shall be extended accordingly and the days so delayed shall be calculated as of the date as provided by the Contract up to date of payment of such sum to such accounts as may be designated by the Seller, In case the Buyer should fail to make such payment for \*\*\* overdue, the Seller shall be entitled to terminate the Contract and request the Seller to pay to the Seller with a default penalty. In case the accumulated default penalty should be less than \*\*\*, the Buyer shall pay to the Seller with a default penalty equivalent to \*\*\*.

16.5 In case the Buyer should fail to provide relevant drawings as per provisions of the Contract, the delivery period for equipments shall be extended accordingly.

16.6 In case without the fault of the Seller the Buyer expressly make clear that the Buyer will not perform its obligations under the Contract, the Seller may before expiry of the Contract request the Buyer to assume relevant liabilities for breach of Contract and the Buyer shall pay to the Seller with a default penalty as \*\*\*.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

## **17. Force majeure**

17.1 An event of force majeure refers to severe natural disaster and catastrophe (such as typhoon, flood, seism, fire, explosion, etc.), war (declared or undeclared), riot, turmoil, etc. In case any party hereto should be prevented from performance of obligations of the Contract by and event of force majeure, the period for performance of the Contract shall be extended accordingly with the extended period equivalent to the period delayed by the event of force majeure, provided that the Contract price shall not be adjusted due to such an event of force majeure.

17.2 The party being affected by an event of force majeure shall upon getting informed of the event of force majeure so notify the other party in the manner of facsimile or cable without delay and shall within \*\*\* submit such certificate proving such an event of force majeure as may be issued by a competent authority to the other party for verification. The party being affected shall out of due care and diligence take all measures as may be necessary so as to minimize such adverse effects and delay as may be caused by such an event of force majeure and upon elimination of such adverse effects caused by the event of force majeure so notify the other party without delay.

17.3 In case the adverse effect of such an event of force majeure should be forecasted to last for more than \*\*\*, the parties shall through friendly negotiations settle issues relating to performance of the Contract, including but not limited to delivery of equipments, installation, pilot run and acceptance.

## **18. Settlement of dispute**

18.1 Any and all disputes arising out of performance of the Contract shall be settled through amicable consultations by the parties to each other and in case no agreement can be reached, the parties hereby agree that any party may submit the case to Zhengzhou Arbitration Commission to be arbitrated by the same as per then valid arbitration rules.

18.2 Unless otherwise specified by such arbitration award, any and all expenses so incurred shall be borne by the losing party.

18.3 During the period of arbitration, the Contract shall continue being performed except for the issue under arbitration.

## **19. Effectiveness of Contract**

19.1 The Contract shall come into force upon being signed and sealed by legal representatives or authorized agent (subject to be authorized by the legal representative in writing) of the parties.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

## **20. Miscellaneous**

20.1 The Contract shall apply to the laws of the People's Republic of China.

20.2 Any and all attachments hereof shall constitute an integral part of the Contract and shall be equally authentic with the Contract. In case there is any discrepancy between such attachments with the Contract, the Contract shall prevail. In case of anything not covered herein, refer to the bidding invitation documents and their supplementary prepared by the Buyer for purchasing of equipments and the tender documents and their supplementary as submitted by the Seller. In case of any discrepancy between such bidding invitation documents with the tender documents, the bidding invitation documents shall prevail.

20.3 Obligations of each party under the Contract shall not exceed the range of the Contract and no party may make any declaration, statement, promise or action restricting the other party.

20.4 The Contract has set forth and made clear all terms and conditions covering responsibilities, obligations, compensations and relieves and no party shall bear any responsibility, obligation, compensation and/or relief not provided herein.

20.5 No party shall without prior consent of the other party assign its obligations under the Contract to any third party, in part or in whole.

20.6 Any and all documents and/or data mutually provided between the parties shall not be provided to any third party having not concern with the Contract equipments, the Project and related projects other than for the purposes of performance of the Contract.

20.7 Each party shall appoint a second authorized representative who shall be responsible for directly handle technical and business issues of the "Contract equipment". Names and addresses of the authorized representatives of the parties respectively shall be made clear to the other party upon taking effect of the Contract.

20.8 As to any and all correspondences, notifications and requirements from one party to the other party, in case they are formally prepared and served by a dedicated person or in the manner of a registered mail, air mail, cable, facsimile or telegraph, they shall be deemed to have been formally received by the other party when receiving a confirmation signifying receiving by any personnel and/or communication facilities from such other party.

20.9 The Contract has two originals and four copies, with each party holding one original and two copies.

---

Addresses of the parties hereto are provided as follows;

The Buyer: Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.

Tel: 0516-85868888 - 6668, 6667

Fax: 0516-83152982

Address: Northern side of No. 310 National Highway, Economic Development Zone,  
Xuzhou

Contact: Su Yiyao

Opening bank: Bank of Jiangsu (Xuanwu sub-branch of Xuzhou)

Account number:\*\*\*

Zip code: 221131

Registration number of taxpayer: \*\*\*

The Seller: Xi' an Nuclear Equipment Co., Ltd.

Tel: 029-86158048/86158045

Cell phone: \*\*\*

Fax: 029-86158054

Address: 5 Weibin Street, Xujiawan, Northern Suburb of Xi' an City

Contact: Wang Wenquan/Yue Wei

Opening bank: Industrial and Commercial Bank of China (Southern Avenue  
Sub-branch of Xi' an)

Account number:\*\*\*

Zip code: 710021

Registration number of taxpayer: \*\*\*

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED  
SEPARATELY WITH THE COMMISSION.

---

**Page for signature and seal**

**Buyer:**

Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.

(Sealed)

Signature of authorized representative:

**Seller:**

Xi'an Nuclear Equipment Co., Ltd.

(Sealed)

Signature of authorized representative:

Special Seal for Contract (seal)

---

## Confidentiality Agreement

Party A: Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.

Party B: Xi'an Nuclear Equipment Co., Ltd.

Whereas:

In "Bidding regarding to Polysilicon Project Reactors (\*\* electrodes design)" (hereinafter referred to as the "Cooperation") between Party A and Party B, either party (the "Supplying party") may to some extent disclose to the other party (the "Receiving party") with confidential information, technical data and other information (hereinafter referred to as the "Confidential information"). The Agreement is hereby concluded by and between Party A and Party B as follows with respect to the above-mentioned information disclosing:

Article I. Receiving party shall keep strict confidentiality of any and all Confidential information as may be provided by the Supplying party and without express written consent of the Supplying party the Receiving party shall not disclose such confidential information to any personnel, in part or in whole.

Article II. Confidential information here shall cover any and all correspondents, memos, abstracts, research reports, models, information summaries and records as may be made by the parties to each other for the purposes of equipments for Reactor (\*\* electrodes design) and shall also include any and all copies relating to equipments for Reactors (\*\* electrodes design) together with any and all other copies concerned, regardless the carriers, in written, electronic version, disc or audiovisual materials or any other forms. Contents of Confidential information include but not limited to:

- (a) Management secrete: including without limitation to financial data, personnel data, salary and remuneration data;
- (b) Production secrete: including without limitation to production scale, channels, sources and prices of equipments, production mode, quality and quantity of raw materials, production costs of products, prices of products, etc.
- (c) Marketing secrete: including without limitation to selling channels of products, data on clients, selling prices, places, quantities and modes of products.
- (d) Operating secrete: including without limitation to corporate operation principles, investment decision-making intentions, market analysis data, market promoting methods, and financing schemes.
- (e) Technology secrete: including without limitation to project design, drawings, workmanship, technical data, researching achievements, patent data, and computer programs.

- (f) Cooperation secrete: including without limitation to contents, processes of the Cooperation complete with any and all intentions made or to be made, history records and other information pertaining to the Cooperation.
- (g) Other secrete: including without limitation to any and all papers, physical materials, discs & CD, magnetic tapes, instruments and any other information of any carrier as well as any information made orally.

Article III. Confidential information provided herein shall not include those in the public domain, those obtained by the Receiving party from the Supplying party and/or any agent of the Supplying party before the Receiving party having any confidentiality obligation for the Supplying party and any agent of the Supplying party, and those acquired from any third party entering into any confidentiality agreement with the Supplying party and any agent of the Supplying party or from any personnel having no confidentiality obligation for the Supplying party and any agent of the Supplying party.

Article IV. Without prior written consent from the Supplying party, the Receiving party shall not disclose or use any confidential information for any purpose other than for the Agreement in part or in whole.

Article V. Without prior written consent from the Supplying party, either party hereto shall not with regard to the Agreement and the Cooperation under the Agreement makes any public statement or conducts any communication with any third party in any form.

Notwithstanding the previous provisions, under any of the following circumstances and within the scope provided below, provisions of this article shall not set any obstacle against either party hereto from obtaining confidential information from the other party: 1) disclosing any and all confidential information to any professional consultant and/or auditors of the party, 2) disclosing any and all confidential information to the existing and/or potential shareholders, partners, equity investors, money lenders or financing parties, or any professional consultants of such personnel as aforesaid; and 3) disclosing any and all confidential information to any employee who needs to be get informed of such confidential information, provided that they shall use such confidential information as come to them within the specified scope and for the prescribed purposes.

Nonetheless, if either party hereto needs to disclose any confidential information for any purpose as aforesaid, such party shall enter into a confidentiality agreement with the disclosed party and shall undertake to bear any and all obligations equivalent with those for the Receiving party under the Agreement. The contents of any and all agreements so executed shall be agreed by the Supplying party in a written form and after such execution, provide the Supplying party with a copy of the agreement so executed. Otherwise, the Receiving party shall be deemed to breach the agreement.

Article VI. If any party hereto fails to perform any of its obligations under the agreement, the observant party may exercise the right to recourse for any and all of its direct and indirect losses, namely, civil remedy as may be granted by any competent authority for breach of fiduciary duty, confidentiality provisions, contract, legal obligations and any other provisions. In case the loss of the observant party can not be calculated in details, the default party shall pay to the observant party with a default penalty totaling RMB\*\*\* for each beach.

Article VII. Any party hereto may out of its own discretion at any time cease proving confidential information to the other party. When the Agreement should be terminated by the parties, any and all confidential information (within \*\*\* upon receipt of a notification signifying such termination) shall be returned to the Supplying party and any and all confidential information retained shall be destroyed and so notify the other party. Such termination shall not affect the performance of any other obligations of the parties under the Agreement.

Article VIII. In case any provisions of any applicable laws or any competent authority compulsively directs or asks the Receiving party to disclose any confidential information or any part of such confidential information, or to copy, reproduce or use such data or information in any other forms, the abovementioned provisions shall not restrict the Receiving party in doing so. If possible, however, the Receiving party shall provide a complete description regarding those so disclosed to the Supplying party and shall seek the ever possible measures so as to keep confidentiality of such information so disclosed. If possible, provide an opportunity for the Supplying party so that the same may with regard to the extent of such confidential information to be disclosed with relevant authorities.

Article IX. The Agreement shall be governed and interpreted by laws of the People' s Republic of China. In case of any discrepancy relating to or not relating to the Agreement, the parties hereto shall settle such discrepancies through amicable consultations. Should any dispute occurred due to performance of the Agreement or in connection with the Agreement not be solved within \*\*\* after occurrence, the case in dispute shall be submitted to and arbitrated by China International Economic and Trade Arbitration Commission in Beijing and the losing party shall perform arbitration awards and bear the expenses for such arbitration.

Article X. Any and all obligations under the Agreement shall continue binding upon both parties within \*\*\* after completion of performance of the Agreement or after declaration of invalidity of the Agreement or after recession or termination of the Agreement.

Article XI. Within \*\*\* upon execution of the Agreement, each party hereto shall not for the purpose of the Cooperation provided herein contact, communicate, negotiate with, reach agreement with or accord with any third party (whether individual or economic equity) or otherwise express intentions regarding the Cooperation provided herein, provided that such restriction shall not include any

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



---

party hereto discussing with any of its legal or economic consultant or auditor about the Cooperation. Obligations provide in this article complete with other obligations under the Agreement shall constitute an integral part of each party' s obligations under the Agreement.

Article XII. Xi' an Nuclear Equipment Co., Ltd. shall prior to undertaking reduction furnaces of other companies notify Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. If demand on equipments of Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. is able to meet production capacity of Xi' an Nuclear Equipment Co., Ltd., Xi' an Nuclear Equipment Co., Ltd. shall not undertake reactors of other companies. If demand on equipments of Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. is unable to meet production capacity of Xi' an Nuclear Equipment Co., Ltd., Xi' an Nuclear Equipment Co., Ltd. may undertake reactors of other companies.

Party A: (Sealed) Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.

Authorized representative: (Sealed)

Date:

Party B: Xi' an Nuclear Equipment Co., Ltd.

Authorized representative: (Sealed)

Date:

Special Seal for Contract (seal)

**Quotation List on Equipments for Polysilicon Project of Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd**

Unit price: RMB\*\*\*

Name and stage number of equipments					Expenses for materials for single machine			Expenses	Profit	Taxation	Freight	Total price
	Drawing	Specification	Main	Quantity	Expenses	For		processing	for	from		
	No.	(mm)	material	(piece)	for main materials	auxiliary materials	Outsourcing	for single machine	single machine	single machine	of single machine	
*** Reactors (electrodes design)	***	***	***	***	***	***	***	***	***	***	***	***

Totaling RMB\*\*\* (including RMB\*\*\* for freight)

- Note: 1. quotations are made according to construction drawings;  
 2. Quotations shall include expenses for designing works;  
 3. Prices are adjusted due to higher prices of materials;  
 4. Effective period of this quotation is seven days.

Xi'an Nuclear Equipment Co., Ltd.  
 Special Seal for Contract (seal)

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd Sales Contract for Reactors (\*\* electrodes design)

**Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd**

**Phase II 1500ton/year Polysilicon Project**

**Sales Contract**

**for**

**[Reactors (\*\* electrodes design)]**

Buyer: Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd

Seller: Kaiyuan Chemical Industry Machine Co., Ltd.

Contract No.: JSZN2175

## Content

<b>1 Definition</b>	3
<b>2. Subject matter</b>	5
<b>3. Scope of provision</b>	6
<b>4. Contract price</b>	6
<b>5. Payment</b>	7
<b>6. Delivery and transportation</b>	8
<b>7. Packing and mark</b>	10
<b>8. Technical service and liaison</b>	13
<b>9. Quality supervision and inspection</b>	14
<b>10. Installation, commissioning, single machine trial run, combined test run with water, feed and trial, and acceptance</b>	17
<b>11. Warranty and claim</b>	20
<b>12. Insurance</b>	22
<b>13. Expenses of taxation</b>	22
<b>14. Outsourcing</b>	22
<b>15. Modification, amendment and termination of Contract</b>	23
<b>16. Liability for breach of Contract</b>	24

<b>17. Force majeure</b>	25
<b>18. Settlement of dispute</b>	25
<b>19. Effectiveness of Contract</b>	25
<b>20. Miscellaneous</b>	26
<b>Page for signature and seal</b>	28

Attachment I Technology Agreement

Attachment II Break-down Price List

Attachment III Confidentiality Agreement

## Sales Contract

The contract is concluded by the two parties as follows on 29 January 2008 in Xuzhou.

Jiangsu Zhongneng Polysilicon Development Co., Ltd (Buyer), with legal address at Northern side of 310 State Highway, Economic Developing Zone, Xuzhou City.

Kaiyuan Chemical Industry Machine Co., Ltd. (Seller), with legal address at 33 Xingdong Road, Kaiyuan City, Liaoning Province.

To fulfill phase II supply and relevant technical service obligation for reactors (\*\* electrodes design), spare parts and components, and special tools of Jiangsu Zhongneng Polysilicon Development Co., Ltd, Buyer will purchase from the Seller, and the Seller will sell the Buyer equipments listed hereunder (including attachments) and supply with technical service, technical materials, spare parts and components and special tools, etc as stipulated herein. Therefore, bound by law and in line with provisions of existing laws and regulations of China, both parties agree to conclude the following articles.

### 1 Definition

Meaning of following words in the contract and attachments are defined as bellows.

- 1.1 The “Buyer” refers to Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd, including agent, successor and consignee of the legal person.
- 1.2 The “Seller” refers to Kaiyuan Chemical Industry Machine Co., Ltd., including agent, successor and consignee of the legal person.
- 1.3 “Contract” refers to all parts contained in the contract and attachments.
- 1.4 “Contract price” refers to provision described in Article 4 hereof.
- 1.5 “Effective date” refers to effective date described in Article 18 hereof.
- 1.6 “Technical materials” refers to design, manufacture, manufacturing supervision, inspection, installation, commissioning, checking and acceptance, performance test and technical guidance relating to contract equipments and the project, requiring documents (including drawing, explanations, standard, statement and manual, various software, etc.) applied in project operation and maintenance as specified in Attachment I hereof.

- 
- 1.7 “Contract equipment(s)” refers to machines, equipments, materials, special tools, spare parts and components and various goods, detailed content and requirements are listed and prescribed in Attachment I hereof.
- 1.8 “Manufacturing supervision” refers to the buyer itself assigns (or entrust the qualified Manufacturing Supervision Unit to assign) representative to supervise quality of key parts of contract equipments supplied by the seller, implements documentation validation and field validation. The quality supervision will not relieve the responsibility of the Seller upon quality of contract equipment.
- 1.9 “Performance acceptance test” refers to test carried out as per provisions of attachment I hereof to test the performance guarantee value as specified in attachment I hereof.
- 1.10 “Preliminary inspection and acceptance” refers to the joint inspection and acceptance carried out by the Buyer upon each set of equipment when the result of performance acceptance test shows that equipment has reached the guarantee value provided in attachment I hereof.
- 1.11 “Final inspection and acceptance” refers to inspection and acceptance by the Buyer regarding each set of contract equipment upon expiration of guarantee period.
- 1.12 “Day, month and year” refers to day, month and year of the Gregorian calendar; each “day” refers to 24 hours, while “week” refers to 7 days.
- 1.13 “Project” refers to the Phase II 1,500t/y polysilicon project by Jiangsu Zhongneng Silicon Technology Development Co., Ltd.
- 1.14 “Technical service” refers to the full-process service of technical instruction, cooperation and training etc. with respect to engineering design, equipment manufacturing supervision, inspection, civil work, installation, commissioning, inspection and acceptance, performance acceptance test, running and repair related to the contract equipment and furnished by the Seller.
- 1.15 “Site” refers to the location for installing contract equipment for the Buyer to the north part of No. 310 National Highway through Jiangsu Xuzhou Economic & Technical Development Zone.
- 1.16 “Spare parts and components” refers to spare parts for equipment provided as per the Contract, including accompanying spare parts and components as well as spare parts and components sufficient for \*\*\* running of the equipment (detailed amount shall be subject to technical agreement).

- 1.17 “Single unit trial running”, “water inter-linkage” and “loaded trial running” refers to single unit trial running, water inter-linkage and loaded trial running in accordance with relevant state standard and any modification thereof.
- 1.18 “Project” refers to Phase II 1,500t/y polysilicon project by Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.
- 1.19 “Written document” refers to any manuscript, printed document or typed document or document bearing seal and/or signature.
- 1.20 “Subcontractor” or “Sub-supplier” refers to any legal person or any successor thereof to which the Seller subcontract any part of goods supply within the scope as specified in the Contract.
- 1.21 “The Last batch of delivery” refers to that after the batch of delivery, the total value of the delivered contract equipment would amount to over 98% of contract equipment price, and the rest undelivered equipments would not influence the installation, commissioning,, single unit trial running, water inter-linkage, loaded trial running and performance acceptance test of contract equipment.
- 1.22 “Equipment fault” refers to condition when the contract equipment (incl. parts, raw materials, cast and forged parts, original parts etc) cannot meet the performance and quality criterion provided in the Contract and/or cannot satisfy the requirement of project stability, reliability, safety and economic operation.

## **2. Subject matter**

Equipment ordered against the Contract will be used by Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. The Seller shall provide equipment, technical materials and service etc. to the Buyer as per the prescribed conditions and time hereof.

### **2.1 Equipment name, type and quantity**

Equipment name: Reactors (\*\*\*) electrodes design)

Equipment type: see attachment I.

Quantity: \*\*\*)

### **2.2 Equipment provided by the Seller shall be brand-new, technologically advanced, mature and reliable.**

2.3 See technical agreement (which is Attachment I hereof) for technical spec., technology, economic indicator and performance of the equipment, technical material and technical service provided by the Seller etc. The Seller shall submit the drawing to the design institute for adjustment and management prior to the middle of February.



2.4 Where it's deemed necessary by the Buyer, the Seller shall dispatch appropriate, experience, healthy and capable staff to provide technical service to ensure the correct installation, commissioning, maintenance and operation of contract equipment, and staff dispatched thereby to site shall comply with safety management agreement signed by the parties, which is related to the Contract.

2.5 The Seller shall provide accompanying spare parts and components to the Buyer as provided in the Contract and prepare spare parts and components as provided in Article 3 hereof; in addition, where required by the Buyer, the Seller shall repair equipment as provided herein.

2.6 During the term of the Project, the Seller shall provide any new operation experience and info obtained to the Buyer for free and inform the Buyer any confirmed improvement in terms of technology and safety, if the same is applicable to the equipment.

2.7 Special tools provided by the Seller shall meet requirements in terms of transportation, storage, protection, lifting, installation, commissioning and maintenance of equipment on site.

2.8 The Seller shall perform its other responsibilities and duties otherwise provided hereunder.

### **3. Scope of provision**

3.1 See attachment I for the scope of provision hereof.

3.2 Both parties hereto agree that the scope of provision shall be subject to attachment I, which has included all contract equipment, technical materials (as-built drawing, general assembly drawing, instruction, qualification certificate, material list and list of spare parts etc.), special tools, spare parts and components and technical service (training included). However, in case of any omission and shortage during contract performance which is not listed in the delivery list and proven to be included in the scope of goods supply, or which is necessary to meet the performance guarantee value with respect to contract equipment in attachment I, the same shall be supplemented by the Seller under the requirement of the Buyer for any deficient equipment, technical material, special tool, spare parts and components etc. without any additional cost to the Buyer.

### **4. Contract price**

4.1 The contract price, namely the total contract price, is RMB\*\*\* million. The Contract price include expenses of contract equipment (incl. spare parts and components), technical material and technical service etc, tax, packing cost, freight and miscellaneous fees and premium relating to the contract equipment etc.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

4.2 See attachment II for break-down price of the total contract price; in case of any conflict between the total contract price and the sum of break-down price, the total contract price shall prevail. The total contract price shall remain unchanged during the effective contract term.

4.3 The Seller agreed to provide spare parts and components required to meet various indicators provided in attachment I hereof to the Buyer within \*\*\* upon the effectiveness of the Contract based upon the following conditions:

4.4 Price shall be subject to attachment II; in case relevant price is unavailable in attachment II, market price of the spare parts and components at the time when the Contract comes into effect shall be applied.

4.5 Time of goods supply: upon the signature of the Contract, the Seller shall ensure to deliver goods from \*\*\* upon receiving advance payment, and deliver all equipment to the project site of the Buyer prior to \*\*\*.

4.6 Other articles shall be subject to the friendly negotiation of both parties hereto.

## **5. Payment**

5.1 The currency applied in the Contract shall be RMB.

5.2 Term of payment: T/T

5.3 Payment

5.3.1 Advance Payment

The Buyer shall pay \*\*\* of the total contract price as advance payment to the Seller within \*\*\* upon the contract conclusion, and the Seller shall provide receipt of the payment (one original and four photocopies).

5.3.2 Delivery Payment

After the Buyer receives the delivery notice and a receipt from the Seller in the amount of \*\*\* total contract price, the Buyer shall pay the Seller \*\*\* of the total contract price. Seller shall ensure that an VAT invoice in the amount equivalent to 100% of the total contract price will be delivered to Xuzhou warehouse simultaneously with the goods (the information recited in the invoice shall conform with the goods and the name set forth in the delivery notice).

5.3.3 Payment of inspection & acceptance sum

After goods have been delivered and all equipments of the Seller have been tested to be qualified, Buyer shall pay Seller \*\*\* of the total contract price as examination fees within \*\*\*. If the examination is conducted in installments, such fees shall be paid in the same installments. If the Buyer fails to examine in time, the examination of goods shall be deemed as completed upon expiry of \*\*\* after receipt of the goods.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

#### 5.3.4 Payment of quality guarantee fee

Remaining \*\*\* of the total contract price will be retained as quality guarantee fee, which will be paid within \*\*\* by the Buyer upon the expiry of the quality guarantee period of equipment. In the event of any quality problem, the Buyer shall be entitled to deduct the quality guarantee fee as provided hereto in case the quality problem as discovered is attributable to the Seller.

### 6. Delivery and transportation

6.1 Delivery term and sequence of contract equipment shall meet the requirement of project construction, equipment installation progress and sequence as well as the requirements in attachment III to ensure the project progress.

6.2 Delivery term, location and receiving unit

6.2.1 Delivery term: the Seller shall prior to \*\*\* deliver all goods to site of the Buyer, while any advance delivery prior to this date shall be subject to the written approval of the Buyer, or else all responsibilities and costs thus occurred shall be undertaken by the Seller.

6.2.2 Delivery location: the Buyer will be responsible for unloading under the direction of the Seller.

6.2.3 Receiving unit: Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd; Tel.: 0516-85868888-6668, 6667, fax: 0516-83152982

6.3 Within 30 days upon the effectiveness of the Contract, the Seller shall provide production arrangement plan to the Buyer as provided in attachment I of the Contract, including making the name of each batch of goods, primary delivery plan, list of overall goods and overall packing list under the Contract. \*\*\* before the commencement of goods delivery, the Seller shall inform the Buyer of the content provided in Article 6.6 by telex or fax ("delivery notice").

6.4 However, in case of any damage, deficiency, shortage or condition inconsistent with the specified quality standard and regulations in the Contract found after opening box, the delivery date of the batch of goods shall be subject to the date when the Seller corrects its noncompliance.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

6.5 The Seller shall go through the transportation tool plan required for delivering contract equipment to the carrier, be responsible for the transportation and insurance etc. of contract equipment from the Seller's premises to the delivery destination, including all expenses related therewith.

6.6 Upon the preparation of each batch of equipment and within \*\*\* from the dispatch of transportation vehicle, the Seller shall inform the Buyer of the following content by telex or fax:

- (1) Contract number;
  - (2) Equipment number;
  - (3) Preparation and dispatch date of equipment;
  - (4) Name, code and price of goods;
  - (5) Gross weight of goods;
  - (6) Total volume of goods;
  - (7) Total pieces packaged;
  - (8) Name of carrier, delivery station/port name, vehicle number/vessel number and packing number;
  - (9) Name, weight, volume and piece of each goods over \*\*\* in weight or over \*\*\* in dimension. For each piece of such equipment/part, the specific gravity and lifting position shall be marked, including sketch map thereof.
  - (10) For special articles (flammable, explosive and toxic articles and other hazardous substances, equipment or articles having special requirements on environmental elements like temperature etc. and vibration during transportation), name, nature, special protective measures, preservation manner and treatment of incidents etc. shall be specially marked.
- 6.7 For articles uncovered in attachment I and Attachment III (excl. spare parts and components listed in Article 4.4 hereof), the Seller shall deliver the same in combination with the project progress if required by the Buyer.
- 6.8 In case of any equipment (or parts) damage or potential equipment (parts) fault caused or existed by reason attributable to the Seller during the guarantee term, and which has been replaced by spare parts and components in storage, the Seller shall supplement the spare parts and components for free, deliver to the destination station/port designated within \*\*\* at the latest and inform the Buyer of it.
- 6.9 The Seller shall, subject to provision in attachment I and Attachment III, provide technical material meeting requirement of project design, supervision, construction, commissioning, test, inspection, training, operation and maintenance to the Buyer by 5 batches. The Seller shall, as per provision in attachment I attachment hereof, provide technical material for each set of equipment (one origin and four copies) as per attachment I. In addition, the Seller shall, within seven days upon the effectiveness of the Contract, list

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

the submission progress schedule of the above technical material (fundamental material provided in Article 8.1 is excluded) as per content of attachment I and regulation of attachment III for the examination of the Buyer, and make proper modification as required by the Buyer.

6.10 Technical material normally will be delivered by mail or express. Upon submitting technical material to postal office or express company, the Seller shall inform within \*\*\* the Buyer and the Project of the mailing date and mail sheet number for the technical material delivered, detailed list of technical material, pieces and pages, weight and contract number etc. in the form of fax or telex. Technical material shall be mailed to the address of the Buyer as provided in the Contract.

6.11 The date of the Buyer's onsite acceptance of documents shall be deemed as the actual delivery date of documents provided by the Seller. The date of delivery of final version of documents shall be deemed as the actual delivery date of relevant documents. Such delivery date may serve as a basis for calculating default penalty for any delayed delivery of documents. In case any insufficiency, missing or damage without any fault of the Buyer shall be discovered in any technical data when inspected by the representative of the Buyer or of the Seller, the Seller shall within \*\*\* (for emergent circumstance, within \*\*\*) upon receiving any notification signifying the same from the Buyer make up the insufficiency, the missing or the damaged for free. In case any insufficiency, missing or damage with fault of the Buyer should be discovered, the Seller shall within \*\*\* (for emergent circumstance, within \*\*\*) upon receiving any notification signifying the same from the Buyer make up the insufficiency, the missing or the damaged for free.

6.12 The Seller shall notify the Buyer of the delivery date in a written form \*\*\* in advance. The Buyer may send a representative or representatives to the factory of the Seller and to loading stations of the Seller to inspect packing quality and supervise loading conditions. In case such representatives of the Buyer fail to participate in such inspections on schedule, the Seller shall have right to dispatch the equipments. Inspections and/or supervisions of such representatives as aforesaid shall not exempt any responsibility of the Seller.

6.13 In case any of the equipments should be damaged or missing prior to delivery, the Seller shall as per provisions of article 11 of the Contract be responsible for repairing and/or replacing immediately. In case the Contract equipments should be damaged or missing during the course of transportation, the Seller shall be responsible for contacting the carrier and its insurance company and shall repair or make up the equipment for free so as to meet requirements of engineering progress.

## **7. Packing and mark**

7.1 Any and all equipments as may be delivered by the Seller shall have proper packing suitable for long-distance transportation,

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

multiple delivery and loading & unloading as per provisions of GB191-73 packing, storage and delivery instructions and marks as well as relevant provisions of competent national authorities. Packing materials provided by the Seller shall be able to keep goods sound and safe during the transportation, loading and unloading and shall be provided with measures relating to reducing vibration and anti-shock. In case such packing materials as to be provided by the Seller can not keep the equipments inside them safe and sound, the Seller shall settle relevant issues in the designing structures of the equipments. Packing shall be provided as per characteristics of equipments with protection measures regarding to anti-damp, mildew-proof, rust prevention and anti-corrosion, ensuring that the equipments may be delivered to the site without any damage and corrosion. Before packing, the Seller shall inspect and clean the equipments as per the whole set of equipments, making sure that no residual remains and ensuring the completeness of components and spare parts.

7.2 The Seller shall mark clear the numbers of components and spare parts in the packing boxes and bales as per the assembly drawings.

7.3 The Seller shall on both sides of each packing box use fade-proof oil paint to print the following marks conspicuously in Chinese:

- (1) Contract number;
- (2) Destination station/port;
- (3) Consigner and consignee;
- (4) Name of equipments, equipment number, and drawing number;
- (5) Box number/bale number;
- (6) Gross weight/net weight (kg);
- (7) Volume (length \* width \* height, in mm)

For goods exceeding two tons (inclusive), the Seller shall on the side of the packing boxes mark the center of gravity and lifting point with proper signs and patterns as normally adopted for transportations for giving assistance to loading, unloading and handing. As per characteristics of goods and in line with requirements on loading & unloading and transportation, the packing boxes shall be clearly printed with “Handle with care”, “Keep upright” and/or “Caution against rain”, “Caution against damp”, etc.

7.4 As to nude pack goods, the Seller shall employ metal labels or directly mark relevant particulars as aforesaid. For large pieces, sufficient racks or stow woods shall be provided.

7.5 For each piece of packing box, detailed packing list and qualification certificate including names of equipments, quantity, price, equipment number, and drawing number shall be provided. For outsourced packing boxes, a factory qualification certificate and a specification shall be provided within them. Another two lists regarding packing boxes shall be mailed.

---

7.6 Spare parts and components set forth in Attachment I shall be respectively packed in sets and shall be made clear outside the packing boxes and shall be delivered for a single time.

7.7 Spare parts and components shall be packed respectively and marked with particulars as provided in article 7.2 and article 7.3. Special tools shall also be separately packed.

7.8 Loosened components of equipments of various kinds shall be properly packed in boxes with appropriate sizes and shall as possible be delivered for a single vehicle so as to reduce costs.

7.9 Grid type boxes and/or similar packing shall be properly packed and shall be able to prevent from being stolen and from being damaged by other articles or rainwater.

7.10 Any and all ports of any pipe, pipeline, valve and other equipments shall be protected by protection covers or be protected in any other method.

7.11 The Seller and/or any subcontractor of the Seller shall not employ a same box number to mark any two boxes.

7.12 As to any goods with clear and clean processing surfaces requiring for special packing, the processing surface shall be protected by employing excellent and durable protection layers (never employ oil paint) so as to prevent from rust and/or damage before installation.

7.13 Any and all technical data as to be delivered by the Seller to the Buyer shall employ such packing as may be able to suitable for long-distance transportation and with such functions like multiple deliveries, rainwater proof and damp proof.

The cover of each bale of technical data shall specify the following particulars:

- (1) Contract number;
- (2) Consignor and consignee;
- (3) Destination station/port;
- (4) Gross weight;
- (5) Box number/bale number.

Each bale of technical data shall be enclosed with two copies of lists in details, signifying the serial number, document number, name and pages.

7.14 In case goods should be damaged or missing due to improper packing of the Seller or improper storage, regardless of the time of

discovery, the Seller shall when confirmed repair, replace or indemnify as per the Contract. In case any goods should be damaged or missing during the course of transportation, the Seller shall be responsible for contacting with the carrier department or the insuring company; as such, the Seller shall as possible make up such goods so as to meet the requirements of construction works.

7.15 The Buyer shall within \*\*\* after checking out the equipments return dedicated railway packing boxes, packing racks, etc. to the Seller, at expenses of the Seller.

## **8. Technical service and liaison**

8.1 The Seller shall within \*\*\* upon taking effect of the Contract submit the Buyer in the manner of a mail with an organization plan for implementation of the service works stipulated in article 8.2 and shall make such organization plan in duplicate for verification by the Buyer who shall make relevant modifications as per requirements of the Buyer.

8.2 Details of expenses for technical liaison meeting, times, quorum and place are provided in Attachment I and the tender documents as submitted by the Seller (in case of any discrepancy between the two, provisions of the Attachment I shall prevail).

8.3 The Seller shall when necessary invite the Buyer to attend technical design of the Seller and explain issues relating to such technical design to the Buyer.

8.4 In case of any major issue requiring for immediate research and negotiations of the parties, any party may convene a meeting and the other party under normal circumstances shall attend the meeting.

8.5 As to each meeting and any other contact modes, the parties shall prepare conference summaries or liaison summaries and summaries so made shall be executed by the both parties. In case any clause of the Contract should be modified, such modification shall be approved by legal representatives or authorized representatives of the parties before taking effect.

8.6 The Buyer shall have right to distribute any and all data (supplied by the Seller) in connection with the Contract equipments to each party relating to the Project or work and such distributions shall not be deemed as an infringement or infringements, provided that the Buyer shall not supply the same to any third party without any connection with the Project or work.

8.7 As to any and all data affixed with words "Confidential documents", whether of the Buyer or of the Seller, the parties shall bear confidentiality responsibilities.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



8.8 Where any subcontractor of the Seller requests for any technical services regarding the Contract equipments or needs to conduct onsite works, the Seller shall be responsible for organization of such subcontractors at its own expenses with the content of the Buyer.

8.9 The Seller shall bear any and all responsibilities regarding supply of equipments (including subcontracting and outsourcing), equipment and technical interface, technical services, technical data, etc. If any designing drawings submitted by the designing institutions should have any mistake, the Seller shall not be held responsible.

8.10 As to other equipments & devices required for connection with the Contract equipments, the Seller shall be responsible for providing interfaces and technical cooperation and shall not make the Buyer bear any extra expense arisen therefrom other than the Contract price.

8.11 Any and all onsite technicians as may be appointed by the Seller shall be full of practical experiences and competent for works for the project. Roll call of such technicians shall be submitted to the Buyer within \*\*\* upon taking effect of the Contract for verification by the Seller.

Details regarding technical services are provided in Attachment I.

## **9 Quality supervision and inspection**

### **9.1 Quality supervision**

9.1.1 The Seller shall within \*\*\* upon taking effect of the Contract provide the Buyer with a list regarding standards on design, manufacturing and inspection of the Contract equipments. Standards on design, manufacturing and inspection shall comply with provisions of Attachment I hereof.

9.1.2 The Buyer shall entrust a competent supervision unit to conduct manufacturing supervision of equipments, inspections on manufacturing supervision and for equipments leaving factory, and to get to know conditions regarding equipments installation, inspection, trial run and packing quality of equipments and to sign for confirmation. Standards for manufacturing supervision and inspection shall be those set forth in Attachment I. The Seller shall coordinate with such works for manufacturing supervision and during the process of manufacturing supervision provide relevant data and standards without delay for free.

9.1.3 Details of range of manufacturing supervision and specific projects for manufacturing supervision inspection/witness are provided in Attachment I.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

9.1.4 The Seller shall provide the following items for the stationed representative and manufacturing supervision representative as may be entrusted by the Buyer:

9.1.4.1 At feeding for the Contract equipments, production plan for the whole set of equipments together with actual production schedule for each month and inspection plan for each month;

9.1.4.2 For 7 days in advance, contents regarding manufacturing supervision and schedule on inspections;

9.1.4.3 Standards (including factory standards), drawings, data and workmanship in connection with manufacturing supervision of the Contract equipments, and records on actual technological process and inspections (including interim inspection records and/or inconsistency reports) together with relevant documents and copies as provided in Attachment I (documents as provided shall not be reproduced at discretion or be taken away from the working site).

9.1.4.4 Conveniences relating to work and life of the manufacturing supervision representative.

9.1.5 Generally, manufacturing supervision inspection/witness (usually onsite witness) shall not affect the normal production process (excluding stoppage and inspection for any major failure discovered) of the plant, and shall be conducted by taking into consideration of the actual production process of the Seller's plant. In case the manufacturing supervision representative should fail to be presented at the site on schedule notified by the Seller, works for tests in the plants of the Seller may go on being conducted and conclusions of such tests shall be effective, provided that the manufacturing supervision representative shall be entitled to after that be informed of such tests, review and reproduce inspection reports and tests conclusions (namely, witness of documents).

9.1.6 In case the manufacturing supervision representative should during manufacturing supervision find out any quality problem or inconformity to standards or packing requirements, the manufacturing supervision representative shall have right to put forward suggestions and decline to make its signature temporarily. The Seller shall then take relevant improvement measures so as to ensure an excellent quality level of equipments to be delivered. Whether the manufacturing supervision representative requests or knows or not, the Seller shall have responsibility to actively and punctually notify the manufacturing supervision representative with any and all major quality defects and problems discovered during the course of manufacturing of the Contract equipments and shall not seek to conceal such issues, nor shall the Seller handle such issues at discretion without notifying the supervision unit.

9.1.7 Whether the manufacturing supervision representative participates in manufacturing supervision and/or leaving factory inspection, and/or the manufacturing supervision representative assists in manufacturing supervision and/or leaving factory inspection, when reports regarding manufacturing supervision and inspections have been signed, such facts shall not be deemed as an exemption of any responsibility regarding to quality warranty of the Seller as provided in the Contract, nor shall any responsibility for the Contract equipments of the Seller be released.

## 9.2 Factory inspection and onsite opening-box inspection

9.2.1 Any and all Contract equipments/components (including subcontracting and outsourcing) to be provided by the Seller shall during the period of manufacturing be strictly inspected and tested and any and all inspections, tests and assembly shall be formally recorded. Eligible equipments may be delivered out of the factory only when all works as aforesaid have been completed. Any and all recording documents so prepared complete with qualification certificate shall act as part of technical data be mailed to the Buyer for filing. As such, the Seller shall also along with accompanied documents provide qualification certificate and quality certificate documents.

9.2.2 The Buyer shall conduct opening-box inspections upon arrival of equipments and shall notify the Seller of the date for such opening-box inspections \*\*\* in advance. The Seller shall as per requirements specified in such notifications as may be served by the Buyer dispatch relevant inspection personnel to the site of the Buyer to attend such inspection works, inspecting the packing and extrinsic features as well as making clear the numbers as per waybill and packing list, together with specifications and quality. In case any discrepancy with fault of the Seller (as confirmed by representatives of both parties) should be discovered, such case shall be handled and settled by the Seller. The Buyer shall provide conveniences regarding work and life of the inspection personnel of the Seller. When the inspection personnel of the Seller fails to arrive at the site punctually, the Buyer shall have right to conduct opening-box inspections by itself. In such circumstances, any and all inspection conclusions as well as records shall be equally effective to both parties respectively and may serve as valid evidences for lodging any claims by the Buyer against the Seller. In case the Buyer fails to conduct inspections within \*\*\* after arrival of the equipments, the equipments shall be deemed to have passed inspections.

9.2.3 During onsite inspections, in case any damage, defect, insufficiency or inconformity in any equipment with fault of the Seller (including causes like improper transportation) should be discovered, such issues shall be recorded and shall be signed by the representatives of both parties respectively and each party shall hold one copy of such records which may serve as evidences for the Buyer to request for repairing and/or replacing and/or compensation against the Seller. In case the Seller entrusts the Buyer to repair any damaged equipment, expenses for repairing shall be borne by the Seller; in case any damage or insufficiency with fault of the Buyer should be spotted, the Seller shall upon receipt of a notification from the Buyer provide or replace relevant components without delay, at the Buyer's own expenses.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

9.2.4 In case the Seller should have any objection against any of the requirements regarding repairing, replacement and/or claim made by the Buyer, the Seller shall within \*\*\* upon receipt of a written notification signifying the same from the Buyer or within \*\*\* upon getting informed of such issues send representative(s) to the site of the Buyer to re-check, at expenses of the Seller itself; otherwise, the requirements as aforesaid shall take effect upon being made.

9.2.5 In case no consensus regarding inspection records should be reached by the parties in any joint inspections, the Buyer shall entrust a competent quality inspection institution to conduct such inspections. Inspection results so made shall be binding upon both parties and the expenses for such inspections shall be borne by the party with fault.

9.2.6 The Seller shall upon receipt of a claim lodged by the Buyer as per provisions of the article 9.2.2 to article 9.2.5 of the Contract shall repair, replace or make up the insufficiency as per provisions of article 9.2.7 without delay and any and all expenses so incurred regarding manufacturing, repairing and freight as well as insurance premium shall be borne by the responsible party. As to any of the claims, the Buyer may deduct an equivalent sum to the compensation payable from Seller against the performance guarantee or quality bond or the following payment.

9.2.7 The time for repairing or replacing of equipments or components with fault of the Seller shall not be later than \*\*\* with the principle of not affecting construction schedule after discovery of defects, damages or insufficiency; unless otherwise specified by the parties, the Buyer shall have right to handle such cases as per provisions of article 11.

9.2.8 The time for lodging claims regarding the specifications, models and quantity of equipments arrived shall not be later than \*\*\* after arrival of such equipments.

9.2.9 Any and all inspections as provided from article 9.2.1 to article 9.2.7 shall refer to onsite inspections of equipments arrived at the site. In case no problem should be discovered or the Seller has as per requirements of claims replaced or repaired, quality assurance responsibility of the Seller under the Contract shall not be deemed to be rescinded.

## **10. Installation, commissioning, single machine trial run, combined test run with water, feed and trial, and acceptance**

10.1 Installation, commissioning, single machine trial run, combined test run with water, feed and trial, operation and maintenance of

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

the Contract equipments shall be conducted by the Buyer as per the technical data, inspection standards, drawings and specifications. Onsite technicians of the Seller shall give instructions for works over the whole process of installation and commissioning and shall for key working processes sign their names so as to confirm (without due cause shall not decline signing their names). Details of key working processes are provided in Attachment I. During the process of installation and commissioning, in case the Buyer fails to follow instructions of the technical data and of onsite technicians of the Seller and any failure should occur, the Buyer shall be solely responsible for such failure (excluding any failure out of any defect in the equipments); in case any failure should occur when instructions of technical data and/or instructions of onsite technicians of the Seller has been followed or when the equipments having such failures have been confirmed by the onsite technicians of the Seller, the Seller shall be liable for responsibilities accordingly.

10.2 Works regarding acceptance and inspections of such equipments installed shall be conducted as per requirements of Attachment I.

10.3 The Seller shall upon completion of installation of Contract equipments send relevant personnel to the site of the Buyer for instruction works and shall settle any and all problems involving equipments without delay. The Seller shall conduct such works by basing on the principle of keeping all works on schedule and the time for doing such works shall not exceed \*\*\*; otherwise, it shall be treated as a delay of working period.

10.4 Acceptance inspections on performance of equipments shall be conducted as per requirements of Attachment I after completion of installation of all equipments for each complete set of equipments and such performance inspections shall be performed by the Buyer and shall be attended by the Seller. After completion of such inspections, if the Contract equipments reach the guaranteed indexes as provided in Attachment I, the Buyer shall within \*\*\* sign the preliminary acceptance certificate regarding the Contract equipments countersigned by the Seller and such certificate shall be made in duplicate with the Seller and the Buyer respectively holding one copy.

In case the Contract equipments fail to reach one guaranteed index or several guaranteed index provided in the Attachment I to the Contract, such circumstance shall be handled as per provisions of article 10.6 and article 11.7.

10.5 Basing on the precondition as not to affect safe and reliable operation of the Contract equipments, in case any minor defect should be discovered, the Seller shall within the period as requested by the Seller rectify such minor defects for free and the Buyer may then agree to countersign a preliminary acceptance certificate.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

10.6 In case in the first performance acceptance inspection the Contract equipments fail to reach one or several guaranteed indexes as provided in Attachment I to the Contract, the parties shall then jointly seek causes to as to make clear the parties respective responsibilities. Then the party with the major responsibility for such failure shall take further measures. The second acceptance inspection shall be conducted \*\*\* after the first acceptance inspection.

10.7 After the second acceptance inspection, in case any major performance index still fails to meet the provisions set forth in Attachment I to the Contract, the parties shall jointly research the case and find out the reasons so as to make clear the responsibilities involved:

In case it is not with the fault of the Buyer, then the case shall be handled as per provisions of article 11.7.

In case it is all with the fault of the Buyer, the Contract equipments shall be deemed to have past the preliminary acceptance inspection. In such circumstances, the representative of the Buyer shall within \*\*\* sign the preliminary acceptance certificate regarding the Contract equipments countersigned by the representative of the Seller. Such certificate shall be formulated in duplicate with the Seller and the Buyer holding one copy respectively. The Seller shall then still have obligations to seek proper measures with the Buyer so as to ensure that the Contract equipments may meet the guaranteed indexes.

10.8 In case the Contract equipments operate stably while the performance acceptance inspection should be delayed for over \*\*\* with fault of the Buyer, the Buyer shall then within \*\*\* sign the preliminary acceptance certificate regarding the Contract equipments countersigned by the Seller.

10.9 Whether the performance acceptance inspection regarding the Contract equipments is performed for once or twice, the Buyer shall after formulation and issuance of the preliminary acceptance certificate within \*\*\* when all claims have been settled issue a final acceptance certificate as per provisions of article 11.4.

10.10 The preliminary acceptance certificate issued by the Buyer as per provisions of article 10.4 and article 10.7 only proves that the performance and parameters regarding the Contract equipments as provided by the Seller can be accepted as per requirements of the Contract as of the time of issuance of the preliminary acceptance certificate and shall not be regarded as an evidence for exemption of any responsibility of the Seller for any potential defect of the Contract equipments. As such, the final acceptance certificate can not be regarded as an evidence for exemption of any responsibility of the Seller for any potential defect of the Contract equipments. Potential defect provided herein shall refer to any defect can not be discovered in the process of manufacturing, trial run and performance acceptance inspections. In case any of such defects should be discovered, the Seller shall repair or replace as per provisions of article 6.8 and article 11.3.1 of the Contract.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

10.11 At any time during the performance of the Contract when the Seller asks for any inspection, test, re-test, repairing or replacing for any failure with fault of the Seller, the Buyer shall properly arrange works so as to coordinate with the Seller in doing such works as aforesaid. The Seller shall then be responsible for any and all expenses for repairing or replacing as well as for personnel of the Seller so incurred. In case any rework should be caused by the Seller who entrusts construction personnel of the Buyer to process and/or repair and/or replace equipments, or caused by mistakes of designing drawings (other than those provided by its designing institution(s)) provided by the Seller or improper instructions of technicians of the Seller, the Seller shall pay to the Buyer with a payment according to the formula provided below: (any and all expenses shall be calculated as per the rate when the expenses incurred)

\*\*\*

## **11. Warranty and claim**

11.1 Quality warranty period or Warranty period refers to a period lasting for \*\*\* commencing from the date of preliminary signing and issuing of acceptance certificate or a period lasting for \*\*\* commencing from the date of the last delivery of equipments (whichever is earlier). However, the Warranty period shall as per provisions of article 11.6 and article 11.8 of the Contract be extended accordingly. Particulars of the Warranty period shall be implemented as per relevant provisions of the Contract.

11.2 The Seller hereby undertakes that the Contract equipments are of up to the moment, being latest and mature in technology which employs the first class workmanship and materials, excellent in quality, safe and reliable in type selection of equipments, economical in operation and convenient in maintenance. The Seller shall ensure the completeness, integrity, correctness and accuracy of technical data as may be provided complete with attachments to the Contract and such technical data are able to meet the requirements of design, installation, commissioning, operation and maintenance of the Contract equipments.

11.3.1 During the period of performance of the Contract, in case any defect in the equipments or any misstate in the technical data as provided by the Seller should be discovered, or any reworking and/or out-of-use due improper instruction or omission of technicians

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

of the Seller, the Seller shall without delay replace or repair them for free and indemnify the Buyer for any and all losses so incurred. In case of replacement or repairing, the Seller shall assume any and all expenses so caused and the Seller shall within \*\*\* upon being proved to be the fault of the Seller replace or repair them.

11.3.2 In case any damage in any equipment should be caused by improper operation, installation and/or commissioning by the Buyer who fails to follow requirements of the technical data, drawings, specifications and instructions of onsite technical service personnel of the Seller, the Buyer shall be responsible for repairing and/or replacing such equipments, provided that the Seller shall as soon as possible provide such spare parts as may be needed and for any emergent spare part requested by the Buyer, the Seller shall arrange the fastest way of transportation. Any and all expenses so incurred shall be borne by the Buyer.

11.4 When the Warranty period expires, the Buyer shall within \*\*\* submit the Seller with a final acceptance certificate regarding expiration of the Contract equipments, provided that during this period the Seller shall complete any and all claims and/or compensation as may be lodged by the Buyer prior to expiry of the Warranty period. Notwithstanding such provisions, the Seller shall not be responsible for any loss arising from any improper maintenance and/or erroneous operation and/or normal depreciation.

11.5 During the Warranty period, in case any defect in the equipments should be discovered yet such defects not conform to provisions of the Contract but with fault of the Seller, the Buyer shall have right to lodge a claim against the Seller. Should the Seller have any discrepancy upon a claim so lodged, such case shall be handled as per provisions of article 9.2.4. Otherwise, the Seller shall upon receipt of claim documents from the Buyer immediately and gratuitously repair, replace or entrust the Buyer to arrange a major overhaul and indemnify the Buyer accordingly.

11.6 In case any stoppage of Contract equipments or deferred installation should be caused by replacement or repairing of equipments with defects with fault of the Seller, the Warranty period shall then be extended accordingly with extended period equivalent to the time so deferred.

11.7 In case the equipments without fault of the Buyer fail to reach one or several warranted indexes as provided in Attachment I attachment hereof in the secondary acceptance tests, the Seller shall be liable for any and all responsibilities specified in article 15 of the Contract.

11.8 In case during the Warranty period any defect in the Contract equipments should be discovered with fault of the Seller, the Quality warranty period of such equipment shall be recommenced after elimination of such defects.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



11.9 Special Agreement: The seller promises he can guarantee a 100% quality and quantity assurance and no copyright infringement. The submission deadline raised by the buyer is also accepted. The buyer has therefore given up other suppliers and, based on the original agreement (in which both sides agree the price remains the same), accepts the demand of a cost increase of \*\*\* per machine (with every single machine having \*\*\* of stick recovery stoves costing \*\*\*).

To guarantee the agreement will be fulfilled, the seller has made up a plan stating the reasonable schedule of product submission agreed by both sides (for details please see Appendix 2). The seller has also promised to bear the responsibilities for violating the agreement: if the mid-point plan is not followed, a penalty of \*\*\*. If the final submission deadline cannot be met, the seller shall compensate \*\*\*. If the submission is made before the submission deadline the penalty at the mid-point can be cancelled.

## **12. Insurance**

12.1 The Seller shall for the purpose of the Contract equipments as per transportation methods such as water carriage, land carriage and air transportation take transportation all risks policy with an insured amount as \*\*\* of prices of delivered Contract equipments in favor of the Seller and the Buyer, and the insured zone shall be from the warehouses of the Seller to the site for delivery of equipments.

## **13. Expenses of taxation**

13.1 Any and all expenses of taxation relating to the Contract to be paid by the Seller as per provisions of relevant laws, regulations and rules on expenses of taxation shall be borne by the Seller.

13.2 Contract price includes tax. Any and all expenses of taxation of any and all equipments, technical data, service, transportation, insurance, imported equipments/spare parts, etc. shall be covered by the Contract price and shall be borne by the Seller.

## **14. Outsourcing**

14.1 The Seller shall independently manufacture any and all components within goods supplying scope and in case the Seller needs subcontract or outsourcing, the Seller shall with regard to the specific contents and scale of proposed subcontract and outsourcing acquire consent of the Buyer in advance.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

14.2 When such consent of the Buyer has been obtained, the Seller shall prior to negotiations with its subcontractors submit a roll call regarding the subcontractors for such portion of equipments/components complete with materials regarding qualification of the subcontractors to the Buyer, and the Buyer shall upon receipt of such documents as submitted by the Seller verify the same within \*\*\* and in case of any discrepancy, the Buyer shall replay in writing.

14.3 Any and all technical services and/or technical coordination for the outsourced equipments/components shall be handled as per provisions of article 8.10, article 8.11 and article 8.12.

14.4 The Seller shall with regard to the outsourced equipments and/or components be liable for any and all responsibilities under the Contract.

## **15 Modification, amendment and termination of Contract**

15.1 After taking effect of the Contract, each party hereto shall not out of its own discretion modify any content (including attachments hereto) of the Contract. Nonetheless, any party may with regard to any content of the Contract propose for any modification, amendment, cancellation and/or supplementation. Such proposal shall be made in a written form to the other party. In case any change to be made should involve Contract price and delivery schedule, proposal for such change shall at the same time specify clear such particulars as may be involved in Contract price and/or delivery schedule. Such change shall be agreed by both parties and signed by legal representatives or authorized agents (subject to be authorized by the legal representative in writing) of the parties before taking effect.

15.2 In case of any of the following circumstances, the Buyer shall be entitled to terminate the Contract:

- (1) the Seller fails to as per provisions of the Contract provide performance security or performance guarantee;
- (2) equipments with fault of the Seller fail to reach the major performance guarantee indexes provided in Attachment I to the Contract in the secondary performance tests as previously provided in article 10.7;
- (3) delivery of equipments by the Seller more than \*\*\* overdue or delivery of technical data and/or supplying of technical service more than \*\*\* overdue;
- (4) as to any other breaches by the Seller, the Seller fails to rectify such breaches within \*\*\* upon receipt of a notification signifying the same from the Buyer as per requirements of the Buyer;
- (5) any inaccuracy or falsehood should be discovered in any part of the bidding documents submitted by the Seller or in the event that the Business license of the Seller or such license for production of equipments and/or components under the Contract should be revoked or the Seller breaches provisions of any other contract as may be entered into by and between the Seller and the Buyer; and

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

(6) such any other circumstances as legally regulated.

15.3 In case the Seller becomes bankruptcy, involves any change of property right (such as merger, recombination, disorganization, cancellation, etc.) or insolvency, or for rights and interests of the Seller's creditor(s) operates businesses under bankruptcy, the Buyer shall be entitled to terminate the Contract immediately upon a notification to the Seller or the bankruptcy & liquidation management party or the owner of the Contract or negotiate with such bankruptcy management party, liquidating party or the owner of the Contract as per the practical conditions and perform some parts of the Contract agreed by the Buyer.

## **16. Liability for breach of Contract**

16.1 If any deferred delivery of equipments shall be with fault of the Seller, such fact shall constitute a breach of the Contract and the Seller shall indemnify the Buyer for any and all loss so incurred, namely, \*\*\* and the days so delayed shall be calculated as of the date of delivery requested by the Buyer up to date of delivery of qualified equipments to such destination as may be designated by the Buyer. In case the Seller should fail to delivery equipments for \*\*\* overdue, the Buyer shall be entitled to terminate the Contract and request the Seller to pay the Buyer with a default penalty. In case the accumulated default penalty should be less than \*\*\*, the Seller shall pay the Buyer with a default penalty equivalent to \*\*\*.

16.2 In case the Seller fails to as per provisions of the Attachment I and Attachment III deliver technical data for design and for construction works on schedule, the Seller shall for each \*\*\* overdue pay the Buyer with a default penalty as \*\*\* and the delayed time shall be calculated as per provisions of article 6.11.

16.3 In case the Seller expressly makes clear or the Seller's actions indicate that the Seller will not perform its obligations under the Contract, the Buyer may before expiry of the Contract request the Seller to assume relevant liabilities for breach of Contract and the Seller shall pay the Buyer with a default penalty as \*\*\*.

16.4 If the products delivered by the Seller does not conform to the product specifications, the Buyer may unconditionally return the products and is entitled to a punitive damage that equals \*\*\*. If such none-conforming products has caused delay to the Buyers' business operation, the Seller shall compensate the Buyer the actual loss suffered as well as any loss of profit.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

## **17. Force majeure**

17.1 An event of force majeure refers to severe natural disaster and catastrophe (such as typhoon, flood, seism, fire, explosion, etc.), war (declared or undeclared), riot, turmoil, etc. In case any party hereto should be prevented from performance of obligations of the Contract by and event of force majeure, the period for performance of the Contract shall be extended accordingly with the extended period equivalent to the period delayed by the event of force majeure, provided that the Contract price shall not be adjusted due to such an event of force majeure.

17.2 The party being affected by an event of force majeure shall upon getting informed of the event of force majeure so notify the other party in the manner of facsimile or cable without delay and shall within \*\*\* submit such certificate proving such an event of force majeure as may be issued by a competent authority to the other party for verification. The party being affected shall out of due care and diligence take all measures as may be necessary so as to minimize such adverse effects and delay as may be caused by such an event of force majeure and upon elimination of such adverse effects caused by the event of force majeure so notify the other party without delay.

17.3 In case the adverse effect of such an event of force majeure should be forecasted to last for more than \*\*\*, the parties shall through friendly negotiations settle issues relating to performance of the Contract, including but not limited to delivery of equipments, installation, pilot run and acceptance.

## **18. Settlement of dispute**

18.1 Any and all disputes arising out of performance of the Contract shall be settled through amicable consultations by the parties to each other and in case no agreement can be reached, the parties hereby agree that any party may submit the case to Zhengzhou Arbitration Commission to be arbitrated by the same as per then valid arbitration rules.

18.2 Unless otherwise specified by such arbitration award, any and all expenses so incurred shall be borne by the losing party.

18.3 During the period of arbitration, the Contract shall continue being performed except for the issue under arbitration.

## **19. Effectiveness of Contract**

19.1 The Contract shall come into force upon being signed and sealed by legal representatives or authorized agent (subject to be authorized by the legal representative in writing) of the parties.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

## **20. Miscellaneous**

20.1 The Contract shall apply to the laws of the People's Republic of China.

20.2 Any and all attachments attachment hereof shall constitute an integral part of the Contract and shall be equally authentic with the Contract. In case there is any discrepancy between such attachments with the Contract, the Contract shall prevail. In case of anything not covered herein, refer to the bidding invitation documents and their supplementary prepared by the Buyer for purchasing of equipments and the tender documents and their supplementary as submitted by the Seller. In case of any discrepancy between such bidding invitation documents with the tender documents, the bidding invitation documents shall prevail.

20.3 Obligations of each party under the Contract shall not exceed the range of the Contract and no party may make any declaration, statement, promise or action restricting the other party.

20.4 The Contract has set forth and made clear all terms and conditions covering responsibilities, obligations, compensations and relieves and no party shall bear any responsibility, obligation, compensation and/or relief not provided herein.

20.5 No party shall without prior consent of the other party assign its obligations under the Contract to any third party, in part or in whole.

20.6 Any and all documents and/or data mutually provided between the parties shall not be provided to any third party having not concern with the Contract equipments, the Project and related projects other than for the purposes of performance of the Contract.

20.7 Each party shall appoint a second authorized representative who shall be responsible for directly handle technical and business issues of the "Contract equipment". Names and addresses of the authorized representatives of the parties respectively shall be made clear to the other party upon taking effect of the Contract.

20.8 As to any and all correspondences, notifications and requirements from one party to the other party, in case they are formally prepared and served by a dedicated person or in the manner of a registered mail, air mail, cable, facsimile or telegraph, they shall be deemed to have been formally received by the other party when receiving a confirmation signifying receiving by any personnel and/or communication facilities from such other party.

20.9 The Contract contains 2 originals and 4 copies, with each party holding 1 original and 2 copies.

---

Addresses of the parties hereto are provided as follows:

The Buyer: Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.

Tel: 0516-85868888 - 6668, 6667

Fax: 0516-85868888-6669

Address: Northern side of No. 310 National Highway, Economic Development Zone, Xuzhou

Contact: Wang Leyi

Opening bank: Bank of Jiangsu (Xuanwu branch of Xuzhou )

Account number: \*\*\*

Zip code: 221131

Registration number of taxpayer: 320300784997610

The Seller: Kaiyuan Chemical Industry Machine Co., Ltd.

Tel: 0410-3620024

Fax: 0410-3821602

Address: 33 Xinggong Road, Kaiyuan City, Liaoning Province

Contact: Wang Wenzhong

Opening bank: China Construction Bank, Kaiyuan Sub-branch

Account number: \*\*\*

Zip code: 112300

Registration number of taxpayer:

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

**Page for signature and seal**

**Buyer:**

Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.

(Sealed)

Signature of authorized representative:

**Seller:**

Kaiyuan Chemical Industry Machine Co., Ltd.

(Sealed)

Signature of authorized representative:

Special Seal for Contract (seal)

---

### Quotation of Price

I. Price of reactors (\*\* electrodes design): RMB \*\*/piece and the total prices shall be  $16 * \text{RMB **/piece} = \text{RMB**}$ .

II. Time of delivery: \*\* equipments shall be delivered on \*\* and all the other \*\* pieces of equipments shall be delivered on or before \*\*.

January 29, 2008

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



## Confidentiality Agreement

Party A: Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.

Party B: Kaiyuan Chemical Industry Machine Co., Ltd.

Whereas:

In “**Bidding invitation regarding to 1500t/y Polysilicon Project, Reactors (\*\* electrodes design) Equipment**” (hereinafter referred to as the “Cooperation”) between Party A and Party B, either party (the “Supplying party”) may to some extent disclose to the other party (the “Receiving party”) with confidential information, technical data and other information (hereinafter referred to as the “Confidential information”). The Agreement is hereby concluded by and between Party A and Party B as follows with respect to the above-mentioned information disclosing:

Article I. Receiving party shall keep strict confidentiality of any and all Confidential information as may be provided by the Supplying party and without express written consent of the Supplying party the Receiving party shall not disclose such confidential information to any personnel, in part or in whole.

Article II. Confidential information here shall cover any and all correspondents, memos, abstracts, research reports, models, information summaries and records as may be made by the parties to each other for the purposes of the reactors equipments and shall also include any and all copies relating to the equipments together with any and all other copies concerned, regardless the carriers, in written, electronic version, disc or audiovisual materials or any other forms. Contents of Confidential information include but not limited to:

- (1) Management secret: including without limitation to financial data, personnel data, salary and remuneration data;
- (2) Production secret: including without limitation to production scale, channels, sources and prices of equipments, production mode, quality and quantity of raw materials, production costs of products, prices of products, etc.
- (3) Marketing secret: including without limitation to selling channels of products, data on clients, selling prices, places, quantities and modes of products.
- (4) Operating secret: including without limitation to corporate operation principles, investment decision-making intentions, market analysis data, market promoting methods, and financing schemes.
- (5) Technology secret: including without limitation to project design, drawings, workmanship, technical data, researching achievements, patent data, and computer programs.

- 
- (6) Cooperation secret: including without limitation to contents, processes of the Cooperation complete with any and all intentions made or to be made, history records and other information pertaining to the Cooperation.
  - (7) Other secret: including without limitation to any and all papers, physical materials, discs & CD, magnetic tapes, instruments and any other information of any carrier as well as any information made orally.

Article III. Confidential information provided herein shall not include those in the public domain, those obtained by the Receiving party from the Supplying party and/or any agent of the Supplying party before the Receiving party having any confidentiality obligation for the Supplying party and any agent of the Supplying party, and those acquired from any third party entering into any confidentiality agreement with the Supplying party and any agent of the Supplying party or from any personnel having no confidentiality obligation for the Supplying party and any agent of the Supplying party.

Article IV. Without prior written consent from the Supplying party, the Receiving party shall not disclose or use any confidential information for any purpose other than for the Agreement in part or in whole.

Article V. Without prior written consent from the Supplying party, either party hereto shall not with regard to the Agreement and the Cooperation under the Agreement makes any public statement or conducts any communication with any third party in any form. Notwithstanding the previous provisions, under any of the following circumstances and within the scope provided below, provisions of this article shall not set any obstacle against either party hereto from obtaining confidential information from the other party: 1) disclosing any and all confidential information to any professional consultant and/or auditors of the party; 2) disclosing any and all confidential information to the existing and/or potential shareholders, partners, equity investors, money lenders or financing parties, or any professional consultants of such personnel as aforesaid; and 3) disclosing any and all confidential information to any employee who needs to be get informed of such confidential information, provided that they shall use such confidential information as come to them within the specified scope and for the prescribed purposes.

Nonetheless, if either party hereto needs to disclose any confidential information for any purpose as aforesaid, such party shall enter into a confidentiality agreement with the disclosed party and shall undertake to bear any and all obligations equivalent with those for the Receiving party under the Agreement. The contents of any and all agreements so executed shall be agreed by the Supplying party in a written form and after such execution, provide the Supplying party with a copy of the agreement so executed. Otherwise, the Receiving party shall be deemed to breach the agreement.

Article VI. If any party hereto fails to perform any of its obligations under the agreement, the observant party may exercise the right

to recourse for any and all of its direct and indirect losses, namely, civil remedy as may be granted by any competent authority for breach of fiduciary duty, confidentiality provisions, contract, legal obligations and any other provisions. In case the loss of the observant party can not be calculated in details, the default party shall pay to the observant party with a default penalty totaling RMB \*\*\* for each beach.

Article VII. Any party hereto may out of its own discretion at any time cease providing confidential information to the other party. When the Agreement should be terminated by the parties, any and all confidential information (within \*\*\* upon receipt of a notification signifying such termination) shall be returned to the Supplying party and any and all confidential information retained shall be destroyed and so notify the other party. Such termination shall not affect the performance of any other obligations of the parties under the Agreement.

Article VIII. In case any provisions of any applicable laws or any competent authority compulsively directs or asks the Receiving party to disclose any confidential information or any part of such confidential information, or to copy, reproduce or use such data or information in any other forms, the abovementioned provisions shall not restrict the Receiving party in doing so. If possible, however, the Receiving party shall provide a complete description regarding those so disclosed to the Supplying party and shall seek the ever possible measures so as to keep confidentiality of such information so disclosed. If possible, provide an opportunity for the Supplying party so that the same may with regard to the extent of such confidential information to be disclosed with relevant authorities.

Article IX. The Agreement shall be governed and interpreted by laws of the People's Republic of China. In case of any discrepancy relating to or not relating to the Agreement, the parties hereto shall settle such discrepancies through amicable consultations. Should any dispute occurred due to performance of the Agreement or in connection with the Agreement not be solved within \*\*\* after occurrence, the case in dispute shall be submitted to and arbitrated by China International Economic and Trade Arbitration Commission in Beijing and the losing party shall perform arbitration awards and bear the expenses for such arbitration.

Article X. Any and all obligations under the Agreement shall continue binding upon both parties within \*\*\* after completion of performance of the Agreement or after declaration of invalidity of the Agreement or after recession or termination of the Agreement.

Article XI. Within \*\*\* upon execution of the Agreement, each party hereto shall not for the purpose of the Cooperation provided herein contact, communicate, negotiate with, reach agreement with or accord with any third party (whether individual or economic equity) or otherwise express intentions regarding the Cooperation provided herein, provided that such restriction shall not include any

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

party hereto discussing with any of its legal or economic consultant or auditor about the Cooperation. Obligations provide in this article complete with other obligations under the Agreement shall constitute an integral part of each party' s obligations under the Agreement.

Party A: (Sealed) Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.

Authorized representative: (Sealed)

Date:

Party B: Kaiyuan Chemical Industry Machine Co., Ltd.

Authorized representative: (Sealed)

Date:

---

**Technical Agreement**

**with regard to “Reactors (\*\* electrodes design)”**

**of**

**Jiangsu Zhongneng Silicon Technology Development Co., Ltd.**

**Ordering unit (the “Buyer”): Jiangsu Zhongneng Silicon Technology  
Development Co., Ltd.**

**Supplying unit (the “Seller”): Kaiyuan Chemical Industry Machine Co., Ltd.**

**Dated: 29 January 2008**

---

## **Attachment B-1 Supply Scope**

### **Supply List**

The following equipments form an integral system for normal operations of the reactor, including but not limited to:

\*\*\*

### **Matched Components**

\*\*\*

3. The Buyer shall out of its own experience submit a list of spare parts which are easy to be damaged and the Seller shall provided such spare parts so submitted for free:

\*\*\*

---

4. The Buyer shall also purchase a certain number of spare parts and components from the Seller, and the list is provided as follows:

\*\*\*

5. The Seller shall provide all processing drawings for all seal elements.

### **Technical Documents**

Document of list provided in the Attachment has only one original, with 2 e-versions (disc) matched. Technical documents shall employ the metric system.

1. Technical documents shall be submitted by the Seller:

\*\*\*

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

## Technical Service

\*\*\*

4. Technical services as provided by the Seller shall include without limitation to the following particulars:

\*\*\*

### Attachment B-2 Technical Conditions

#### 1. Equipment parameters

##### Reactors

Quantity of silicon sticks: \*\*\*

Length of silicon sticks: \*\*\*

Inside diameter of reactors: \*\*\*

Inside diameter of cooling clips: \*\*\*

Space of flow guiding bolts in within clips: \*\*\*

Height of cylinder body: \*\*\*

Height of chassis: \*\*\*

Foundation bolts: \*\*\*

Major medium within the reactors: \*\*\*

Medium for clips: \*\*\*

Operating pressure within reactor: \*\*\*

Operating temperature within inner wall of reactor: \*\*\*

Operating pressure of cooling clips: \*\*\*

Operating temperature of cooling clips: \*\*\*

Design temperature of cooling clips: \*\*\*

Designed pressure deviation of inner bag: \*\*\*

Number of power supply connections: \*\*\*

Number of nozzles accessing to the mixed gas: \*\*\*

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



---

Number of lens: \*\*\* lens in all

Inner wall lens before leaving factory shall reach \*\*\* (equivalent to \*\*\*) standard. All pieces shall be degreased and cleaned. All sealing surfaces shall be protected.

### 3. Materials of equipments

#### List of materials of stainless steel reactors

\*\*\*

#### List on materials of electrode

\*\*\*

## Attachment B-3 Technical Description

### 1. Reactors

A reactor comprises a cylinder type vessel and a chassis. The cylinder type vessel and the chassis are wired with cooling clips. All surfaces connecting with workmanship are made of stainless materials and have been polished.

The following parameters and data have been considered:

#### 1.1 Design and capacity

\*\*\*

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

## 1.2 External dimension

\*\*\*

## 1.3 Design data

1. Design shall comply with existing national standards on manufacturing of pressure vessels.
2. Design of duct and flange shall comply with the metric system.

## 1.4 Functions of reactor

\*\*\*

## Structure of reactor

## 1.5 Chassis

\*\*\*

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

## **Assembly of reactor**

### **1.6 Electrode/initial electrode**

\*\*\*

### **1.7 Pipe for mixed gas**

\*\*\*

### **1.8 Vent-pipe**

\*\*\*

### **1.9 Heat insulation**

A heat protection system is provided to fully separate the reactors. Such system shall be supplied by the Seller and shall be designed by a designing institution.

## **2. Design basis**

\*\*\*

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

### **Manufacturing and Acceptance Standard**

The whole set of reactor and document materials shall comply with the existing national standards regarding manufacturing of pressure vessels.

In inspection and acceptance, the existing PRC standard shall be applied.

Technical requirements and standards of manufacturing of equipments shall as per current PRC standards regarding to manufacturing of pressure vessels.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

**Attachment B-4 Quality Warranty (contents of herein shall belong to  
Attachment B-3)**

**Attachment B-5 Factory Inspection and Test**

After equipments are manufactured, representatives of both parties shall conduct inspections and acceptances of equipments in plants of the Seller. The Seller shall provide a manual regarding such inspections and tests for the Buyer to perform evaluation.

Before shipment, the Buyer shall have a team of inspectors in the plants of the Seller to conduct inspections on the equipments to be delivered.

**Attachment B-6 Time of Delivery**

**1. Time of delivery**

The Seller shall complete delivery of all equipments on or before \*\*\*.

**2. Delivery time of technical documents**

Technical materials 1.1 and 1.2 mentioned in Attachment B-1 shall be supplied to the Buyer within \*\*\* upon formulation of the Contract and shall provide 1.10 equipment assembly drawings to the Buyer within \*\*\* upon formulation of the Contract.

Documents as mentioned in Attachment B-1 shall be submitted to the Buyer within 8 weeks upon formulation of the Contract.

**3. Time of commissioning**

Commissioning of the reactor shall have a period of \*\*\*. Commencing from the first batch of materials feeding and within the regulated commissioning time, the Seller shall actively give assistance to works for commissioning for free. In case any rectification should be conducted due to any reason relating to the quality of reactor, the commissioning time shall be recalculated after completion of such rectification.

Ordering unit (the "Buyer"): Jiangsu Zhongneng Silicon Technology Development Co., Ltd.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

Supplying unit (the “Seller”): Kaiyuan Chemical Industry Machine Co., Ltd.

Date: 29 January 2008

Contract No.: SSC000139

**Wafer Supply contract**

by and between

**Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.**

and

**Jiangsu AIDE Solar Energy Technology Co., Ltd.**

**as of April, 16, 2008**

## **Wafer Supply Contract**

This Wafer Supply Contract (hereinafter referred to as the “Contract”) is concluded by and between the following two parties on April 16, 2008 in Xuzhou, Jiangsu, PRC:

Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. (on its own name and acts for and on behalf of relevant associated companies, as established and/or to be established inside and/or outside the territory of PRC, partaking in the Contract and confirmed by the Buyer in writing) is an enterprise duly organized in the territory of the People’s Republic of China (“PRC”), with registered address as No. 66, Yangshan Road, Economic Development Zone, Xuzhou City, Jiangsu Province, PRC. (Hereinafter referred to as the “Seller”)

and

Jiangsu AIDE Solar Energy Technology Co., Ltd. (on its own name and acts for and on behalf of relevant associated companies, as established and/or to be established inside and/or outside the territory of PRC, partaking in the Contract and confirmed by the Seller in writing) is an enterprise duly organized in the territory of the People’s Republic of China, with registered address as No. 69, Pantaoshan Road, Economic Development Zone, Xuzhou City, Jiangsu Province, PRC. (Hereinafter referred to as the “Buyer”)

The Seller and the Buyer are jointly referred to as the “parties” and separately the “party”.

### **Preambles**

Whereas the Buyer and the Seller intend to establish a long-term supply and sale relationship, the Buyer intends to purchase a certain amount of wafers from the Seller and the Seller at the same time intend to act as a supplier of the Buyer and to sell a certain amount of wafers to the Buyer.

Basing on such fact as aforesaid and fact statements, guarantees and agreements made to each other of the parties, the Contract is hereby formulated as follows:

### **1. Definition**

Save as otherwise agreed herein or the context otherwise requires, terminologies below shall have the meanings as provided:

1.1 “Contract” refers to “Contract with regard to supply of wafers”, including the brief introductions and main text clauses together with all attachments hereto as well as any and all revision, modification and supplement of the Contract as may be made by the parties subsequent to formulation of the Contract.

1.2 “Contract duration” refers to the duration from the date of taking effect of the Contract to the data when the Contract expires, namely, the valid term of the Contract.

1.3 A “Working day” refers to any business day commonly adopted by enterprises within the territory of PRC, including any Sunday or Saturday as may be declared by the PRC government as an interim working day (“taking a work day off in exchange of a holiday”), and excluding legal festivals and holidays and other Saturdays or Sundays not exchanged for holidays.

1.4 “Effective date” refers to the date when the Contract is formulated.

1.5 “Contract year” refers to any calendar year during the Contract duration, provided that the first Contract year shall be commenced as of the Effective date of the Contract and ended on December 31,2008.



1.6 “Associated company”, for the purpose of any party hereto, refers to any company directly or indirectly controlled by, or by which the party is directly or indirectly controlled, or jointly directly or indirectly under control with the party. “Control/controlled” provided herein refers to directly or indirectly have (i) more than fifty percent (50%) (inclusive) of right to vote on shares or equity of a company, or (ii) fifty percent (50%) (inclusive) of registered capital of a company.

1.7 “Loss” refers to any damage award, penalty, expense, taxation, fine, deficit and other loss or expenditure (covering profit loss and/or value loss), including any interest, appropriate investigation charge, legal charge, appropriate attorney fee and expense for other experts arising out of any lawsuit or any claim for compensation, breach of contract or taxation estimation, and shall cover expenses in all respects, especially in any and all attorney fees incurred from (i) any investigation on or counterplea against claim for compensation from any third party, (ii) any declaration on or claim for any right against the other party as per provisions of the Contract, or (iii) any amicable settlement made for the purposes of any case or lawsuit or any potential case or lawsuit.

1.8 “Intellectual property right” refers to any right possessed regarding to any invention, discovery, improvement, utility model, appearance design, works with copyright, industrial design, calculation method, data structure, commercial secret or proprietary technology, product price, specification, confidential information, or any conception with commercial value. Intellectual property right shall also refers to any trademark, upholstery, trade name, domain name, as well as any other mark or sign signifying or highlighting any products or service from any entity or under control of any entity. To be more specific, intellectual property right shall cover any and all intangible right and interest and/or privilege in connection with any and all right and interest of any nature with regard to computer software and/or data under any circumstance in any district worldwide, as well as any application right and/or registration right regarding such right and interest as aforesaid.

1.9 “China” or “PRC” refers to the People’s Republic of China, for the purpose of the Contract, however, excluding Hong Kong SAR, Macao SAR and Taiwan region.

1.10 “Renminbi” or “RMB” or “CNY” refers to the legal currency of PRC.

1.11 “Products” or “Product” refers to wafers as provided by the Seller to the Buyer as per product specification specified in Attachment A hereto; the Seller agrees to sell and deliver such Products as per the Contract and the Buyer agrees to buy and accept such products as per the Contract.

1.12 “Advance payment” shall have the meanings as provided in Article 3.5.1 of the Contract.

1.13 “Contract amount” refers to aggregated payment for products payable by the Buyer within the total Contract years, totaling RMB 8,483,333,269.00 (RMB Eight Billion, Four Hundred and Eight Three Million, Three Hundred and Thirty Three Thousand, Two Hundred and Sixty Nine Yuan Only).

1.14 “Portion of Contract amount not performed” refers to the total amount not performed when the Contract is rescinded, other than any amount not performed for any month or any year.

## **2. General provisions**

2.1 Any and all attachments hereto shall form an integral part of the Contract and shall be equally authentic with the Contract.

2.2 Any and all titles provided before the main text, and/or articles of the Contract are for index only and shall not affect the meanings, interpretation or effectiveness of the Contract.

2.3 For the purpose of provisions and attachments of the Contract, the Buyer shall during the valid term of the Contract purchase and accept the products under the Contract and shall pay relevant payment for products payable.

2.4 For the purpose of provisions and attachments of the Contract, the Seller shall during the valid term of the Contract sell and deliver the products under the Contract.

2.5 Valid term of the Contract covers eight (8) Contract years commencing from taking effect of the Contract and ending when the eighth (8<sup>th</sup>) Contract year expires; in case the Contract should be rescinded or terminated as per relevant provisions of the Contract, the valid term shall be ended on such day when the Contract were so rescinded or terminated.

2.6 Any and all Associated companies of a party hereto shall sign a commitment letter in such format as per stipulations set forth in Attachment D and acquire written confirmation from such party. Any and all Associated companies so confirmed by the party shall not without prior written consent of such party withdraw from the Contract.

2.7 The Contract shall be a “take or pay” contract. The Buyer understands and accepts that the Seller, on the basis of good faith of the Buyer and judgment on quantity of products requested by the Buyer, has conducted investment involving large sums of money and extended its production capacity so as to satisfy the demand of the Buyer on products. The parties hereby accept that the following are true and accurate statements of the parties: both parties agree to bear respectively any risk involving market price fluctuation and during the valid term of the Contract, the Buyer shall be liable for purchasing products as per products quantity set forth herein and the Seller shall be liable for providing products as per products quantity set forth herein. Unless otherwise provided in writing, the parties shall within the valid term of the Contract absolutely and irrevocably accept products quantity for each Contract year as specified in the Contract as per products prices set forth in Attachment C and shall pay and supply accordingly as per provisions reached.

2.8 The parties understand and expressly agree that the Seller shall provide products as per stipulations of Attachment A hereto only and the Buyer shall solely determine and be responsible for any practicability for any special purpose of the products as well as any issue regarding the treatment, usage and application of such products.

2.9 The parties understand and expressly agree that unless otherwise provided by the parties in a written form, prior to acquisition of a written consent from the other party, the Buyer shall not assign any product acquired from the Seller as per the Contract to any third party, paid or not, and that the products shall be used for production of the Buyer or for production of any Associated company of the Buyer; the Buyer hereby undertakes to bear any and all liabilities so incurred for breach of this article.

2.10 The Seller shall be entitled to process wafers by itself or appoint any third party to process the same. Should the Buyer intend to designate any third party for processing works, a supplement agreement shall be otherwise entered into by the parties through amicable consultations.

### **3. Supply of Products**

#### **3.1 Products**

Any product provided as per the Contract shall conform to specifications set forth in Attachment A hereto and such specifications may be modified only when agreed by the parties in writing.

#### **3.2 Price**

3.2.1 During the valid term of the Contract, any unit price including tax as provided in Attachment C shall be a fixed price. Both parties agree that once the Contract is signed, any party shall not request the other party to modify any product price out of any reason other than legal modification of tax rate of value-added tax.

3.2.2 Any unit price including tax as set forth in Attachment C hereto and any payment for products payable shall cover value-added tax; in case tax rate of value-added tax changes or should the Seller be liable for deduction of any other tax for and on behalf of the Buyer when legally required by PRC laws, the unit price including tax and payment for products payable as set forth in Attachment C shall be adjusted accordingly prior to taking effect of such new tax rate or such laws requiring for deduction of any other tax for and on behalf of the Buyer by the Seller.

### 3.3 Quantity

3.3.1 During the valid term of the Contract, quantity of products that the Buyer shall purchase from the Seller and the Seller shall sell to the Buyer shall be subject to Attachment C and aggregated quantity of products within the entire Contract years totals 368,749,998 pieces. The Seller shall be entitled to adjust (increase or decrease) within \*\*\* of quantity of products to be provided for the current month as provided in Attachment C, provided that the quantity of products to be provided for the month shall not be less than \*\*\* of the quantity for the month as set forth in Attachment C. The portion of products decreased or increased shall be replenished or deducted accordingly by the seller within \*\*\* commencing from the first date of the following month, (namely, should the seller adjust the supply quantity of the very month, the total quantity of the month shall meet the quantity set forth in Attachment C by replenishing or deducting the quantity supplied within \*\*\* commencing from the first date of the following month). In addition, both parties agree that once the Contract were signed, any party shall not request the other party to adjust the quantity of products to be provided out of any cause unless otherwise specified in a written form by the parties.

3.3.2 Both parties hereby agree that quantity adjustment monthly shall be handled as per the following approaches:

- (a) Where the Seller intends to decrease the quantity of products to be provided for a month as set forth in Attachment C, the Seller shall prior to the \*\*\* date of a month notify the Buyer in a written form signifying the quantity of products to be provided for the following month. Quantity of products to be provided after being adjusted together with payment for products adjusted accordingly shall be subject to submission of "Notification regarding Adjustment of Quantity of products to be provided for the Following Month"; the Buyer shall unconditionally accept such adjustment by the Seller, provided that such adjustment on quantity shall conform to stipulations of the Contract.
- (b) Where the Buyer intends to increase the quantity of products to be provided for a month as set forth in Attachment C, the Buyer shall prior to the \*\*\* date of a month notify the Seller in a written form signifying the quantity of products to be provided for the following month. Quantity of products to be provided after being adjusted together with payment for products adjusted accordingly shall be subject to submission of "Notification regarding Adjustment of Quantity of Products to be provided for the Following Month"; the Seller shall unconditionally accept such adjustment by the Buyer, provided that such adjustment on quantity shall conform to stipulations of the Contract. For such portion of payment for goods added accordingly caused by such adjustment by the Seller, if the Seller has any difficulty in finance, the time of such payment shall be \*\*\* (within such time the Buyer shall not be held for any responsibility for overdue payment, provided that the original payment for products shall be paid up); the Seller may decline supplying any product to the Seller before such payment for products being paid up.

3.3.3 Where the Seller adjusts the quantity of products to be provided, the Seller shall not be liable for any responsibility for breach of the Contract.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

### 3.4 Quality

3.4.1 The Seller shall guarantee only that the products to be provided conform to such specification as set forth in Attachment A; should any inconformity to specifications provided in Attachment A be discovered, the parties shall handle such case as per provisions of article 3.6.5 of the Contract. For any claim or legal action arising out of any defect of the product, including without limitation to breach of Contract and/or infringement of product liability, the Buyer may select any right of relief provided below and the obligation of the Seller shall explicitly be limited to (i) replace the unqualified products, or (ii) refund the purchasing price for such portion of unqualified products; or (iii) indemnify the Buyer for the purpose of such unqualified products causing any claim, provided that such indemnification shall not exceed the purchasing price for such portion of unqualified products.

3.4.2 In case of any discrepancy regarding quality of any product provided, any party or both parties may entrust a legal inspection institution to inspect such products and any inspection report made by such institution shall be binding upon both parties. Expenses for such inspection shall be paid by the party entrusting such inspection in advance and shall be assumed in the manner provided below:

- (a) as per such inspection report, in case the product indeed has any defect in quality, the expenses for inspection shall be borne by the Seller;
- (b) as per such inspection report, in case the product does not have any defect in quality, the expenses for inspection shall be borne by the Buyer;
- (c) in case the inspection institution fails to have any fixed inspection conclusion, it shall be deemed that there is any discrepancy regarding the quality of any product and the expenses for such inspection shall be borne by the Seller.

3.4.3 During the duration when such inspection is made, the parties shall continue to perform the Contract.

### 3.5 Payment

#### 3.5.1 Advance payment

Advance payment provided herein refers to nonrefundable and irrevocable advance payment with the nature of earnest money. The advance payment totals RMB\*\*\* (RMB\*\*\* Only); time for such payment shall be performed as per provisions set forth in Attachment B hereto. Unless otherwise specified in the Contract, the Buyer hereby expressly accept that the Buyer understands and agrees that once the Contract were signed, the Seller shall under no circumstance refund the advance payment as aforesaid to the Buyer, in part or in whole, unless the Contract were rescinded or terminated ahead of time by the Seller due to breach of the Contract by the Seller or the Contract is terminated by the parties.

The advance payment may only be deducted by payment for products payable by the Buyer as per stipulations provided below:

The parties hereby confirm that as of \*\*\*, the Buyer may deduct \*\*\* of the total advance payment for each month against the payment for products for the month.

In case the Contract should be rescinded or terminated ahead of time, or when the Contract is fully performed, the Seller the within \*\*\* upon rescission or termination or the Contract being fully performed refund the residual advance payment (if any) to the Buyer (without interest), unless the Buyer materially breaches the Contract. In case the Buyer breaches the Contract and the Buyer shall then pay default penalty or compensation to the Seller as per the Contract, the Seller shall be entitled to deduct accordingly such default penalty or compensation against the advance payment preferential to payment for products after notification to the Buyer in writing and request the Buyer to pay such amount as equivalent to such sum deducted within \*\*\* upon such deduction so as to make up the advance payment; should the Buyer fail to make up such deficiency on schedule, the Buyer shall be liable for responsibilities as per article 8.1.2 of the Contract.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

3.5.2 Payment for products: The Buyer shall prior to the \*\*\* date of each month pay the Seller with payments for products for the following month as per provisions of Attachment C of the Contract.

3.5.3 The Seller shall, for the purpose of products as delivered, within \*\*\* when the payment for products was paid up by the Buyer to the Seller issue corresponding invoices to the Buyer.

3.5.4 The Buyer shall make the payment for products to the bank account provided below:

Opening bank: \*\*\*

Account number: \*\*\*

Account name: Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd

If any of the information regarding bank account should be modified, the Seller shall so notify the Buyer \*\*\* in advance in writing; such bank account shall be a bank account within the territory of PRC. Any remittance by the Buyer to such bank account as may be designated by the Seller shall be deemed a payment to the Seller.

### 3.6 Delivery

3.6.1 Any and all delivery of products shall conform to provisions as set forth in the schedule of Attachment C. After the Buyer paying up payments for products for the following month prior to the \*\*\* date of a month, the Seller shall supply products from the \*\*\* date of such following month and shall complete providing such products as specified. The Seller shall make all that can to provide products to the Buyer evenly for each week. The Seller shall be entitled to decline supplying any product to the Buyer if advance payment payable by the Buyer should not be paid up or any payment for products should not be paid up by the Buyer; in case the Buyer should have any product when any payment for products should not be fully paid up, the Seller shall still have the property right of such products.

3.6.2 Place of delivery: unless otherwise agreed in writing by the parties, products shall be delivered at the place of the Seller or any other place such as workshop field, plant or warehouse, etc. as may be designated by the Seller, provided that such places are within the administrative region of Jiangsu province, PRC, namely, products shall be picked up by the Buyer itself. After delivery, any risk relating to any damage, lost, etc. of the products shall be assumed by the Buyer.

3.6.3 Packing, transportation and insurance: the Seller shall properly pack the products to be delivered to the Buyer as per packing standards set forth in Attachment E. The Seller shall be held responsible for any and all losses arising out of any inconformity to such packing standards. After delivery of products to the Buyer, the Buyer shall be liable for transportation and risk of the products as well as any and all expenses so incurred.

3.6.4 In case the Buyer should out of its own reason after payments for products have been made ask for deferred delivery of products by the Seller or should without any due cause decline accepting products as delivered by the Seller, the Seller shall grant an extended duration as \*\*\* to the Buyer and when such extended duration expires, the Seller may after serving a written notification to the Buyer turn to a competent notary organization on the basis that any risk and expense so incurred shall be assumed by the Buyer, or sell such deferred or declined products to any third party with selling price and expenses conforming to provisions of article 8.1.1 of the Contract. The sum from deducting any and all expenses for such selling against the sum gained from such selling shall act as advance payment otherwise made by the Buyer to the Seller.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

3.6.5 Inspection: the Buyer shall within \*\*\* upon delivery of products complete inspection of such products as delivered and any objection so incurred shall be subject to sending a written notification regarding defects of products to the Seller within such duration. The Seller shall within \*\*\* upon receiving such notification replace such products with defects with qualified products. In case the Buyer within \*\*\* upon delivery fails to send a written notification regarding defects of products to the Seller, it shall be deemed that the products as delivered by the Seller are qualified and conform to provisions of Attachment A. In addition to quality inspection, the Buyer shall complete inspections on quantity, packing, etc. of products to be delivered and shall put forward it at that time when any discrepancy should be discovered. Should the Buyer fail to conduct such inspections stipulated in the previous sentence, it shall be deemed that the Buyer has irrevocably accepted such products.

#### **4. Force majeure and exemption**

##### **4.1 Grounds for exemption applicable to both parties**

4.1.1 “Force majeure” refers to any and all events uncontrollable, unforeseeable, unavoidable and unconquerable, occurred after execution of the Contract, and as a result of which one party hereto is unable to perform its obligations under this Contract, in part or in whole. An event of force majeure includes but not limited to earthquake, typhoon, water disaster or other natural disasters, fire disaster, explosion, war, labor strike or turmoil. Should any party be prevented from executing its obligations under the Contract or be delayed in performing its obligations under the Contract by any event of force majeure without any fault or misfeasance of the party, the party then shall not be held responsible for being delayed in performing the Contract or for being prevented from performing the Contract and such facts shall not be construed as a breach of the Contract. Both parties hereby agree to continue to perform the Contract within \*\*\* upon elimination of such force majeure event. Contract duration shall be extended accordingly with such duration equivalent to the period of such force majeure event preventing from performing the Contract.

##### **4.1.2 Legal modification**

In case the Contract should be prevented from being executed due to any modification of applicable laws, the parties shall not investigate any responsibility of the other party and shall basing on the principle of equality seek and confirm new cooperation method through amicable consultations.

##### **4.2 Grounds for exemption applicable to the Seller**

4.2.1 Ceasing production caused by any infectious disease, ceasing production or production capacity of a month decreased by more than \*\*\* due to \*\*\*, unexpected power failure lasting for more than \*\*\* or damaging equipments, terrorism event, malicious destruction, military operation, sovereign act, governmental operation.

4.2.2 In the event that the Seller needs to inspect, repair and maintain its equipments (no more than \*\*\* times for each year and each duration for such maintenance should be over \*\*\*, which causing a decrease in production capacity by more than \*\*\*), the Seller shall be so exempted for the month.

4.2.3 Supply of raw materials behind demand. “Supply of raw materials behind demand” refers to any case where there is material insufficiency in raw materials as needed for production of silicon materials in the market rather than price factors (including the case where “price available while goods unavailable”).

#### 4.3 Notification and reply

Any party affected by any force majeure event or other ground for exemption shall notify the other party without delay in writing signifying the same, covering full explanation of such force majeure event or such ground for exemption, as well as the existing status of such event or ground, and any and all measures taken or to be taken by the party affected striving for eliminate any and all adverse effects from such event. The party affected by any force majeure event or other ground for exemption shall take all necessary measures with due diligence so as to conquer any adverse effect from being delayed in performance of the Contract and on the ground not requiring any other expense from the other party take all necessary measures so as to make up for the time so deferred.

#### 5. Intellectual property right

Any and all drawings, data, design, instruments, equipments, program, engineering modification, invention, commercial secrete, copyright, right of wires layout, source code, result code, patent right application, proprietary technology, computer and/or product software (including partial software), trademark right, technical information and other information as developed, produced or provided by the Seller during the course of development, production or manufacturing of the product shall exclusively belong to the Seller (or the Seller' s licensor, if any). Any and all stipulations of the Contract shall not be deemed that any of such intellectual property right has been granted to the Buyer.

#### 6. Confidentiality obligation and confidential information

6.1 The parties (including any Associated company of each party) accept and agree that any information (including investigation information, technical information, product development information, marketing plan or conditions, product information, business strategies information as well as other similar information) regarding terms and conditions of the Contract and exchanged for the purpose of the Contract shall form the "confidential information" of the party disclosing such information (hereinafter referred to as the "disclosing party"). The abovementioned confidential information is exchanged for the purposes that the parties may appropriately perform their obligations and responsibilities under the Contract respectively. Within the Contract duration and \*\*\* year after termination or dissolution of the Contract, any party receiving any Confidential information (including such party' s any employee, attorney, financial consultant, senior official, directors and/or shareholders) (hereinafter referred to as the "receiving party") shall not without prior written consent from the disclosing party in any method use any clause of the Contract or any confidential information received from the disclosing party, nor shall the receiving party release, disclose or inform such confidential information to any individual, enterprise, company or entity. Notwithstanding the above provisions, any party may under any of the following circumstances release, disclose or inform any of its Associated companies with the terms and conditions of the Contract or any confidential information received from the disclosing party: such Associated company undertakes to strictly keep the confidentiality of such information as aforesaid, provided that such Associated company for the purpose of performance of the Contract has to be informed of such information. Each party hereto further undertakes that the receiving party shall take all measures with such degree no lower than those for keeping the confidentiality of the receiving party' s own confidential information so as to keep such confidential information received from the disclosing party, provided that, however, the receiving party shall implement all necessary measures with due care and diligence for the purpose for keeping such confidential information from being released or disclosed. Confidential information shall not cover the following particulars:

- (a) any information obtained by the receiving party prior to disclosure by the disclosing party to the receiving party;
- (b) any information publicly available without the fault of the receiving party;
- (c) any information legally obtained from any third party and without any restriction on disclosure;
- (d) any information solely developed by the receiving party;
- (e) any information so released that a written grant for releasing from the disclosing party has been acquired as per the Contract; or



- (f) any information disclosed as per requirements of any applicable laws or for the purpose of submission of financial reports, provided that for the purpose of the party requesting for such disclosure may under available circumstances shall notify the other party and under any appropriate circumstance grant the other party with rational chances to ask for cancellation for such disclosure.

6.2 The receiving party shall keep confidentiality of any and all confidential information received and save as for performance of obligations under the Contract the receiving party shall not reproduce or use such confidential information. After completion of performance of obligations under the Contract or when being requested by the disclosing party, the receiving party shall return any and all confidential information as received to the disclosing party.

6.3 The receiving party accepts and agrees that any illegal use or disclosure of any confidential information as aforesaid may induce irreplaceable loss and any and all reliefs made according to laws may not be able to replenish the loss suffered by the disclosing party; therefore, should the receiving party has breached or intends to breach the provisions of this article, the disclosing party may in addition to execution of any other rights exercisable and the right of relief apply for injunction relief so as to bar such breaches.

6.4 Each party (including any Associated company informed of any confidential information as per the Contract) agrees that any party hereto without prior consent of the other party shall not release or disclose publicly any pronouncement, report, statement or message regarding any transaction, any clause with regard to the Contract or under the Contract. Notwithstanding the provisions of the previous sentence, any party or any Associated company of such party may disclose any content of the Contract on the ground of compulsive requirements of local laws and any applicable laws. The parties may subsequent to an agreement on detailed contents for news release as may be reached release the same regarding to the execution and contents of the Contract.

## **7. Proprietorship and utilization regarding to drawings, documents and other items**

Any and all drawings, blueprint, abrasive tools, models, devices, forme and any other item or document as may be supplied or made by the Seller for the purpose of development, production or manufacturing of the products under the Contract shall exclusively belong to the Seller and upon the termination or dissolution of the Contract, they shall be returned to the Seller without delay. For the purpose of any and all drawings, blueprint, abrasive tools, models, devices, forme and any other item or document as may be supplied or made by the Seller, the Buyer may use only for performance of the Contract and shall not use such items for any purpose in favor of any other party.

## **8. Breach, termination and recession**

8.1 Buyer's responsibilities for not conforming to the Contract in purchasing and/or paying

8.1.1 In case the Buyer fails to purchase products for a month from the Seller as per the quantity stipulated in the Contract, the Seller may at its own discretion sell such portion of products not purchased by the Buyer to the domestic market and/or the international market, and in such a case, the Buyer shall bear the spread from such insufficiency of such sales price against the price as stipulated in the Contract as well as relevant expenses for such sales. Such sales price may be stipulated in a contract and shall not be lower than \*\*\* of the market price then, or such sales may be performed in the manner of an auction and shall therefore not be subject to the provisions in the first half of this sentence (the Seller shall notify the Buyer in writing before commencing such auction procedures). Relevant expenses for such sales shall not exceed \*\*\* of the sum of such portion of products so sold as calculated as per the price set forth in the Contract.

8.1.2 In case the Buyer fails to make advance payment and/or payment for products as per the scheduled time, the Buyer shall bear daily a default penalty as \*\*\* and during such time, the parties shall continue to perform the Contract.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



In case the Buyer fails to make advance payment within \*\*\* (inclusive) days extended and/or fails to make payment for products within \*\*\* (inclusive) days, the Seller may send the Buyer with a notification requesting the Buyer to correct its breaches within \*\*\*. Should the Buyer fails to rectify its breaching actions within \*\*\* after such notification other than caused by an event of force majeure, the Buyer shall be deemed to have gravely breached the Contract and then the Seller shall be entitled to unilaterally rescind the Contract subsequent to sending a written notification to the Buyer signifying the same. Such recession shall take effect upon arrival of such notification at the Buyer. Should the Buyer within such notification duration rectify its breaching actions, the Seller shall not be entitled to rescind the Contract. Where the Buyer breaches or gravely breaches the Contract, the Seller shall have options not to dismiss the Contract but to receive relief as per the stipulations set forth in article 8.1.1, save as the Contract should be rescinded according to rules of then any effective legal documents.

8.1.3 Where the Buyer gravely breaches the Contract and the Seller then rescinds the Contract, the Buyer shall bear responsibilities for breach of the Contract, namely:

- (a) as per provisions of article 8.1.2 of the Contract pay default penalty for overdue payment (calculation of such default penalty shall be ended on the date of recession of the Contract), and
- (b) any and all residual advance payment available on the date of recession of the Contract shall belong to the Seller, and
- (c) pay to the Seller with a default penalty as \*\*\*.

8.2 Seller' s responsibilities for not conforming to the Contract in supplying products.

8.2.1 In case the Seller fails to replace any product with defect with qualified product within \*\*\* as specified in article 3.6.5 of the Contract, or the Seller in a month fails to meet the demand of the Buyer on such quantity as specified in the Contract, whether through the Seller' s own production or through purchasing from any third party, the Buyer may subsequent to urging the Seller and granting for \*\*\* as an extension purchases at its own discretion products from any domestic market or international market as substitute products of the insufficiency, and in such a case the Seller shall bear the spread from such insufficiency of such purchasing against the price as stipulated in the Contract as well as relevant expenses for such purchasing. Such purchasing price may be stipulated in a contract and shall not be higher than \*\*\* of the market price then and relevant expenses for such purchasing shall not exceed \*\*\* of the sum of such portion of products so purchased as calculated as per the price set forth in the Contract.

8.2.2 In case the Seller fails to deliver products and/or deliver any insufficiency as per the scheduled time, the Seller shall bear daily a default penalty as \*\*\* of the amount of products not delivered (calculation of such default penalty shall be ended when such products has be delivered or substitute products have been received by the Buyer, provided that the aggregated default penalty shall not exceed \*\*\* of the total value of such portion of products) and during such time, the parties shall continue to perform the Contract. In case the Seller fails to deliver products for \*\*\* (inclusive) days overdue, the Buyer may send the Seller with a notification requesting the Seller to correct its breaches within \*\*\*. Should the Seller fails to rectify its breaching actions within \*\*\* after such notification other than caused by an event of force majeure, the Seller shall be deemed to have gravely breached the Contract and then the Buyer shall be entitled to unilaterally rescind the Contract subsequent to sending a written notification to the Seller signifying the same. Should the Seller within such notification duration rectify its breaching actions, the Buyer shall not be entitled to rescind the Contract. During the period where the Seller fails to deliver products on schedule, the Buyer shall also have options not to dismiss the Contract but to receive relief as per the stipulations set forth in article 8.2.1, save as the Contract should be rescinded according to rules of then any effective legal documents.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

8.2.3 Where the Seller gravely breaches the Contract and the Buyer then rescinds the Contract, the Seller shall bear responsibilities for breach of the Contract, namely:

- (a) as per provisions of article 8.2.2 of the Contract pay default penalty for overdue payment (calculation of such default penalty shall be ended on the date of recession of the Contract), and
- (b) any and all residual advance payment (if any) on the date of recession of the Contract shall be returned to the Buyer, without interest, and pay a default penalty as \*\*\*, and
- (c) pay to the Buyer with a default penalty as \*\*\*.

8.3 Both parties hereby unanimously consent and accept that the calculation method of any and all foreseeable losses arising out of any breach of the Contract as well as remuneration of such loss fully conforms to that for calculation of any default penalty. The parties further agree to waive the right of adjustment on any default penalty exceeding the actual loss, as stipulated in article 114 of "Contract Law of the People's Republic of China".

#### 8.4 Termination and recession

8.4.1 The Contract shall be terminated in case that

- (a) the Contract expires; or
- (b) the Contract shall be terminated when agreed by the parties in a written form.

8.4.2 Any party hereto may unilaterally rescind the Contract by sending a written notification signifying the same to the other party in case that

- (a) the Seller or the Buyer materially breaches the Contract as per provisions of article 8.1 or article 8.2, the non-defaulting party may unilaterally rescind the Contract by sending a written notification to the defaulting party signifying the same; or
- (b) any party hereto declares being bankruptcy, or should be under any procedure regarding insolvency, liquidation or dissolution, or ceases business, or should be insolvency of any liability due, the other party hereto may unilaterally terminate the Contract by sending a written notification to such party.

#### 9. Notification

Any and all notifications or documents as may be served as per provisions of the Contract shall be prepared in writing by the representatives of the parties respectively provided below and shall be sent to or be delivered to the representatives of the parties respectively provided below. Any notification sent in any of the following manners shall be deemed that all members of the addressee have received such notification:

- (a) delivery conducted manually by a dedicated person, the time since such delivery; (b) delivery conducted via a registered letter or a certified mail, the time since receiving of the notification or the document; or (c) delivery conducted via an express mail service, the following working day of such delivery.

Representative of each party to receive any and all normal correspondents:

##### Representative of the Seller:

**Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.**

Address: No. 66, Yangshan Road, Economic Development Zone, Xuzhou City, Jiangsu Province, PRC

Attention: Zhu Guomin (General Manager)

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

**Representative of the Buyer:****Jiangsu AIDE Solar Energy Technology Co., Ltd.**

Address: No. 69, Pantaoshan Road, Economic Development Zone, Xuzhou City, Jiangsu Province, PRC

Attention: Zhang Yanpeng (Executive Vice President)

In case any party hereto intends to modify any of the above information regarding the address or representative for sending and/or receiving notifications or documents, such party shall so notify the other party in writing. Any and all correspondents and/or communications shall conform to stipulations of such cooperative procedures which shall be jointly agreed by the parties hereto.

**10. Contract language**

The Contract shall be written in Chinese and in English and the two language versions shall be equally authentic. In case of any discrepancy, the Chinese version shall prevail.

**11. Applicable law**

The effectiveness, interpretation and execution of the Contract shall be governed by laws of the People's Republic of China. Any and all laws and rules on conflicts of laws other than PRC laws shall not apply to the Contract.

**12. Settlement of dispute**

Unless otherwise provided by the Contract, any and all disputes, dissidences or claims for compensation caused by the Contract or in connection with the Contract, or breach of the Contract, termination of the Contract or inefficiency, etc. shall be finally settled by Shanghai Commission of China International Economic and Trade Arbitration Commission (CIETAC-Shanghai) as per its domestic arbitration rules then effective. Such arbitration shall be made in Shanghai and the language used for such arbitration procedure shall be in Chinese.

Any arbitration award so prepared and awarded shall be final and unquestionable and shall be binding upon both parties, and may be adopted as a ground for any court decision of any competent court. Expenses for such arbitration (including but not limited to any expenses incurred for appointment of arbitrators) shall be assumed by the parties as per provisions of such arbitration award.

**13. No waiver**

Where any party fails to request the other party to strictly perform the any provision of the Contract, or to execute any right and/or interest under the Contract, it shall not be deemed that such party has waived such right and/or interest, and such party shall not be deprived of the right and/or interest later of requesting to exercise or rely on such provision or right and/or interest.

**14. Severability**

Any ineffectiveness of any clause of the Contract shall not affect the effectiveness of other clauses of the Contract.

**15. Assignment**

Any party without prior written consent from the other party shall not assign any obligation under the Contract.

---

**16. Consecutive effectiveness**

Any and all relives for breach and any and all confidentiality rights, interests and obligations as stipulated by the Contract shall continue to be effective subsequent to termination or recession of the Contract.

**17. Modification**

Any modification, amendment, supplement or waiver of any clause of the Contract shall not take effect unless it was made in a written form entered into by and between the Seller and the Buyer.

**18. Integrality**

The Contract together with all attachments hereto shall constitute for the purpose of the Contract object as reached an entire contract and shall replace any and all contracts and/or memorandums as previously formulated by and between the parties hereto.

**19. Effectiveness of Contract**

The Contract shall come into force when the Contract is duly executed by the authorized representative of the parties.

- (the main text of the Contract is ended here and the attached page is for signature and seal only) - (Page for signature and seal)

**Seller: Jiangsu Zhongneng Polysilicon Technology  
Development Co., Ltd.**

(Sealed)

---

(Signature of representative)

**Buyer: Jiangsu AIDE Solar Energy Technology Co.,  
Ltd**

(Sealed)

---

(Signature of representative)

---

## Attachment A

### Attachment A-I: Specification and Quality Standard of Products

#### Specification of 125\*125mm monocrystal wafers

Size

\*\*\*

Thickness

\*\*\*

Type of electric conduction

\*\*\*

Direction

\*\*\*

Content of oxygen

\*\*\*

Content of carbon

\*\*\*

Resistivity

\*\*\*

Life of some carriers

\*\*\*

- (main text of this page is ended here) -

**Attachment A-2: Intention regarding to Adjustment of Attachment A-1**

The parties hereby agree that as of coming into force of the Contract, any specification as set forth in Attachment A-1 can only be modified after written consents of both parties have been made. The parties may as per agreement set forth in Attachment A-2 consult any modification of Attachment A-1. In case the parties after such consultation fail to reach any written supplementary agreement (including the duration when such consultation was conducted), the parties shall continue to implement as per provisions set forth in Attachment A-1.

I. Seller' s adjustment intention regarding to product thickness set forth in Attachment A-1:

<u>Year (Contract year)</u>	<u>Product thickness (unit: mic)</u>
2008	***
2009	***
2010	***
2011	***
2012	***
2013	***
2014	***
2015	***

(Remark: from year 2008 to year 2011, product thickness shall decrease successively by \*\*\* yearly; from year 2011 to 2015, product thickness shall decrease successively by \*\*\*)

II. Buyer' s adjustment intention regarding to product thickness set forth in Attachment A-1:

Monocrystal wafers each 125\*125 specification as set forth in Attachment A-1 shall be 2.4 W [the conversion rate shall serve as the basis for calculation of other product price after unit price of each slice was converted into unit price of each watt as per stipulations of the original contract when any product specification adjustment resulting in inability to confirm the product price through consultations of the parties].

In case after taking effect of the Contract the Buyer intends to purchase or the Seller intends to produce monocrystal wafers or polywafers of other specifications and Buyer intends to purchase and the Seller intends to supply relevant silicon materials, the parties may otherwise enter into a supplementary agreement through friendly consultations.

- (main text of this page is ended here) -

## Attachment B

### Amount and Schedule of Advance Payment

<u>Payment date of advance payment</u>	<u>Amount of advance payment (RMB)</u>
	<u>Unit: RMB</u>
April 22, 2008	***
May 15, 2008	***
April 16, 2009	***
April 16, 2010	***
Total	***

Advance payment shall be \*\*\* of Contract amount - RMB 8,483,333,269.00 [Say RMB Eight Billion, Four Hundred and Eight Three Million, Three Hundred and Thirty Three Thousand, Two Hundred and Sixty Nine Yuan Only], namely.

Advance payment totals RMB\*\*\* [Say RMB\*\*\* Only] (rounded by taking integer digits); advance payment for each installment shall be paid up prior to such date as aforesaid (inclusive).

- (main text of this page is ended here) -

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

**Quantity of products to be supplied monthly and price for year 2008**

<u>Month</u>		<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>	<u>October</u>	<u>November</u>	<u>December</u>	<u>Total</u>
Quantity of wafers to be provided										
	Piece	***	***	***	***	***	***	***	***	***
Unit price including tax (RMB)										
	RMB/piece	***	***	***	***	***	***	***	***	
Tax rate of value-added tax at the year										
		17 %	17 %	17 %	17 %	17 %	17 %	17 %	17 %	
Payment date each month										
		***	***	***	***	***	***	***	***	
Payment for goods payable (RMB)										
	RMB	***	***	***	***	***	***	***	***	***

**Quantity of products to be supplied quarterly and price for 2009-2010**

<u>Year</u>		<u>2009</u>					<u>2010</u>				
<u>Quarter</u>		<u>1<sup>st</sup> quarter</u>	<u>2<sup>nd</sup> quarter</u>	<u>3<sup>rd</sup> quarter</u>	<u>4<sup>th</sup> quarter</u>	<u>Total</u>	<u>1<sup>st</sup> quarter</u>	<u>2<sup>nd</sup> quarter</u>	<u>3<sup>rd</sup> quarter</u>	<u>4<sup>th</sup> quarter</u>	<u>Total</u>
Quantity of products to be provided											
	Piece	***	***	***	***	***	***	***	***	***	***
Unit price including tax (RMB)											
	RMB/piece	***	***	***	***	***	***	***	***	***	***
Total price including tax (RMB)											
	RMB	***	***	***	***	***	***	***	***	***	***

**Quantity of products to be supplied and price for 8-year duration**

<u>Year</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>Total</u>
-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	-------------	--------------



Quantity	Piece	***	***	***	***	***	***	***	***	368,749,998
Unit price including tax (RMB)	RMB/piece	***	***	***	***	***	***	***	***	
Total price including tax (RMB)	Piece	***	***	***	***	***	***	***	***	8,483,333,269

Terms and conditions:

1. Maximal adjustment range shall be \*\*\* of the above-mentioned quantity of products to be provided monthly for each year.
2. As to quantity of products to provided monthly for year 2009~year 2010, the parties shall fixed it up within the last month of the previous Contract year and in ease no agreement should be reached, quantity of products to be provide monthly shall be subject to be amortized evenly from the quantity of products to be provided quarterly, namely, in such as case, the quantity of products to be provided monthly shall be \*\*\*.
3. Quantity of products to be provided monthly during year 2011~year 2015 shall be fixed up by the parties within the last month of the previous Contract year, and in case no agreement should be reached, quantity of products to be provide monthly shall be subject to be amortized evenly from the quantity of products to be provided yearly, namely, in such as case, the quantity of products to be provided monthly shall be \*\*\*.
4. Advance payment of \*\*\* shall be offset evenly monthly.
5. The \*\*\* date of each month shall be the payment date of the amount payable for the quantity of products to be provided for the following month, namely, payment for products for a month shall be fully paid up prior to such date (inclusive).
6. Tax rate of quotation including tax as aforesaid shall be 17% and in case of tax rate adjustment by the government, the tax rate so adjusted so prevail. (Monthly amount set forth in the column of payment for products regarding to year 2008 is calculated from the value-added tax rate of the year (17%); in case of value-added rate adjustment, the rate so adjusted shall prevail.)
7. The parties hereby agree that as of year 2010 when the actual production capacity of the Buyer increases, the Seller shall after being agreed by the parties through consultations increase the quantity of products to be provided for the year as per practical situations. Price for products so increased shall as per the price of the year. Specific quantity of products to be provided so increased shall be subject to be otherwise agreed by the parties.

- (main text of this attachment is ended here) -

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

**List of Associated Companies Partaking to the Contract and Format of Commitment Letter**

**List of Associated Companies**

Associated companies of the Seller:

(Blank)

Associated companies of the Buyer:

(Blank)

- (main text of this page is ended here) -

---

## Commitment Letter

We, [\*\*\* Company], are informed that Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. has entered into “Contract with regard to Supply of Wafers” (the “Contract”) with [•] as of MM/DD/2008. As an associated company of [the Buyer/the Seller] and conforming to stipulations of the Contract, we hereby apply for partaking in the Contract so as to be [the Buyer/the Seller] under the Contract.

We hereby irrevocably undertake that once joining in the Contract to be [the Buyer/the Seller] we shall be abided by the following provisions:

We are fully aware of and understand any and all stipulations of the Contract as well as attachments to the Contract and we hereby undertake to be bounded by any and all contents contained in the Contract and attachments to the Contract.

We shall therefore bear the joint responsibility and obligation under the Contract with any and all associated companies partaking in the Contract, and we further accept that any performance of obligations under the Contract by any associated company of the other party shall be deemed a performance of the Contract by the other party.

Should we no longer conform to requirements on Associated companies under the Contract, we shall therefore no longer enjoy any right or interest under the Contract, provided that any joint responsibility under the Contract to be borne by us shall not be exempted.

Seal of the party making such commitment: [\*\*\* company]

Signature of legal representative or authorized representative:

MM/DD/YY

**Product Packing Standard**

Products shall be packed in boxes, with each box 300 pieces of wafers, and then these boxes shall be packed in larger boxes so as to prevent from being damaged during transportation and storage.

- (main text of this page is ended here) -

**Commissioned Processing Contract**

Party A: Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.

Registered place: 66 Yangshan Road, Economic Development Zone, Xuzhou City,  
Jiangsu Province

Legal representative or principal: Xu Jin

Party B: Changzhou Huasheng Hengneng Optoelectronics Co., Ltd.

Registered place: North of Middle Huacheng Road (2 Zhongxing Road), Jintan

Legal representative or principal: Feng Yan Economic Development Zone

The Contract is hereby concluded by and between Party A and Party B through friendly consultation in accordance with relevant provisions of “Contract Law of the People’s Republic of China” and shall be binding upon both parties.

**Article I. Contract object**

Party A intends to provide Party B with polysilicon (hereinafter referred to as “polysilicon”) so as to entrust Party B to process wafers conforming to requirements of the Contract, for the purpose that Party A may sell such wafers to any third party (hereinafter referred to “practical user”).

**Article II. Yield rate and processing volume**

2.1 Polysilicon should be processed into monocrystalline wafers with size as 125mm \* 125mm, and the yield rate shall be:

For year 2008, as per \*\*\* piece/kg; for year 2009, as per \*\*\* piece/kg; for year 2010, as per \*\*\* piece/kg; and for year 2011, as per \*\*\* piece/kg;

2.2 For total quantity of wafers that Party A entrusts Party B to process as well as processing volume for each month of each year, refer to Appendix II “Polysilicon, processing volume of silicon wafers and number of silicon wafers” for details.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

- 2.3 Processing volume of wafers set forth in Appendix II refers to the rationally anticipated processing quantity when entering into the Contract by both parties. In performance of the Contract, Party B shall guarantee the production capacity as per the anticipated production volume set forth in Appendix II. For the actual processing quantity, Party B shall process and deliver wafers as per polysilicon delivered by Party A as agreed in Article 4 hereof and relevant yield rate.

### **Article III. Quality standard and requirements of wafers**

Wafers as processed by Party B shall strictly conform to the requirements of each parameter set forth in **Appendix III** and it shall have a \*\*\* quality warranty period as of the date of Party' s delivery of wafers.

Unless otherwise specified herein, Party A may from time to time at its discretion adjust parameter requirements of wafers entrusted to Party B to process, provided that such adjustment of parameters shall be consented by Party B. Otherwise, Party B shall not be held responsible for any loss so occurred against Party A.

### **Article IX. Delivery of polysilicon**

- 4.1 Quantity of polysilicon to be delivered: polysilicon shall be delivered to Party B monthly. Refer to Appendix II "Polysilicon, processing volume of wafers and number of wafers" for detailed specifications regarding quantity of polysilicon to be delivered. Party A shall be entitled to, as per its own practical production capacity, appropriately adjust the quantity of polysilicon to be delivered to Party B for each month as set forth in Appendix II, provided that a notification signifying such adjustment be made \*\*\* in advance to Party B and that the quantity as may be provided after such adjustment shall not exceed \*\*\* of that for each month as provided in the appendix. Should Party A provide polysilicon exceeding such range as

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

specified in the previous sentence, Party A shall notify Party B \*\*\* in advance. In case Party B can not process the quantity of polysilicon as provided by Party A, Party B shall so notify Party A in a written form signifying its actual processing capacity and when being confirmed by Party A in a written form. Party B shall not be held responsible for the processing of the portion exceeding that confirmed.

- 4.2 Delivery mode and time: polysilicon shall be delivered by Party B itself and Party B shall within \*\*\* complete delivery of processed polysilicon for the month upon receipt of Party A' s delivery notice.
- 4.3 Place of delivery: such warehouse as may be designated by Party A.
- 4.4 Party B shall be responsible for transportation of polysilicon at the expense of Party A (included in expenses for processing). Party B shall arrange delivery works properly by taking into account anticipated delivery duration as well as the time for loading, so that delivery of polysilicon may be completed within the schedule as stipulated in this article.
- 4.5 Packing of polysilicon shall be the responsibility of Party B who shall guarantee that its packing may meet the requirements for long distance transportation.
- 4.6 Party A shall be deemed to have delivered the polysilicon to Party B upon the loading of the same on such vehicles as designated by Party B, risk involved thereafter shall be responsibility of Party B; before delivery, risk involved shall be the responsibility of Party A. However, if Party B should fail to carry away polysilicon on schedule, risks involved thereof after the date of delivery as provided by the Contract shall be assumed by Party B.

#### **Article V. Inspection and custody of polysilicon**

- 5.1 Authorized representative of Party B shall submit a letter of authority when trying to taking away polysilicon and before leaving warehouse of Party A or designated by Party A make clear the quantity of polysilicon as delivered by Party A and make a

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

written confirmation regarding the quantity of such polysilicon as delivered by Party A. As such, the authorized representative of Party B shall together with Party A take samples from the current batch of materials and reserve the sample with Party A after that is sealed and marked upon inspection, and the reserved sample will represent the overall quality of current batch of materials to be delivered upon the confirmation by both parties.

- 5.2 Polysilicon as to be provided by Party A to Party B shall conform to such requirements as stipulated in **Appendix I** "Specification of polysilicon" hereto. Party B shall conduct inspections on such polysilicon within \*\*\* after the delivery by Party A. Should quality or specification of such polysilicon be discovered as not meeting requirements of the Contract upon inspection (other than those caused by poor transportation), Party B shall so notify Party A within the inspection period as stipulated in the previous sentence and shall replace them within \*\*\* upon the confirmation by Party A. Freight so incurred shall be borne by Party A. In case Party B fails to notify Party A any discrepancy regarding quality and/or specification within the inspection period, then it shall be deemed that polysilicon provided by Party A conform to stipulations of the Contract and Party A then may dismantle the seal for the current batch of reserved sample.
- 5.3 Party B shall properly keep the polysilicon as provided by Party A properly and without Party A's prior written consent Party B shall not replace any polysilicon at its own discretion.
- 5.4 For completion of processing of wafers as per the Contract, Party B shall only use polysilicon as provided by Party A and shall under no circumstance use or adulterate polysilicon not provided by Party A. As such, Party B shall guarantee to apply the dedicated monocrystalline wafer production oven to produce wafers for Party A. Such dedicated monocrystalline wafer production ovens shall not be used for production of any product for any third party.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



---

## Article VI. Delivery of wafers

- 6.1 Quantity of wafers to be delivered: Party B shall deliver wafers to Party A as per processing volume of wafers as set forth in Appendix II “Polysilicon, processing volume of wafers and number of wafers”. In case adjustment on providing quantity of polysilicon has been made by Party A, delivery of wafers shall be as per the adjusted processing volume of wafers. Party B shall keep stable and consecutive productions of wafers so as to deliver wafers as required by Party A or practical users.
- 6.2 Delivery time and place: within \*\*\* after delivery of polysilicon by Party A to Party B, Party B shall complete processing of wafers as per requirements on quantity and quality set forth in the Contract and deliver such wafers to Party A’s warehouse or other destination as may be designated by Party A in good batch number which shall at least cover information regarding serial numbers of polysilicon provided by Party A, production date, date of delivery, and name of practical user.
- 6.3 The unloading of wafers from vehicles as designated by Party B to Party A’s warehouse or any other destination as may be designated by Party A shall be deemed to be a delivery of wafers by Party B to Party A. Risks involved before delivery of wafers shall be assumed by Party B; after delivery, risks shall be assumed by Party A.
- 6.4 Freight and expenses: transportation for delivery shall be arranged by Party B itself, and freight so incurred shall be borne by Party A (included in expenses for processing). Party B shall fully take into consideration of transportation duration together with loading and unloading duration and arrange transportation work without delay so that wafers that shall be delivered for the month may be delivered to Party A or any third Party as may be designated by Party A within the delivery duration as provided in this article.

- 6.5 During the course of deliver, Party B shall cause the receiver (refer to Party A or practical user) and Party B to jointly sample at least \*\*\* pieces of wafers and record relevant information regarding the wafers (at least including batch number). When such information has been confirmed by the receiver, Party B shall together with the receiver seal the said samples and the recorded information for several copies. Samples sealed shall at least be reserved with Party A for at least one copy.
- 6.6 In case Party A or practical user asks for onsite inspection in the place of delivery, Party B shall provide convenience accordingly, and the completion of inspection shall be deemed as a delivery.

#### **Article VII. Requirements on packing and expenses of packing**

- 7.1 Party B shall be responsible for packing of wafers. Packing of wafers hereunder to be made by Party B for Party A or any third party as may be designated by Party A shall conform to industry standard and those packing requirements as may be rationally judged by professional insiders. In addition, such wafers and packing shall be able to withstand requirements on long distance transportation and rough handling.
- 7.2 Expenses for such packing shall be borne by Party B, and packing materials shall not be returned, which shall belong to Party A or any third party as designated by Party A.

#### **Article VIII. Inspection and acceptance**

- 8.1 During the course of processing, Party B shall accept Party A' s necessary inspections on its works, provided, however, that Party A shall not impede Party B' s normal operation.
- 8.2 Party A or any third party designated by Party A shall check the quantity of wafers as delivered at the day by Party B and shall give written confirmations regarding the quantity so delivered with Party B' s employees. In case the quantity of wafers so delivered are less than that specified in the Contract, Party B shall within \*\*\* make them up and assume relevant liabilities for overdue delivery. Any and all expenses for wafers so incurred shall be borne by Party B.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

- 8.3 Quality inspection period of Party A' inspection on wafers shall last for one year, commencing from the date of delivery of wafers by Party B. Where any nonconformity to relevant stipulations of the Contract is inspected, Party A shall within the duration as aforesaid notify Party B in writing. Party B shall within \*\*\* after receiving such written notification specifying discrepancy replace such wafers with quality defects. For wafers as provided by Party B, \*\*\* of nonconformity rate shall be permitted. For disqualified wafers within the range of nonconformity rate, Party B shall not be held responsible for breach of Contract if Party B may replace them within \*\*\* upon receipt of Party A' s notification. Failing that, Party B shall be liable for overdue delivery. As to responsibilities for overdue delivery of wafers with quality defects, the time limit for overdue delivery shall be calculated as of the date of first delivery till the completion of replacement of wafers conforming to quality requirements. Any and all expenses so occurred shall be borne by Party B (the expenses include but are not limited to expenses for handling quality related issues, loss borne by Party A for client' s claim for remuneration as well as anticipated profit loss of Party A).
- 8.4 Acceptance standard: refer to Appendix II and Appendix III for details.
- 8.5 In case of any dispute between the parties over the quality of wafers during inspection, any party hereto may apply with legal quality supervision and inspection authority for relevant inspections and acquire inspection certificate. Should wafers fail to conform to Contract requirements, Party B shall repair such wafers or replace them with new ones and bear relevant responsibilities for delivery overdue as well as bear expenses for such inspection. Provided that the quality of the wafers meets the requirement of the Contract upon inspection, Party A shall assume such fees accordingly.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

- 8.6 If any practical user claims against Party A for inconformity of wafers produced by Party B or deferred delivery with fault of Party B, Party A shall immediately so notify Party B who shall then give assistance to Party A for technical supports, defense, counterplea and any other necessary activities so that Party A may not have to bear such responsibilities. If a competent court or arbitral authority decide that Party A shall be liable for such quality defects or deferred delivery with fault of Party B and indemnify the practical user and Party A has already made such notification as specified in this article, Party B shall indemnify Party A with full amount equivalent to the sum as made by Party A against the practical user as per court decisions and shall bear relevant responsibilities for breaching of the Contract.

#### **Article IX. Expenses for processing and payment**

- 9.1 Party B shall be entitled to charge fees for actually processed wafers conforming to requirements of the Contract. Unit price for each piece shall be calculated as per relevant provisions of appendixes hereto (including 17% value-added tax and freight).
- 9.2 Party A shall within \*\*\* upon delivery of wafers by Party B settle expenses for processing. Should Party B indemnify Party A with any amount before Party A's settlement of payment, Party A may directly deduct such sum from the expenses for processing. For wafers overdue accepted by Party A, Party A shall within \*\*\* settle the expenses for processing with Party B, provided that the default penalty for overdue delivery shall be deducted.
- 9.3 Party B shall as per relevant regulations and provisions as agreed issue formal invoices conforming to provisions of applicable laws to Party A.
- 9.4 If Party A without any due cause fails to pay expenses for processing to Party B, Party B shall be entitled to investigate relevant liabilities for breach against Party A pursuant to provisions of the Contract, provided that no polysilicon and wafers shall be withheld.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

**Article X. No delegation**

Without Party A' s prior written consent, Party B shall not delegate the processing of wafers hereunder to any third party.

**Article XI. Confidentiality**

- 11.1 Confidentiality obligation. The parties shall strictly keep confidential any and all relevant information as may come to known from the other Party during performance of the Contract, including without limitation to business secret, proprietary information or technology, sample, software, mold designing requirements, technical drawings, workmanship or assembly process flow, research achievement, price and calculations, financial data, quality standard, Contract terms concluded by the parties as well as any other technical and commercial information (hereinafter referred to as "confidential information"). Unless prior written consent from the other party has been acquired or disclosure has to be made pursuant to provisions of relevant laws and regulations, the party receiving any confidential information from the other party shall not disclose such confidential information to any third party, in whole or in part. Except for the purposes of performance of the Contract, any receiving party shall not use such information for any other purposes directly or indirectly, in part or in whole. Each party hereto agrees to keep the confidentiality of confidential information from the other party in line with protection degree of its own confidential information, provided, however, that such protection degree shall not lower than a reasonable degree. In case of any unauthorized use or disclosure of any confidential information from the other party, the parties hereunder shall notify the other party in writing without delay and shall give assistance to the other party in taking remedy measures. The party receiving confidential information from the other party may disclose such information to its own relevant employees, agents or professionals as employed, provided that it shall assure that such personnel shall be bounded by the Contract and keep confidentiality of such confidential information that come to them and use such information only for the purposes of performance of the Contract.

- 
- 11.2 Exception of confidential information. The followings shall not be regarded as confidential information: (1) any information obtained before receiving from the other party, with written evidence supporting such fact; (2) any information available in the public domain not due to the fault of the receiving party; (3) any information disclosed as per applicable law requirements; (4) any information disclosed as per compulsive requirements of any competent governmental authority and/or supervising & monitoring institution; and (5) any information as obtained via any other legal approach after receiving the same.
- 11.3 Provisions of this article will survive the termination or dissolution of the Contract without time limit.

## **Article XII. Declaration and assurance**

- 12.1 Both parties are enterprises legally established and exist, having full right, power and competence to conclude and exercise the Contract. Any and all formalities as needed for conclusion and performance of the Contract have been legally handled and prepared with due effectiveness. Any and all internal authorization procedures for conclusion of the Contract have already been handed and the undersigned are legal representatives or authorized representatives of each party. The Contract shall be binding upon both parties after its taking effect.
- 12.2 In concluding the Contract, no decision, ruling, arbitration or specific administrative action which may sufficiently have materially adverse effects on performance of the Contract was made by any court, arbitral authority, administrative organ or supervising & monitoring institute.
- 12.3 Party B undertakes to take out property insurance with full amount for assets pertaining to wafers hereunder.

---

**Article XIII. Party B' s liability for breach of Contract**

- 13.1 In case Party B fails to take away polysilicon pursuant to the schedule as provided by the Contract, Party B shall pay Party A with \*\*\*. For \*\*\* or more overdue, Party A shall be entitled to decline Party B' s taking away of polysilicon and to terminate processing entrustment for the portion of deferred delivery. Furthermore, Party A shall have right to charge default fine from Party B as \*\*\*. In case Party B should delay its delivery of wafers due to its delayed picking up of polysilicon, Party B shall be liable for delayed delivery of wafers as per provisions of Article 13.3 of the Contract.
- 13.2 In case wafers delivered by Party B should be insufficient in quantity pursuant to stipulations of the Contract, Party B shall within \*\*\* upon such delivery make them up and these portion shall be handled as per delayed delivery as specified in Article 13.3 of the Contract.
- 13.3 In the event that Party B shall delay its delivery of wafers in line with agreements of the Contract, Party B shall pay Party A with a default penalty as \*\*\*; at the same time, Party A shall be entitled to stop providing polysilicon to Party B until such breach of Party B has been corrected and relevant responsibilities for breach of Contract have been assumed by Party B for Party A. For \*\*\* or more days overdue, Party A shall be entitled to dissolve the processing entrustment for the portion delayed or reject to accept the overdue delivery and shall have right to charge a default penalty from Party B as \*\*\*. Furthermore, for the portion of polysilicon used yet undelivered, Party B shall indemnify Party A as per the sale price of those dissolved or rejected by Party A in the current month.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

- 13.4 In case Party B fails to deliver wafers as per quality stipulated in the Contract, Party A shall be entitled to ask Party B to make up the insufficiency with wafers conforming to quality requirements within \*\*\* upon delivery of wafers and Party B shall be liable for relevant responsibilities for breach of Contract as per stipulations on overdue delivery in Article 13.3.
- 13.5 In case more than \*\*\* of polysilicon received from Party A shall be damaged and/or lost due to poor custody of Party B, Party B shall indemnify Party A's loss as per the value of wafers available from such damaged and/or lost materials (subject to sale price of the damaged and lost wafers of the month exercised by Party A). In addition, Party B shall return the damaged polysilicon to Party A.
- 13.6 Except for an event of force majeure, Party B shall pay Party A with default penalty as \*\*\* if Party B fails to deliver wafers on schedule. In addition, for the portion of polysilicon used for the undelivered, Party B shall indemnify Party A as per sale price of polysilicon of the month exercised by Party A.
- 13.7 If Party B fails to pack wafers as per stipulations of the Contract and re-packing is required, Party B shall be liable for it or re-pack the wafers and assume expenses so occurred, including but not limited to freight and expenses for packing. Under such a circumstance, if Party A asks for compensation rather than re-packing, Party B shall indemnify Party A with the value difference between the disqualified packing materials and the qualified packing materials. Party B shall be responsible for any and all expenses and/or losses of packing or polysilicon arising out of poor packing and/or insufficient or improper protection measures.
- 13.8 In case any damage of wafers should be occurred during the course of transportation, Party B shall make up qualified wafers within \*\*\* upon delivery of wafers and assume responsibilities for overdue delivery stipulated in Article 13.3 herein.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



- 
- 13.9 If Party B at its own discretion transpose polysilicon provided by Party A, Party A shall be entitled to reject to accept them and charge a default penalty from Party B as per \*\*\* of the value of wafers rejected (subject to sale price of damaged and lost wafers of the month exercised by Party A). In addition, for the portion of polysilicon used for the rejected wafers, Part B shall indemnify Party A as per sale price of wafers of the current month exercised by Party A. If Party A under such a case asks for re-work, Party B shall handle as required and be liable for overdue delivery.

#### **Article XIV. Party A' s responsibility for breach of Contract**

- 14.1 Should Party A fails to make payment to Party B on schedule, Party A shall pay Party B the interest for overdue at the rate of current commercial loan issued by the People' s Bank of China upon the amount of such overdue payment.
- 14.2 Party A may adjust the schedule on providing of polysilicon as per practical requirements. Under such circumstances, should Party A fail to provide Party B with polysilicon as per the time and requirements set forth in the Contract, the date for delivery of such portion of polysilicon shall be extended accordingly.
- 14.3 Should Party A without due cause refuse to accept wafers, Party A shall then indemnify Party B' s loss so incurred.

#### **Article XV. Dissolution of Contract**

- 15.1 In case the performance of the Contract of one party or both parties is materially affected by force majeure which lasts for over \*\*\*, then either party may dissolve the Contract by notifying the other party in writing.
- 15.2 The Parties hereto may agree to dissolve the Contract through friendly consultations.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

- 
- 15.3 During the valid term of the Contract, if Party B fails to take away polysilicon for \*\*\* overdue for once time or if Party B fails to take away polysilicon accumulated for \*\*\* times, Party A shall be entitled to dissolve the Contract and charge a default penalty from Party B as \*\*\*. Party B shall then pay Party A with the default penalty as aforesaid in full within \*\*\* upon the date of dissolution of the Contract.
- 15.4 During the valid term of the Contract, if Party B delays to deliver wafers for \*\*\* for once time or if Party B delays to deliver wafers for accumulative \*\*\* times, Party A shall be entitled to dissolve the Contract and charge a default penalty from Party B as \*\*\*. Party B shall then pay Party A with the default penalty as aforesaid in full within \*\*\* upon the dissolution of the Contract.
- 15.5 During the valid term of the Contract, if Party B fails to deliver sufficient quantity of wafers and the insufficiency should accounts for over \*\*\* of the wafers that shall be delivered for the month, or if Party B fails to deliver sufficient quantity of wafers for accumulative \*\*\* times, then Party A shall be entitled to dissolve the Contract in part or in whole and charge a default penalty as \*\*\*. Party B shall then pay Party A with the default penalty as aforesaid in full within \*\*\* upon the dissolution of the Contract.
- 15.6 During the valid term of the Contract, if Party B delivers disqualified wafers and the inconformity should accounts for \*\*\* of the wafers deliverable for the month, or if Party B delivers disqualified wafers for accumulated for \*\*\* times, then Party A shall be entitled to dissolve the Contract in part or in whole and charge a default penalty as \*\*\*. Party B shall then pay Party A with the default penalty as aforesaid in full within \*\*\* upon the date of dissolution of the Contract.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

- 15.7 If Party B without Party A's written consent entrust wafers to be processed by Party B to any third party, Party A shall be entitled to dissolve the Contract in part or in whole and charge a default penalty from Party B as \*\*\*. Party B shall then pay Party A with the default penalty as aforesaid in full within \*\*\* upon dissolution of the Contract.
- 15.8 If Party A without due cause delays to pay Party B with expenses for processing for \*\*\* for once or for accumulative \*\*\* times and such payment overdue totals more than RMB\*\*\*, Party B shall be entitled to dissolve the Contract and charge a default penalty from Party A as \*\*\*. Party A shall then pay Party B with the default penalty as aforesaid in full within \*\*\* upon the date of dissolution of the Contract.
- 15.9 After the dissolution of the Contract, Party B shall within \*\*\* upon such dissolution deliver the wafers processed yet not delivered to Party A. Polysilicon not processed as well as advance payment not deducted yet shall also be returned to Party A within such term as aforesaid. Party B shall be responsible for such transportation and freight for returning such wafers and/or polysilicon to Party A. Party A shall within \*\*\* upon completion of the abovementioned issues settle the expenses for processing with Party B, provided that the amount as default penalty to be assumed by Party B hereunder shall be deducted.
- 15.10 In case Party A need to dissolve the Contract in advance, Party A shall so notify party B \*\*\* in advance. Party A shall not be liable for breach of Contract, otherwise, the Contract shall not be dissolved.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

- 
- 15.11 Dissolution of the Contract shall not affect the validity of relevant provisions regarding responsibilities for breach of the Contract, confidentiality, settlement of disputes, payment of default penalty after dissolution of Contract, etc.

#### **Article XVI. Force majeure**

- 16.1 Force majeure refers to events not foreseeable or not preventable and unconquerable to one party or both parties hereto occurred after formation of the Contract and such events prevent one party or both parties hereto from performing the Contract in part or in whole. Force majeure events include but are not limited to explosion, fire, flood, earthquake, typhoon and other natural disasters as well as war, riots, etc.
- 16.2 In case of a force majeure event, the Party prevented from performing the Contract shall notify the other party in the most convenient manner without delay and shall within \*\*\* upon discovery of such force majeure event submit to the other party with a report of such event specifying the same in details. The Party prevented from performing the Contract shall take all necessary measures so as to eliminate adverse effects of such force majeure event and try its best to reduce the other party' s loss. Upon the end of such force majeure event, the Party prevented from performing the Contract shall continue to fulfill its obligations hereunder.
- 16.3 In case a force majeure event shall last for more than \*\*\*, the parties shall as per influence of such force majeure event on performance of the Contract determine whether to terminate or delay the performance of the Contract, or exempt obligations of the party prevented hereunder in part or in whole. In case such a force majeure should last for more than \*\*\*, it shall be handled as per provisions of Article 15.1 of the Contract.

---

**Article XVII. Settlement of disputes**

- 17.1 The Contract shall be governed and interpreted by applicable laws of the People' s Republic of China.
- 17.2 Any and all disputes arising out of or in connection to the performance of the Contract shall be settled through negotiations of the both parties hereto. In case no agreement can be reached, such case shall be submitted to China International Economic and Trade Arbitration Commission for arbitration in Beijing city.

**Article XVIII. Supplementary and appendix**

- 18.1 Any issue not covered herein shall be executed as per provisions of relevant laws and regulations. In case no applicable law and/or regulation should cover such issue, the parties may otherwise reach an agreement as the supplementary of the Contract. Any and all appendixes and supplementary of the Contract shall constitute an integral part of the Contract and shall be equally authentic with the Contract.
- 18.2 For the purposes of prevention of any doubt, "year" and/or "yearly" in the Contract and/or in the appendixes refer to Gregorian calendar year when used for calculation of total quantity of wafers and unit price including tax; in other cases, they refer to the Contract year.
- 18.3 Contract year refers to, for year 2008, the full 12 months from May 1, 2008; for subsequent years, it shall be calculated accordingly; for year 2011, from the initial day of Contract year of the year to December 31, 2011.

**Article XIX. Effectiveness of the Contract**

- 19.1 The Contract shall take effect upon being signed and sealed by both parties and shall expire on December 31, 2011. The parties may before November 30 of each year consult with each other for adjustment of yield rate, technical specifications and other parameters for subsequent years. Those due yet not agreed shall be executed as per the original provisions of the Contract.

---

19.2 The Contract is formulated in duplicate with each party hereto holding one and shall be equally authentic.

Party A: Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd. (sealed)

Legal representative or authorized representative: (signature)

Party B: Changzhou Huasheng Hengneng Optoelectronics Co., Ltd. (sealed)

Legal representative or authorized representative: (signature)

March 21, 2008

---

## Appendix I. Specification of polysilicon

Special provisions regarding thickness of products:

<u>Year (Contract year)</u>	<u>Specification of thickness of product (unit: ##)</u>
2008	***
2009	***
2010	***
2011	***
2012	***
2013	***
2014	***
2015	***

Remark: for year 2008 - 2011, decrease progressively by \*\*\* units; for year 2011 - 2015, decrease progressively by \*\*\* units.

For the purpose of specifications set forth in Appendix I, Party A may at any time notify Party B \*\*\* in advance in writing of the adjustment of the specifications set forth in Appendix I.

Appendix II. Polysilicon, processing volume of wafers and number of wafers

<u>Year</u>	<u>Unit</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>Total</u>
Quantity	10,000 pieces	***	***	***	***	6,500
Unit including tax (RMB)	Yuan/piece	***	***	***	***	
Quantity of monocrystal silicon wafers available for each kg of polysilicon (125mm* 125mm)	Piece/kg	***	***	***	***	
Total price (including tax)	Yuan	***	***	***	***	567,300,000

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



(Subject to any written notification by Party A to Party B at any time and no discrepancy being lodged in a written form)

**Wafer Supply Agreement**

**between**

**Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.**

**and**

**Solarcell S. p. A**

**Contract No. [ELC00163]**

**June 1, 2008**

## **WAFER SUPPLY AGREEMENT**

This Wafer Supply Agreement (this “**Agreement**”) is entered into as of June 1, 2008, by and between Jiangsu Zhongneng Polysilicon Technology Development Co. Ltd. ( 江苏中能硅业科技发展有限公司), a company limited by shares established in the People’ s Republic of China with its principal place of business at 310 Xuzhou Economic Development Zone, North of the National Highway, Xuzhou, Jiangsu Province, People’ s Republic of China (the “**Seller**”), and Solarcell S.p.A., a joint stock company corporation with its principal place of business at via Verdi, 10, Brugherio (Milan), Italy (the “**Buyer**”). Seller and the Buyer together shall be referred to as the “**Parties**” and individually as a “**Party**”.

### **RECITALS:**

WHEREAS, the Seller is in the business of designing, developing, manufacturing, marketing and selling wafers for the solar industry; and

WHEREAS, the Buyer wishes to secure a supply of wafers and to purchase quantities of wafers from the Seller, and the Seller wishes to provide a supply of wafers and to sell quantities of wafers to the Buyer; and

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, the Parties agree as follows:

### **ARTICLE I DEFINITIONS**

#### **I.1 Definitions**

The following terms shall have the following meanings for the purposes of this Agreement:

- (a) “Agreement” shall mean this Wafer Supply Agreement, including all Schedules and Exhibits hereto, as it may be amended, modified or supplemented from time to time in accordance with its terms.
- (b) “Business Day” shall mean any day of the year other than (i) any Saturday or Sunday or (ii) any other day on which banks located in the People’ s Republic of China generally are closed for business.
- (c) “Contract Year” shall mean a twelve month period commencing on January 1 of a particular year and ending on December 31 of that year, except that the first Contract Year under the Agreement shall be from the Effective Date to December 31, 2008.
- (d) “Effective Date” shall mean the date of execution of this Agreement by all Parties.
- (e) “Euro” or “EUR” means the official currency of the European Union.

- 
- (f) “Force Majeure Event” shall have the meaning set forth in Article II.13(a).
  - (g) “Seller Order Acknowledgement” shall have the meaning set forth in Article II.3(a).
  - (h) “Governmental Authority” shall mean any national, federal, state, provincial or local government or a subdivision thereof, or any entity, body or authority exercising executive, legislative, judicial, regulatory or administrative functions thereof or pertaining thereto.
  - (i) “Indemnified Person” shall mean the Person or Persons entitled to, or claiming a right to, indemnification under Article V.
  - (j) “Indemnifying Person” shall mean the Person or Persons claimed by the Indemnified Person to be obligated to provide indemnification under Article V.
  - (k) “Initial Term” shall have the meaning set forth in Article IV.1.
  - (l) “Law” shall mean any law, statute, regulation, ordinance, rule, order, decree or governmental requirement enacted, promulgated or imposed by any Governmental Authority.
  - (m) “LC Bank” shall have the meaning set forth in Article III.1.
  - (n) “Letter of Credit” shall have the meaning set forth in Article III.1.
  - (o) “Loss” or “Losses” shall mean any and all damages, fines, fees, Taxes, penalties, deficiencies, losses (including lost profits or diminution in value) and expenses, including interest, reasonable expenses of investigation, court costs, reasonable fees and expenses of attorneys, accountants and other experts or other expenses of any proceedings or of any claim, default or assessment (such fees and expenses to include all fees and expenses, including fees and expenses of attorneys, incurred in connection with (i) the investigation or defense of any third party claims, (ii) asserting or disputing any rights under this Agreement against any Party hereto or otherwise, or (iii) settling any action or proceeding or threatened action or proceeding).
  - (p) “Missed Delivery” shall have the meaning set forth in Article II.6.
  - (q) “Person” shall mean any natural person, corporation, proprietorship, firm, partnership, limited partnership, limited liability company or partnership, trust, joint venture, union, association, Governmental Authority or other entity.
  - (r) “Prepayment” shall have the meaning set forth in Article III.2.
  - (s) “Purchase Shortfall” shall have the meaning set forth in Article II.2(c).
  - (t) “Quarter” shall have the meaning set forth in Article II.2(a).
  - (u) “Quarter Quantity” shall have the meaning set forth in Article II.2(a).

- (v) “Renminbi” or numbers preceded by the abbreviation “RMB” shall mean amounts in Chinese renminbi.
- (w) “Subsidiaries” shall mean any Person subject to control by either Party, or any of their respective affiliates. The term “control” as used in the preceding sentence means, with respect to a corporation, the right to exercise, directly or indirectly, fifty percent (50%) or more of the voting rights attributable to the shares of such corporation, or with respect to any Person other than a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person.
- (x) “Tax” or “Taxes” means all (i) federal, state, local, foreign and other taxes, assessments, duties or similar charges of any kind whatsoever, including all corporate franchise, income, sales, use, ad valorem, receipts, value added, profits, license, withholding, payroll, employment, excise, property, net worth, capital gains, transfer, stamp, documentary, social security, payroll, environmental, alternative minimum, occupation, recapture and other taxes, and including any interest, penalties and additions imposed with respect to such amounts; and (ii) liability for the payment of any amounts as a result of an express or implied obligation to indemnify any other Person with respect to the payment of any amounts of the type described in clause (i).
- (y) “Wafers” shall mean silicon wafers to be supplied for use in solar cells by the Seller complying in all respects with the Wafer Specifications.
- (z) “Wafer Specifications” shall mean the specifications set out in Schedule A and in each case as amended, updated or replaced and in force from time to time subject to the mutual agreement of the Parties in writing.

## **ARTICLE II**

### **SUPPLY OF WAFERS**

#### **II.1 Wafer Specifications**

The Wafers to be supplied under this Agreement shall meet the specifications as agreed to by the Parties in Schedule A hereto. The Seller shall maintain, in accordance with the Seller’s standard procedures, accurate records and data for any quality testing done by or for the Seller of any Wafers purchased by the Buyer hereunder and shall make such records and test data available to the Buyer upon reasonable request. The specifications set forth in Schedule A may be revised by written agreement of both Parties provided that (i) no change to the specifications shall be made unless \*\*\* prior notice in writing has been given for the change by a Party to another Party and (ii) both Parties have agreed on the terms and conditions for the supply of Wafers with the revised specifications. The Parties agree to negotiate in good faith on the price of the Wafers with the revised specifications having regard to items such as the amount of materials used, the amount of production cost and breakage rates. The Parties agree that unless a written agreement has been reached by the Parties with respect to the supply of Wafers with the revised specifications. The Seller shall continue to supply Wafers with the specifications as agreed by the Parties in Schedule A.

Notwithstanding the foregoing, the Parties agree to cooperate in good faith to improve the quality of the Wafers to be supplied with the agreed specifications and minimizing breakage rates provided that if the improvement of quality of the Wafers results in an increase in production cost, the Seller is not obliged to supply such Wafers with improved quality unless their new price has been agreed in writing by the Parties.

## II.2 Quantity and Price.

(a) Target Purchase Quantities. During each Contract Year, the Buyer agrees to purchase and the Seller agrees to supply over the course for a period of three months each (each a “**Quarter**”) during each Contract Year the quantity of Wafers (such quarterly purchase quantity commitments, measured in number of wafers, the “**Quarter Quantity**”), at the prices set forth in Schedule B hereto.

(b) Prices. All prices are based on EXW China basis. The prices set forth in Schedule B hereto are on a RMB per wafer basis, exclusive of any freight costs, insurance or other delivery costs or any Taxes in respect of the Wafers, which shall additionally be paid by the Buyer.

The Parties agree that should any change in Laws pertaining to Taxes in the PRC happen (other than Taxes relating to income and profit of the Parties generally) and (i) such change results in an increase in production costs of Wafer of the Seller, or (ii) such changes result in new or additional costs or expenses to the Buyer other than those already in existence that the Buyer is liable to pay to the Seller as at the date of this Agreement, the Parties will discuss and renegotiate the Prices within a period of \*\*\* subsequent to the change, in order to take into account the effects of the above changes. Should the Parties not reach an agreement after the above period of \*\*\*, the Party that suffers for the increase in costs or Taxes (as the case may be) will have the right to terminate this Agreement by serving a \*\*\* notice in writing to the other Party, unless the other Party shall agree to bear the relevant increase in costs, in which case neither Party shall be entitled to terminate this Agreement. Notwithstanding the foregoing, the Parties shall continue to perform their respective obligations under this Agreement until such time the new Prices have been agreed or this Agreement has been terminated.

The Parties agree that should any change in Laws pertaining to Taxes in the PRC happen (other than Taxes relating to income and profit of the Parties generally) and such change results in a reduction in production and/or administrative costs of Wafer of the Seller, the Parties will discuss and renegotiate the Prices within a period of \*\*\* subsequent to the change, in order to take into account the effects of the above changes. Should the Parties not reach an agreement after the above period of \*\*\*, the Party that would not benefit from a reduction in Prices as a result of the reduction in production and/or administrative costs shall have the right to terminate this Agreement by serving a \*\*\* notice in writing to the other Party, unless the other Party shall agree to reduce the Prices in the sum equivalent to the reduction in production costs of Wafer of the Seller as a result of the change in the relevant Laws, in which case neither Party shall be entitled to terminate this Agreement. Notwithstanding the foregoing, the Parties shall continue to perform their respective obligations under this Agreement until such time the new Prices have been agreed or this Agreement has been terminated.

(c) Purchase Shortfalls. If the Buyer purchases fewer wafers than the lesser of (i) the Quarter Quantity or (ii) the number of wafers tendered, in accordance with the terms of this Agreement, for delivery by the Seller during a Quarter of such Contract Year, the Seller shall be entitled to enforce the Letter of Credit and/or make a claim for the difference between (A) the amount that would have been payable by the Buyer during a Quarter of such Contract Year and (B) the amount payable by the Buyer during such relevant Quarter for the actual volume of wafers purchased by the Buyer from the Seller based on the applicable price listed in Schedule B hereto (such calculated amount, the “**Purchase Shortfall**”). The Purchase Shortfall shall accrue interest at the rate of \*\*\*,

unless prohibited by Law. In the event that the Buyer fails to pay the amount of the Purchase Shortfall in full within \*\*\* after the date of invoice, the Seller shall be entitled to: (i) terminate this Agreement, (ii) enforce the Letter of Credit, and/or (iii) make a claim for all Losses arising therefrom. In addition, if the Buyer fails to pay the amount of the Purchase Shortfall in full within \*\*\* after the date of invoice and that the Seller has already produced all or part of the Products within the Quarter Quantity for the Buyer, the Seller may freely sell such Products to third parties at such terms it considers to be reasonable, and if the sale price is lower than the price set hereunder, the Buyer shall be liable for the difference immediately.

(d) Monthly Planning, Rolling Forecast. For planning purposes only, no later than the \*\*\* of each calendar month, the Buyer shall deliver to the Seller a forecast of the quantities of Wafers that the Buyer anticipates that it will order from the Seller over \*\*\*. Such estimated amounts in the forecasts shall have no effect on the Buyer's obligation to purchase some or all of the Buyer's Quarter Quantity for any Quarter of a Contract Year or the Seller's obligation to deliver the indicated quantities, unless confirmed pursuant to the procedures of Article II.3.

### II.3 Purchase Orders and Order Acknowledgements.

(a) Purchase Order. The Buyer shall issue a written purchase order to the Seller through fax or internationally recognized carrier on a monthly basis at a minimum. Subject to the terms and conditions set forth herein, such purchase order shall specify the unit price, total price, quantity and requested delivery dates. The Seller shall, within \*\*\* after it receives any such purchase order, respond to such purchase orders with a written Seller order acknowledgement (the "**Seller Order Acknowledgement**"), which will set forth the requested quantities for which the Seller can then confirm a quantity (which quantity may be a partial quantity of the Buyer purchase order) and an estimated shipment calendar week. The Seller Order Acknowledgements shall reference the applicable Buyer purchase order. Until the Seller has provided the Buyer with the Seller Order Acknowledgement, such purchase order shall not be deemed to have been accepted by the Seller.

(b) Binding Purchase Orders. Unless expressly agreed to in writing by the Parties, no additional or different terms or conditions contained in any quotation, sales order, acknowledgement form, purchase order or other communication from the Seller or the Buyer shall be binding upon either the Party. To the extent that there is a conflict among the terms and conditions of this Agreement, any Buyer purchase order and any Seller Order Acknowledgement, the terms of this Agreement shall apply.

### II.4 Seller Invoices.

Seller invoices shall reference the applicable Buyer purchase order and the Seller Order Acknowledgements and shall be submitted by the Seller to the accounts payable address of the Buyer specified in writing from time to time by the Buyer. To the extent that there is a conflict between the terms and conditions of this Agreement and any such invoice, the terms of this Agreement shall apply. All prices in the invoices shall be in EUR calculated based on the conversion of the prices to be paid by the Buyer under this Agreement in RMB into EUR by reference to the average middle exchange rate of RMB to EUR as quoted by the People's Bank of China for the thirty (30) days preceding the relevant Quarter (the "**Currency Conversion Mechanism**").

## II.5 Terms of Sale and Shipment Terms.

(a) Terms of Sale. All sales of Wafers hereunder shall be made EXW China (Incoterms 2000: EXW). “Incoterms 2000” means the version of “Incoterms” adopted by the International Chamber of Commerce effective as of January 1, 2000, including all amendments thereof, but excluding any amendments thereof specifically agreed to by the Parties as not being applicable to this Agreement. All freight costs, insurance and other delivery costs associated with sales of Wafers under this Agreement that the Buyer is responsible for under this Agreement will be included in the invoice referred to in Article II.8(a), if such an amount has been paid or will be paid by the Seller first. The Seller shall pack and ship Wafers in accordance with then-current industry standards and practice.

(b) Shipment Date. The scheduled shipment date for Wafers shall be specified in the Seller Order Acknowledgment in accordance with Article II.3 hereof.

(c) Shipment Instruction. The Buyer shall furnish written shipping instructions to the Seller from time to time, and such shipping instructions, if different from the last shipping instructions, shall take effect only if provided at least \*\*\* prior to the actual shipping date.

(d) Shipment Date Change Requests. The Buyer may request a delay or pull in the shipment of an individual delivery or any part thereof upon written notice to the Seller, subject to the following conditions:

- (i) Unless agreed to by the Seller, the shipment date change request notice must be received by the Seller at least \*\*\*, in case of a pull in, or \*\*\*, in case of a delay, prior to the scheduled shipment date;
- (ii) If the shipment date change request notice is a delay request (a push out of requested delivery date), the Buyer shall commit to purchase the delayed Wafers no later than the end of the Contract Year in which such shipment was originally scheduled by the Seller;
- (iii) The Seller shall agree to such request in writing; and
- (iv) In the event of an accepted shipment date change request, the Buyer shall accept delivery of and pay for Wafers already manufactured or in the manufacturing process for such purchase order at the time of the Buyer’s delivery of the notice requesting a change in the shipment date.

(e) In no event shall a delay of any shipment or any part thereof as requested by the Buyer pursuant to Article II.5(d) affect, in any way, the Buyer’s obligation to purchase the Buyer’s Quarter Quantity for any Quarter of a Contract Year.

## II.6 Missed Delivery

If, commencing from the Contract Year of January 1, 2009, the Seller fails to deliver any part of the Quarter Quantity pursuant to Article II.2(a) (“**Missed Delivery**”), and such Missed Delivery continues uncured by the end of the relevant quarter, the Seller shall have the right to “make up” Missed Deliveries for any relevant Quarter in the following manners:

in the event that the actual quantities of Wafers delivered is less than \*\*\* of the relevant Quarter Quantity in the relevant Quarter, the Seller shall deliver at least up to \*\*\* of the relevant Quarter within \*\*\* of the end of the Quarter where the Missed Delivery occurred; and

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



the remaining shortfall shall be delivered by the Seller within \*\*\* of the end of the Quarter where the Missed Delivery occurred.

The Wafer price for such Missed Deliveries, if actually made in the Contract Year subsequent to the Contract Year where the Missed Delivery occurred, shall be the Wafer price in effect at the time of shipment of the Wafers. The Parties expressly agree and acknowledge that any Missed Delivery hereunder shall not allow the Buyer to terminate this Agreement; provided, however, subject to Article II.12, the Buyer shall have the right to claim actual damages against Seller for failure to deliver Wafers on a timely basis after reasonable best efforts to mitigate such damages by the Buyer. For the avoidance of doubt, the Seller shall provide all the Quarter Quantity in full for the Contract Year ending on December 31, 2008 and Article II.6 shall not apply to any Missed Delivery existed for the Contract Year ending on December 31, 2008.

## II.7 Title and Risk of Loss

Title to and risk of loss of Wafers shall pass to the Buyer on the earlier of (i) the Shipment Date, as determined pursuant Article II.5(b) or (ii) at the time where the Buyer has been notified by the Seller that such Wafers have been delivered by the Seller to a freight forwarder appointed by the Buyer. Without prejudice to other provisions under this Agreement, should the Wafers not have been made available for delivery on the Shipment Date, title to and risk of loss of Wafers shall pass to the Buyer on the earlier of (a) \*\*\* after the Seller has communicated to the Buyer that the relevant Wafers are available for pick-up or (b) at the time where the Buyer has been notified by the Seller that such Wafers have been delivered by Seller to a freight forwarder appointed by the Buyer. It is agreed by the Parties that in the case of (i) or (a) of this Article, the Seller may, in its own discretion, store the Wafers at any warehouse it considers appropriate pending the collection of the Wafers by the Buyer, but the Seller is not liable for any loss or damage to the Wafers arising from the acts or omissions after the title and risk of loss passed to the Buyer.

## II.8 Payment Terms; Delivery Terms; Freight Terms

(a) The Seller shall issue an invoice to the Buyer for each shipment of Wafers, which shall be received by the Buyer at least \*\*\* before the relevant Shipment Date, as determined pursuant Article II.5(b). All amount shall be in EUR calculated based on the Currency Conversion Mechanism. The Buyer shall make payment for each shipment by way of cash through telegraphic transfer. The Seller is under no obligation to deliver any Product unless and until it has received, (i) via telefax or e-mail, documentary confirmation from the Buyer, evidencing that the Buyer's bank has irrevocably made the relevant payment together with the pertaining SWIFT code and (ii) the relevant Letter of Credit. In the event that the Buyer fails to make any payment under this Agreement within \*\*\* after the date of the invoice, the Seller reserves the right to assess a late payment charge of \*\*\*, unless prohibited by Law and the Seller shall be entitled to: (i) terminate this Agreement, (ii) enforce the Letter of Credit, and/or (iii) make a claim for all Losses arising from the Buyer's failure to make payment. The Seller may recover for each delivery hereunder as a separate transaction, without reference to any other delivery.

(b) The Buyer shall be responsible for all freight costs, insurance and other delivery costs associated with sales of Wafers under this Agreement that are incurred for shipping the Wafers by the Seller. Any Taxes, levies or assessments (including related interest and penalties) imposed, levied, assessed or arising by virtue of this Agreement other than Taxes based upon the income of the Seller shall be borne by the Buyer. If any charges are exempt from sales or use Tax liability, the Buyer shall provide Seller with evidence of tax exemption acceptable to the relevant taxing authority.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

## II.9 Inspection

No later than within \*\*\* after receipt of each shipment of Wafers by the Buyer under Article II.7 hereof, the Buyer shall inspect such Wafers for any defect (including compliance with specifications). The Buyer shall be deemed to have unconditionally accepted the entire shipment unless the Seller receives a written notice specifying the alleged defect within \*\*\* after the Buyer's receipt of the Wafers under Article II.7 hereof. In the event that the return was authorized in writing in advance by the Seller and the Seller's returned material authorization number is prominently marked on each shipping container, the Seller shall accept Wafers returned by the Buyer. The Seller shall not unreasonably withhold authorization for return requests in cases in which the Buyer has provided the Seller with reasonable proof of the defect of the Wafers. In the event that the Seller authorizes a return of Wafers in accordance with the above procedures and the Seller's standard return process, the Seller shall be entitled to: (i) inspect the returned Wafers, (ii) remedy the defect in the returned Wafers and/or (iii) replace the non-conforming Wafers within \*\*\* after receiving the Buyer's written notice. In the event of a dispute between the Parties regarding the existence of a defect in the Wafers after inspection by the Parties, the Parties shall jointly designate an independent expert to conduct an inspection of such Wafers. If the independent expert finds that a defect exists in the Wafers after its inspection, the Seller shall pay for the costs of the expert's inspection, and if the expert finds that a defect does not exist in the Wafers, the Buyer shall pay the costs of the expert's inspection.

## II.10 Quality Inspection

Notwithstanding Article II.9, the Parties agree that the Buyer shall, by serving a \*\*\* prior notice in writing to the Seller, have the right to carry out Wafer quality inspections in the presence of the authorised representative of the Seller at the Wafer production facilities designated by the Seller, at the time and date and in the manner specified by the Seller, in accordance with the standard market practice.

## II.11 Representations and Warranties

The Seller represents and warrants that the Wafers delivered to the Buyer under this Agreement shall meet the specifications set forth in Schedule A hereto, and that the Buyer shall obtain full and unencumbered title to all Wafers, free and clear of any and all rights of third parties, when title to the Wafers passes to the Buyer pursuant to and consistent with Article II.7 hereof. EXCEPT AS SET FORTH IN THE PRECEDING SENTENCE, THE SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, OF FITNESS OF THE WAFERS FOR PARTICULAR USE OR OTHERWISE, INCLUDING WITHOUT LIMITATION, WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. THE SELLER DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS ALL WARRANTIES OTHER THAN THOSE EXPRESSED IN THIS AGREEMENT.

## II.12 Limitation of Liability

The Seller's total liability, and the Buyer's exclusive remedy, for any and all Losses and damages, arising out of any cause whatsoever under any theory of contract, tort, strict liability, or other legal or equitable theory, including under a breach of representations and warranties made under Article II.1 hereof, shall be limited solely to the Buyer's actual direct damages directly caused under this Agreement; provided, however, the total liability shall be limited to the price of the Wafers or the Seller shall have the option to repair or replace Wafers that fail to meet the specifications set forth in Schedule A hereto with the Buyer's reasonable

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

proof therefor. In no event shall the Seller be liable for lost profits, special, incidental, consequential or punitive damages. The Seller shall not be liable for, and the Buyer assumes liability for, all personal injury and property damage connected with the handling, transportation, possession, processing, further manufacture, other use or resale of the Wafers, irrespective of whether the Wafers are used alone or in combination with any other material.

### II.13 Force Majeure

(a) The Seller shall not be liable for any delay or failure to perform due to any cause or condition beyond its reasonable control, whether foreseeable or not, resulting from a catastrophic event, including, without limitation, Acts of God, war, riot, fire, explosion, accident, flood or sabotage; compliance with Laws, regulations, orders, action or national defense requirements; embargoes or acts of civil or military authorities; in each case affecting the Seller or any of its subcontractors or suppliers (all of such events, a "**Force Majeure Event**"). The Seller shall give prompt written notice to the Buyer of any such Force Majeure Event within \*\*\* after the date of occurrence of such event and any associated delivery changes.

(b) If a Force Majeure Event occurs, the Seller shall not be responsible for any damages, increased costs, or Losses which the Buyer may sustain by reason of such failure of performance, but this Agreement shall not be deemed to have been terminated or frustrated as a result of such failure of performance, except as may be permitted by Article II.12(c). If a Force Majeure Event occurs, the Seller shall adopt the appropriate measures to minimize or remove the effects of the Force Majeure Event and, within the shortest practicable time, attempt to resume performance of its obligations under this Agreement that have been affected by the Force Majeure Event.

(c) If the Seller has suffered a Force Majeure Event and is unable to perform substantially all of its obligations under this Agreement for \*\*\* or more after suspension of its performance after the occurrence of a Force Majeure Event, the Buyer and the Seller may mutually agree to terminate this Agreement. Notwithstanding anything in this Agreement to the contrary, the occurrence of a Force Majeure Event hereunder shall in no event excuse either Party from its obligations to pay to the other Party any sums accrued or due hereunder to such other Party.

## ARTICLE III LETTER OF CREDIT

### III.1 Letter of Credit

The Buyer shall issue, within \*\*\* upon the signing of this Agreement or within \*\*\* upon the signing of this Agreement if Article III.2 is applicable, the first irrevocable standby letter of credit in form and substance reasonably satisfactory to the Seller of \*\*\* (the "**Letter of Credit**") drawn on the Landesbank Baden-Württemberg branch of Freiburg (Germany) or another issuer reasonably acceptable to the Seller (the "**LC Bank**") to be valid until January 30, 2011. The Buyer shall issue a new Letter of Credit no later than January 15 of each subsequent year to be valid from the date of the expiry of the previous Letter of Credit until January 30 of the next year. The value of the Letter of Credit subsequent to any Letter of Credit issued in the preceding year shall be reduced by \*\*\* of the actual amount paid by the Buyer to the Seller in respect of the purchase of Wafers in the preceding year commencing from the \*\*\*. Any failure to provide the Letter of Credit shall constitute a default and the Seller shall be entitled to terminate this Agreement.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

### III.2 Prepayment

The Buyer may, in its sole discretion, make, within \*\*\* upon the signing of this Agreement, a prepayment (the “**Prepayment**”) of \*\*\* Euro (EUR \*\*\*) upon signing this Agreement. After the Buyer has made the Prepayment to the Seller in accordance with this clause, the Seller shall apply such amount of Prepayment received to offset the Prices payable for the first delivery of Wafers under this Agreement and the second delivery (if there is any Prepayment left unapplied after the first delivery of Wafers) until the entire amount of Prepayment has been applied. Any failure to provide the Letter of Credit under this clause shall constitute a default and the Seller shall be entitled to terminate this Agreement and forfeit the Prepayment.

## ARTICLE IV TERM AND TERMINATION

### IV.1 Term

The Term of this Agreement shall commence on the Effective Date and shall expire at the end of the eighth Contract Year (the “**Initial Term**”). The Parties agree to negotiate in good faith to extend the Initial Term of the Agreement on or prior to the \*\*\* anniversary of the Effective Date.

### IV.2 Termination by Either Party

Either Party to this Agreement may terminate this Agreement by written notice to the other Party if, and only if, such other Party (a) becomes insolvent, (b) makes a general assignment for the benefit of creditors, (c) suffers or permits the appointment of a receiver for its business or assets, (d) becomes subject as the debtor to any proceeding under any bankruptcy or insolvency Law, whether domestic or foreign, and such proceeding is not dismissed with prejudice within \*\*\* after filing, or (e) commences liquidation or dissolution proceedings, voluntarily or otherwise. In addition, if a Force Majeure Event has occurred, and the Parties have mutually agreed to terminate this Agreement pursuant to the provisions of Article II.12(c), this Agreement shall be so terminated on the date the Parties have agreed shall be the termination date.

### IV.3 Effect of Termination

Upon termination or expiration of this Agreement, the Parties’ obligations hereunder shall terminate. Notwithstanding the foregoing, the provisions of Article II.2, Article II.11 (subject to the time limits of Article II.9, Article II.10 and Article IV.2), Article II.12, Articles IV, V, VI and VII are of a continuing nature and shall survive termination of this Agreement. No such termination shall relieve any Party from liability for any prior or subsequent breach of this Agreement.

## ARTICLE V INDEMNIFICATION

### V.1 Indemnification Generally

The Buyer shall indemnify and defend the Seller and its directors, officers, employees, contractors and agents, from any liability (including reasonable attorneys’ fees) for any Loss or injury to persons or property which may result from the Buyer’ s breach of its

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

representations, warranties or covenants in this Agreement. Subject to Articles II.11 and II.12, the Seller shall indemnify and defend the Buyer and its directors, officers, employees, contractors and agents, from any liability (including reasonable attorneys' fees) for any Loss or injury to persons or property which may result from the Seller's breach of its representations, warranties or covenants in this Agreement.

## V.2 Time Limits

Any right to indemnification or other recovery under this Article V shall only apply to Losses arising from claims with respect to which the Indemnified Person shall have notified the Indemnifying Person in writing within \*\*\* of the occurrence of the facts giving rise to the underlying claim; provided, however, that such obligations to indemnify and hold harmless shall not terminate with respect to any Losses arising from claims as to which the Indemnified Person shall have, before the expiration of the \*\*\* period, previously delivered a notice pursuant to Article V.1 to the Indemnifying Person.

# ARTICLE VI DISPUTE RESOLUTION

## VI.1 Resolution of Disputes between the Parties

(a) Prior to initiating any legal or other action or proceeding against the other, the Parties shall attempt in good faith to resolve any controversy or claim arising from or relating to this Agreement promptly by negotiations between the respective representatives of the Parties. The disputing Party shall give the other Party written notice of the dispute. Within \*\*\* after receipt of such notice, the receiving Party shall submit a written response to the other Party. The notice and response shall include a statement of the respective Party's position and arguments supporting its position. The representatives shall meet at a mutually acceptable time and place within \*\*\* after the date of the disputing Party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved through negotiation within \*\*\* after the date of the disputing Party's notice, or if either Party will not meet with the other Party within \*\*\* after the date of the disputing Party's notice, either Party is free to initiate proceedings in accordance with the provisions of Article VI.2. All deadlines specified herein may be extended by mutual written agreement of the Parties.

(b) If no agreement can be reached between the Parties after good faith negotiations, either the Buyer or the Seller may initiate proceedings in accordance with the provisions of Article VI.2.

## VI.2 Arbitration

(a) Except as otherwise provided in this Agreement, any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or validity thereof, shall be finally settled by the Hong Kong International Arbitration Centre ("**HKIAC**") under the rules of the United Nations Commission on International Trade Law (the "**UNCITRAL**"). The place of arbitration shall be in Hong Kong, and the language used in the arbitral proceedings shall be Mandarin Chinese.

(b) The arbitrator shall be appointed by mutual consent of the Parties in accordance with the procedures set out in the UNCITRAL rules regarding the appointment of arbitrators. If the Parties shall fail to reach mutual consent in appointing the arbitrator, the Seller shall appoint one arbitrator from the HKIAC roster of arbitrators, the Buyer shall appoint one arbitrator from the HKIAC roster of arbitrators, and the two arbitrators shall jointly appoint a third arbitrator from the HKIAC roster of arbitrators.

(c) The arbitral proceeding shall accord to each of the Parties the right of cross-examination of witnesses, the right to provide witnesses, including expert witnesses, and the right to make both written and oral submissions.

(d) The arbitral award made and granted by the arbitrator shall be final, binding and incontestable and may be used as a basis for judgment thereon in any court having jurisdiction. All costs of arbitration (including, without limitation, those incurred in the appointment of arbitrator) shall be apportioned in the arbitral award.

(e) No person who is, or has been, an employee or agent of, or consultant or counsel to, any Parties or any affiliate thereof shall be eligible to act as an arbitrator at any time.

### VI.3 Court Action

No Party shall be entitled to commence or maintain any action in a court of law (including any appeal against or review of the arbitral award) upon any matter in dispute arising out of or relating to or in connection with this Agreement, except for the enforcement of an arbitral award granted pursuant to this Agreement.

### VI.4 Waiver of Immunity

To the extent that any Party (including assignees of any such Party's rights or obligations hereunder) may be entitled in, any jurisdiction, to claim for itself or its revenues, assets or properties, immunity from service of process, suit, the jurisdiction of any court, an interlocutory order or injunction or the enforcement of the same against its property in such court, attachment prior to judgment, attachment in aid of execution of an arbitral award or judgment (interlocutory or final) or any other legal process, and to the extent that, in any such jurisdiction there may be attributed such immunity (whether claimed or not), each Party hereto hereby irrevocably waives such immunity.

### VI.5 Continued Performance

This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

### VI.6 Survival

The provisions contained in this Article V shall survive the termination or expiration of this Agreement.

## **ARTICLE VII CONFIDENTIAL INFORMATION**

### VII.1 Confidential Information; Public Disclosure

(a) Each of the Seller and the Buyer agrees that it will not disclose to any third party the existence of or the details of this Agreement and any trade secrets or other proprietary information it obtains with respect to the other Party during or after the term of

this Agreement except as expressly permitted hereunder, and that it will treat all such information as confidential and will use such information only for carrying out the purposes of this Agreement; provided, however, that either Party will not be obligated to treat as confidential any information acquired by it that is either known to the general public or to the industry, or known to, or in the possession of, such Party prior to disclosure by the other Party, that is disclosed as required by Law or the rules of any stock exchange, or that is independently developed by such Party. The confidentiality obligations of the Parties hereunder shall continue during the term of this Agreement and for a period of \*\*\* after termination of this Agreement.

(b) The Parties to this Agreement shall consult with each other as to the form, substance and timing of any press release or other public disclosure related to this Agreement or the transactions contemplated hereby, and no such press release or other public disclosure shall be made without the consent of the other Party hereto, which consent shall not be unreasonably withheld or delayed; provided, however, that the Parties may make such disclosure to the extent permitted above or to the extent required by applicable Law and regulatory authorities, including the requirements of a stock exchange on which a Party is listed or the applicable securities regulatory commission.

#### VII.2 Equitable Relief

Notwithstanding any other provision of this Agreement, it is understood and agreed that the remedy of indemnity payments pursuant to Article V and other remedies at law may be inadequate in the case of any breach of the covenants contained in this Article VII. Accordingly, either Party shall be entitled to seek equitable relief, including the remedy of specific performance, with respect to any breach or attempted breach of such covenants.

### ARTICLE VIII GENERAL PROVISIONS

#### VIII.1 Expenses

Each Party hereto shall bear its own fees and expenses with respect to the transactions contemplated hereby.

#### VIII.2 Amendment

This Agreement may be amended, modified or supplemented only in writing signed by the Parties.

#### VIII.3 Notices

Any notice, request, instruction or other document to be given or delivered hereunder by a Party hereto shall be in writing and shall be deemed to have been delivered, (a) when received if given in Person or by courier or a courier service, or (b) on the date of transmission if sent by facsimile transmission (receipt confirmed) on a Business Day during the normal business hours of the intended recipient, and if not so sent on such a day and at such a time, on the following Business Day:

If to the Seller, addressed as follows:

**Company Name:** Jiangsu Zhongneng Polysilicon Technology Development Co., Ltd.

**Address:** No. 66 Yangshan Road, Xuzhou Economic Development Zone, Jiangsu Province

**Attention:** Mr. Zhu Guomin, General Manager

**Telephone:** (86-516) 85868888

**Facsimile:** (86-516) 83152868

**E-mail:** zhuguomin@gcl-power.com

If to the Buyer, addressed as follows:

**Company Name:** Solarcell S.p.A.

**Address:** via Verdi. 10 - 20047 Brugherio (Milan)

**Attention:** Mr. Carmelito Denaro - Chairman and Managing Director

**Telephone:** (39-039) 2878378

**Facsimile:** (86-039) 2875049

**E-mail:** info@mxgroup.it

or to such other individual or address as a Party hereto may designate for itself by notice given as herein provided.

#### VIII.4 Waivers

Except as otherwise provided in Article IV.2, the failure of a Party hereto at any time or times to require strict performance of any provision hereof or claim damages with respect thereto shall in no manner affect its right at a later time to enforce the same. No waiver by a Party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.

#### VIII.5 Assignment

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns; provided, however, that except with the written consent of the Seller, no assignment of this Agreement or any rights or obligations hereunder, by operation of Law or otherwise, may be made by the Buyer, except to companies controlled by the Buyer or under common control with the Buyer provided that the Buyer shall give the Seller \*\*\* advance written notice and the Buyer shall continue to be liable for all the Buyer's obligations after the assignment. The Seller may assign this Agreement or any rights or obligations hereunder to its Subsidiary, affiliate or successor.



---

#### VIII.6 Severability

If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions hereof shall not be affected thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

#### VIII.7 Entire Understanding; Conflicts

This Agreement sets forth the entire agreement and understanding of the Parties hereto with respect to the transactions contemplated hereby and supersedes any and all prior agreements, arrangements and understandings, both written and oral, among the Parties relating to the subject matter hereof.

#### VIII.8 Applicable Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of the People's Republic of China.

#### VIII.9 Counterparts; Facsimile Signatures

This Agreement may be executed in counterparts, and when so executed each counterpart shall be deemed to be an original, and said counterparts together shall constitute one and the same instrument.

[remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

**SELLER**

**BUYER**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title \_\_\_\_\_

朱司仁  
王院长

2008.6.1.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CARMELO DEVARO  
PRESIDENT

---

## SCHEDULE A

### WAFER SPECIFICATIONS

#### Specification for 156 x 156mm Multi-crystalline Silicon Wafer

Crystal Type	***
Dimension	***
Thickness	***
Diagonal Length	***
Edge angle	***
TTV ( $\mu\text{m}$ )	***
Bow/Warping	***
Conductivity Type	***
Orientation	***
Oxygen concentration	***
Carbon concentration	***
Resistivity	***
Minority carrier Life Time	***
Crack and pinhole	***
Saw mark	***
Square angle	***
Edge defect	***
Wafer surface	***
Contamination	***

**SCHEDULE B****QUARTER QUANTITY AND PRICE SCHEDULE**

<b>Contract Year</b>	<b>Quarter Quantity (Pieces of Wafers)</b>				<b>Unit Price</b>
	<b>First Quarter</b>	<b>Second Quarter</b>	<b>Third Quarter</b>	<b>Fourth Quarter</b>	<b>RMB per wafer</b>
2008	***	***	***	***	***
2009	***	***	***	***	***
2010	***	***	***	***	***
2011	***	***	***	***	***
2012	***	***	***	***	***
2013	***	***	***	***	***
2014	***	***	***	***	***
2015	***	***	***	***	***

Note:

The number of Wafers to be delivered in each month shall be equivalent to the relevant Quarter Quantity divided by three.

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

## CONTRACT

**No: MB-SHA2008025**

Date: 2008/06/27

At: Shanghai, China

**The Buyers:****JIANGSU ZHONGNENG POLYSILICON  
TECHNOLOGY DEVELOPMENT CO., LTD**

Address:

66# Yangshan Road, Xuzhou Economic

Development Zone, Jiangsu Province

TEL: 0086-516-85868888

FAX: 0086-516-83152877

**The Sellers:****MEYER BURGER AG**

Address: Allmendstrasse 86, CH 3600 Thun, Switzerland

TEL: 0041-33-4390505

FAX: 0041-33-4390510

This Contract is made by and between the Buyers and the Sellers; whereby the Buyers agree to buy and the Sellers agree to sell the under-mentioned commodity (hereinafter referred to the "Contract Products") according to the terms and conditions stipulated below:

**1. Pricing for Contract Products**

For the avoidance of the doubt, the Contract Products will be priced in \*\*\* and the Buyer will pay in \*\*\* with all machines delivered until June 30th 2009 according to the delivery schedule, and after June 30<sup>th</sup> 2009 Buyer will pay in \*\*\* For the optional products in Form 1, (up to \*\*\* sets Wire Saws) the exchange rate shall be fixed at the time of execution of the option.

The details for price of the Contract Products are as displayed in this Form 1:

**Form 1**

Item	(1) Commodity & Specifications	(2) Quantity	(3) Unit Price	(4) Total Amount	(5) Time of shipment
<b>Phase 1</b>	Model *** Wire Saw (details as per attachment)	*** sets	USD***	USD*** CIF SHANGHAI SEAPORT	*** before Oct. 30, 2008; *** before Nov. 30, 2008; *** before Dec. 30, 2008. Late delivery of any of *** to *** Saws will lead the delay penalty. The *** ASAP before Q1 of 2009 without delay penalty.

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

<b>Phase 2A</b>	Model *** Wire Saw (details as per attachment)	***	USD***	USD *** CIF SHANGHAI SEAPORT	Each month *** machines to be shipped from Jan.2009-June,2009
<b>Phase 2B</b>	Model *** Wire Saw (details as per attachment)	***	Euro ***	Euro *** CIF SHANGHAI SEAPORT	Each month *** machines to be shipped from July.2009-Nov.,2009, *** machines before Dec.2009
<b>Phase 3</b>	Model *** Wire Saw (details as per attachment)	***	Euro ***	Euro *** CIF SHANGHAI SEAPORT	Each month *** machines to be shipped from Jan.2010-Dec.30,2010
<b>Option of Buyer</b>	Model *** Wire Saw (details as per attachment)	Up to ***	CHF ***	Upon quantity required by Buyer when exercising the option CIF SHANGHAI SEAPORT	decided by Buyer upon *** notice in advance

**\*\* The Seller is allowed, after approval of the Buyer, to deliver the machines earlier or later than stated in the contract due to combined shipment for several machines.**

**\*\* The Buyer may exercise the option of up to \*\*\* sets Model \*\*\* Wire Saw in one time or in several times and the Seller is obligated to supply such Wire Saw provided always that the Buyer gives Seller the prior notice of no less than \*\*\* for shipment. Terms in this Contract shall be applicable to such Wire Saws under the option.**

## **2. Country of Origin and Manufactures**

Switzerland, Meyer Burger AG

## **3. Packing**

Contract Products shall be packed in strong wooden case(s), or in carton(s), suitable for long distance ocean transportation or air transportation and to change of climate, well protected against moisture, shocks and rust. The Sellers shall be liable for any damage of the commodity and expenses incurred on account of improper packing and for any rust attributable to inadequate or improper protective measures taken by the Sellers in regard to the packing. One full set of service and operation instructions concerned shall be enclosed in the case(s).

## **4. Shipping Mark**

The Sellers shall mark on each package with fadeless paint the package number, gross weight, net weight, measurement and the wordings: "KEEP AWAY FROM MOISTURE", "HANDLE WITH CARE", "THIS SIDE UP", etc., and the shipping mark:

\_\_\_\_\_  
MB-SHA2008025  
SHANGHAI, CHINA

**\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.**

**5. Port of Shipment:**

**Main European Seaport**

**6. Port of Destination:**

**Shanghai Seaport**

**7. Insurance:**

**All Risks. To be covered by the Seller.**

**8.**

8.1) Advance payment: Within \*\*\* after the BUYER receive the bellowing designated documents, the advance payment will be made according to below list: Form 2

**Form 2**

Advance Payment	The machine for Phase 1 (2008)	The machine for Phase	
		2A and 2B (2009)	The machine for Phase 3 (2010)
1 <sup>st</sup> advance payment	*** of total value by T/T	*** of total value by T/T.	*** of total value by T/T.
2 <sup>nd</sup> advance payment	None	*** of total value payable *** upon bank guarantee from the buyer	*** of total value payable *** upon bank guarantee from the buyer

Signed Proforma Invoice with 1 original & 3 copies showing 100% value of each delivered Contract Products value, indicating contract number.

Manually signed Commercial Invoice with 1 original and 3 copies showing each advance payment value as above list, indicating Contract number.

For each payment, a bank guarantee in favor of the Buyer shall be delivered by Seller in a form written agreed by the Buyer, with the amount equivalent to the due advance payment, issued by a reputable bank within \*\*\* after the execution of this Contract and the bank guarantee will expire when the last Contract Products of the respective phase is delivered to the Buyer.

Performance bond under Clause 19.1.

**8.2) Payment against L/C:**

Within \*\*\* before shipment, The Buyer will, at the buyer' s expense, establish in favor of Meyer Burger an irrevocable Letter of Credit (Details as form 3). The Letter of Credit shall be valid until \*\*\* after shipment effected.

The acceptance certificate must be issued by the Buyer immediately after acceptance test.

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.





**Form 3**

<b>Payment under L/C</b>	<b>The machine for Phase 1 (2008)</b>	<b>The machine for Phase 2 (2009)</b>	<b>The machine for Phase 3 (2010)</b>
1 <sup>st</sup> payment	*** of each shipment value against presentation of all documents stipulated in Clause 9.1 of the contract.	*** of each shipment value against presentation of all documents stipulated in Clause 9.1 of the contract.	*** of each shipment value against presentation of all documents stipulated in Clause 9.1 of the contract.
2 <sup>nd</sup> payment	*** of each shipment value against presentation of all documents stipulated in Clause 9.2.	*** of each shipment value against presentation of all documents stipulated in Clause 9.2 acceptance certificate issued by the Buyer.	*** of each shipment value against presentation of all documents stipulated in Clause 9.2 acceptance certificate issued by the Buyer.

**9. Documents:****9.1 Documentation for 1<sup>st</sup> payment by L/C**

- (1) Full set of on board ocean bills of lading marked "Freight Prepaid" made out to order blank endorsed notifying the Buyer.
- (2) Commercial Invoice at \*\*\* of each shipment value in 5 copies indicating contract number, made out in details as per relative contract.
- (3) Insurance Policy/Certificate in one original and two copies for \*\*\* of the invoice value showing claims payable in China in currency of the draft, blank endorsed, covering All Risks.
- (4) Packing list in 5 copies issued by the Manufacturers.
- (5) Certificate of Quality and Quantity in 5 copies issued by the Manufacturers.
- (6) Copy of fax to the Buyers advising particulars of shipment immediately after shipment is made.
- (7) Certificate of Origin issued by the manufacturer.
- (8) Fumigation Certificate or certificate of Plant Quarantine issued by relative competent authority or Non-wooden packing declaration.

**9.2 Documentation for 2nd Payment by L/C**

- (1) Certification of Acceptance issued by Buyer.
- (2) Commercial Invoice at \*\*\* of each shipment value in 5 copies indicating contract number, made out in details as per relative contract.

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

**10. Shipment:**

The Sellers shall ship the goods within the shipment time from the port of shipment to the port of destination. Partial shipment is allowed. Transshipment is allowed.

**11. Guarantee of Quality:**

The Sellers guarantee that the commodity hereof is made of the best materials with first class workmanship, brand new and unused, and complies in all respects with the quality and specification stipulated in this Contract. The guarantee period shall be \*\*\* counting from the date on which the acceptance certificate is issued or \*\*\* after the date of shipment, whichever comes first. Buyer' s exclusive remedy and Seller' s sole liability for any breach of the foregoing warranty shall be for Seller, at Seller' s sole option, to repair, replace or modify the defective Product, or refund to Buyer the purchase price paid by Buyer for the defective Product. The warranty service shall be performed at Seller' s factory or, by mutual agreement at Buyer' s location. In order to receive the warranty service, Buyer must return the defective Product within \*\*\* of notification from Buyer hereunder. THE WARRANTY SET FORTH IN THIS CLAUSE 11 IS IN LIEU OF ALL OTHER WARRANTIES AND SELLER HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR USE. Any repair or attempt to repair Products by anyone other than an authorized representative of Seller automatically voids any warranty on those Products. Any use of parts, materials or supplies not authorized or approved by Seller in connection with the operation, maintenance or repair of the Contract Product may void this warranty.

The Seller warrants that it will provide the Buyer of the software updating for the Contract Products if needed and the Seller won' t charge the Buyer any addition fees for this. The software updating aforesaid includes remote software downloads and remote technical support. The Seller also warrants that it will provide the Buyer of the Contract Products using the best and latest technology in the future.

The Seller warrants that it has the right and permission to supply to the Buyer the Goods, including documentation and services related in accordance with the terms of the Contract. The Seller shall indemnify the Buyer against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of letters patent, copyright, trade mark or trade name by the use of any Goods supplied by the Seller.

WITHIN \*\*\* AFTER RECEIVING THE CONTRACT PRODUCTS BY THE BUYER, SHOULD THE QUALITY, SPECIFICATION OR THE QUANTITY BE FOUND NOT IN CONFORMITY WITH THE STIPULATIONS OF THE CONTRACT EXCEPT THOSE CLAIMS FOR WHICH THE INSURANCE COMPANY ARE LIABLE, SHOULD THE CONTRACT PRODUCTS BE PROVED THAT THERE ARE DEFECTS INCLUDING LATENT DEFECTS OR TO BE MADE WITH UNSUITABLE MATERIALS, THE BUYER SHALL, ON THE STRENGTH OF THE INSPECTION CERTIFICATE ISSUED BY THE CHINA INSPECTION & QUARANTINE BUREAU (CIQ), HAVE THE RIGHT TO CLAIM FOR REPLACEMENT WITH NEW QUALIFIED ONES. THE BUYER SHALL GUARANTEE TO RETURN ALL DEFICIENT CONTRACT PRODUCTS TO THE SELLER BASED ON FOB TERMS IMMEDIATELY AFTER RECEIPT OF THE FAX/E-MAIL OF B/L OF REPLACEMENT MADE BY THE SELLER. ALL THE EXPENSES (SUCH AS INSPECTION CHARGES, FREIGHT FOR RETURNING DEFICIENT CONTRACT PRODUCTS, INSURANCE PREMIUM, STORAGE & PORT CHARGES ETC) SHALL BE BORNE BY THE SELLER. THE SELLER SHALL GUARANTEE TO REPLACE THE DEFICIENT CONTRACT PRODUCTS WITH QUALIFIED ONES WHICH MUST BE IN CONFORMITY WITH THE SPECIFICATIONS, QUALITY & PERFORMANCE AS STIPULATED IN THE AGREEMENT, AND SHIP THE QUALIFIED CONTRACT PRODUCTS TO THE BUYER BASED ON CIF TERMS WITHIN \*\*\* OR LONGER PERIOD EXPRESSLY CONSENTED BY THE BUYER IN WRITTEN FROM THE DATE OF RECEIPT OF AFORESAID CLAIM. ALL OF THE COSTS AND FEES INCURRED HEREUNDER FOR DELIVERY OF THE QUALIFIED CONTRACT PRODUCTS AS THE REPLACEMENT OF THE DEFICIENT CONTRACT PRODUCTS SHALL BE BORN BY THE SELLER. IF THE SELLER FAILS TO ANSWER THE BUYER WITHIN THIS PERIOD, THE CLAIMS SHALL BE RECKONED AS HAVING BEEN ACCEPTED BY THE SELLER.

## **12. Transfer of the Title and Risks of the Loss**

The title of the Contract Products will transfer from the Seller to the Buyer once the Contract Products have been manufactured and the Buyer has paid the full payment for them, however, the risk of loss with respect to the Contract products by the Seller hereunder will pass from the Seller to the Buyer upon delivery to the Buyer by the last carrier.

## **13. Force Majeure:**

Seller shall not be liable for any delays in the delivery of orders, due in whole or in part, directly or indirectly to fire, act of God, strike, government order, riot and other serious natural disasters. Under such circumstances, the Sellers, however, are still under the obligation to take all necessary measures to hasten the delivery of the goods. In case the accident lasts for more than \*\*\*, the Buyer shall have right to cancel the Contract.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

#### **14. Liability for Accidents and Damage**

The Seller shall indemnify the Buyer in respect of all damage (including the damage to the Contract Product) or injury and all actions, claims and costs in connection therewith arising out of, in the course of or caused by the carrying out of the Contract provided always that the same is due to any negligent act or omission of the Seller and its respective servants or agents or materials or workmanship.

#### **15. Arbitration and Applicable Law**

All disputes arising from the contract or the execution of the Contract shall be settled first between the Buyer and Seller in a friendly way. If the agreement can not be reached after friendly discussion, the disputes will be submitted to the China International Economic and Trade Arbitration Commission ("CIETAC") in SHANGHAI for arbitration. The arbitration will be carried out in accordance with the CIETAC's arbitration rules in effect at the time of arbitration. The arbitral award is final and binding upon both parties. The arbitration fees shall be borne by the losing party unless otherwise awarded by the Commission.

The construction, validity, interpretation, performance, implementation and all matters relating to this Contract and any amendment thereto shall be governed by the United Nations Convention on Contracts For The International Sale Of Goods. To the extent the United Nations Convention on Contracts For The International Sale Of Goods does not cover, PRC laws shall apply.

#### **16.**

This contract is made in both Chinese and English. Two original copies of this contract will be held by the Buyer, the Seller respectively. If the English version and Chinese version of the contract differs, the English version shall prevail.

#### **17. Intellectual Property**

- (1) No right shall be granted to Seller under any Buyer's patent, copyrights and/or other intellectual property right except as may necessary to fulfill Seller's obligations under this Contract.
- (2) Similarly, the technical and commercial information provided by Seller is proprietary and confidential with the copyright remaining sole property of the Seller. It is not to be disclosed to any third party other than the end-user who is to be advised of its confidential nature and restrictions of use.

- 
- (3) Buyer agrees that all non-public information furnished to Buyer by Seller to Contract Products is proprietary to Seller and such information shall be held in confidence and shall not be used or disclosed by Buyer without Seller's prior written consent. Buyer shall enforce against its employees and agents these obligations of confidentiality.
- (4) The Seller warrants that it has the right and permission to supply to the Buyer the Contract Products, documentation and services in accordance with the terms of the Contract. The Seller represents and warrants that (i) the Seller is the owner of the Contract Products and the documentation and has the right to provide or license, as applicable, to the Buyer such Contract Products, documentation and services in accordance with the Contract (and that the Seller is duly authorized by any third party owner of any component the Contract Products and documentation to provide and to license to the Buyer, as applicable, such products, documentation and services in accordance with this Contract) (ii) the Seller has determined that the Contract Products (including the methodologies and technologies used or produced by such Contract Products), documentation and services may be disclosed to the Buyer without a valid claim of trade secret misappropriation by any party, (iii) the Contract Products (including the methodologies and technologies used or produced by such Contract Products), documentation and services (and Buyer's receipt and use thereof) do not infringe any third party patent, copyright, trademark, trade secret or other intellectual property right anywhere in the world, and (iv) the sale anywhere in the world of products created utilizing the Contract Products does not infringe any third party patent, copyright, trademark, trade secret or other intellectual property right anywhere in the world.
- (5) The Seller shall indemnify the Buyer and its affiliates, and their respective officers, directors, agents and employees (the "Buyer Indemnified Parties") from and against any cost, loss, liabilities, charge, expense (including attorneys' fees), damages and judgments suffered by any Buyer indemnified Party arising from or incurred by reason of any action, claim, demand or proceeding that any of the Contract Products (including methodologies and technologies used or produced by such Contract Products), documentation and services provided by the Seller (or Buyer's receipt and use thereof) misappropriates or infringes any patent, copyright, trademark, trade name, trade secret or any other intellectual property right therein anywhere in the world, provided that the Buyer shall notice the Seller such action, demand or proceeding within a reasonable period and the Seller shall have the right to take control of the defense against such action, claim, demand or proceeding at its own expense.

18. \*\*\*

**19. Performance Bond**

- 19.1 The seller shall provide the Buyer with a performance bond in favor of the Buyer, in a form written agreed by the Buyer, with the amount of \*\*\* of total price of the Contract Product of Phase 1 and Phase 2A, issued by a reputable bank within \*\*\* after the execution of this Contract and the Performance Bond will expire when all the price of Contract Products of Phase 1 and Phase 2A is paid and the performance bond submitted by the Seller to the Buyer pursuant to Clause 19.2 is effective.
- 19.2 The seller shall provide the Buyer with a performance bond in favor of the Buyer, in a form written agreed by the Buyer, with the amount of \*\*\* of total price of the Contract Product of Phase 2B and Phase 3, issued by a reputable bank no later than the later date 1 July 2009 or all the price of Contract Products of Phase 1 and Phase 2A is paid, and the performance bond will expire when the warranty periods of all Contract Product under this Contract expire.

**20. DELAYED DELIVERY AND PENALTY**

IN CASE OF DELAYED DELIVERY, EXCEPT FOR FORCE MAJORE CASES OR THE NEGLIGENCE OF THE BUYER, THE SELLER SHALL PAY TO THE BUYER FOR EVERY WEEK OF DELAY A PENALTY AMOUNTING TO \*\*\*. ANY FRACTIONAL PART OF THE WEEK IS NOT TO BE CONSIDERED. THE TOTAL AMOUNT OF PENALTY SHALL NOT, HOWEVER, EXCEED \*\*\* AND IS TO BE DEDUCTED FROM THE TOTAL VALUE OF THE DELAYED PRODUCTS. IN CASE

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

THE PERIODE OF DELAY EXCEEDS \*\*\* AFTER STIPULATED DELIVERY DATE, THE BUYER HAS THE RIGHT TO TERMINATE THIS CONTRACT BUT THE SELLER SHALL NOT THEREBY BE EXEMPTED FROM THE PAYMENT OF PENALTY.

## **21. Training**

The Seller shall provide, at a mutually agreed date before the first installation or at latest until end of December 2008, \*\*\* free training in Switzerland for \*\*\* process engineer, \*\*\* maintenance engineer and \*\*\* chief operator of the Buyer. The Training will be conducted according to a standard training syllabus which will be provided by the Seller and will be satisfactory by the Buyer. The China-Swiss transportation fees incurred by these employees will be born by the buyer, and the transportation in Switzerland and accommodation fees will be born by the Seller.

## **22. Customer Service**

The Seller will have an installation and support team continuously on site available during entire delivery period from Jan., 2009 to Dec., 2010. According to a continuous delivery schedule. In case of interruption due to Buyer's reason, the seller is entitled to withdraw the installation team until the installation restarts.

The team contains \*\*\* senior engineer and according to the need, \*\*\* additional engineers. The team who is responsible to provide customer service to the Buyer will respond and provide relevant on site services in 24 hours upon the report of the Buyer.

## **23. Termination of the Contract**

- (1) Without prejudice to any rights and remedies to which the Buyer may be entitled, if Seller neglects to perform the Contract with due diligence and expedition, or refuses or neglects to comply with any reasonable orders given to the Seller in writing by the Buyer in connection with the performance of the Contract, or contravenes the provisions thereof, or any stipulation in the Contract, the Buyer may give notice in writing to the Seller to make good the neglect, refusal, or contravention complained of.
- (2) Should the Seller fail to comply with a notice given by the Buyer in accordance with Clause 23.1 within \*\*\* from the date of service thereof in the case of a failure, neglect of contravention capable of being made good within that time, or otherwise within such time as may be reasonably necessary for making it good, then, and in such case the Buyer may forthwith suspend, or terminate the Contract or any part thereof by notice in writing the Seller.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

- (3) Without prejudice to any other rights or remedies to which the Buyer may be entitled, if the Seller become bankrupt or insolvent, or have a receiving order made against it, or compound with its creditors, or be a corporation commence to be wound up (not being a member's voluntary winding up for the purpose of amalgamation or reconstruction) or have a receiver or manager of its business appointed, the Buyer may after written notice and when the Seller is not capable of performing this Contract either:
- i) terminate the Contract forthwith by notice in writing to Seller or to the receiver or liquidator or to any person in whom the Contract may become vested; or
  - ii) give such receiver, liquidator, or other person the option of carrying out the Contract subject to his providing a guarantee for the due and faithful performance of the Contract up to an amount to be agreed.

#### **24. Assignment**

- (1) The respective rights and obligations of either party hereto may be assigned with the prior written consent of the other party, except that the Seller may assign its rights to receive payments under the Contract and the Buyer may assign its rights to receive goods under the Contract.
- (2) The Buyer may notify the Seller of the consignee within \*\*\* before the shipment of the Contract Products and the Buyer will make changes in the L/C to be issued under the Contract accordingly.

#### **25. Special Provision:**

- (1) In case the Buyer cancel the contract after signature of contract due to the Buyer's reason, the Buyer is liable for compensation to the Seller at the rate of \*\*\* of the contract value. The payment will be made by the end-user within \*\*\* after cancellation of contract. Vice versa, in case the seller cancels the contract due to seller's reason, the seller will bear the compensation as stated above rate of \*\*\* of the contract value.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



- 
- (2) If the Buyer fails, due to the Buyer' s reason, to install the Contract Products in time within \*\*\* after the arrival of Contract Equipment at Buyer' s Job-site, the Contract Equipment has to be treated as accepted automatically and the Buyer must provide the balance of payment for the Equipment of the Contract to the Seller.
  - (3) Both the Buyer and the Seller agree keep the contract content (price, quantity, delivery etc) strictly as confidential. It can only be released under mutual agreement by both parties.
  - (4) Buyer shall have the right to adjust the delivery schedule of the undelivered goods with the extent of adjustment of \*\*\* by giving a \*\*\* prior notice to the Seller.

**[Bellowing has no content and the following page is the execution page.]**

---

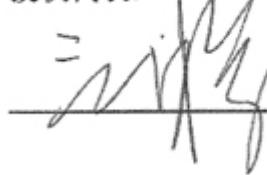
\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

The Buyers:

JIANGSU ZHONGNENG  
POLYSILICON TECHNOLOGY  
DEVELOPMENT CO LTD.

Authorized Representative

授权代表:

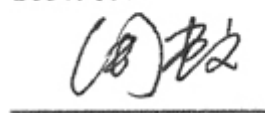


The Sellers:

MEYER BURGER AG

Authorized Representative

授权代表:



Attachments 1-5 are an integral part of the contract of MB-SHA2008025 and will be reviewed and confirmed by written by the Seller and Buyer before shipment.

Attachment 1: System configuration

Attachment 2: Facility requirement/unit

Attachment 3: Unpacking, installation and commissioning

Attachment 4: Acceptance criteria

Attachment 5: Special service and support

including

\*\*\*      \*\*\*      \*\*\*

\*\*\* mm

\*\*\*

\*\*\*

\*\*\*

\*\*\*

\*\*\*

\*\*\*

\*\*\*

14

\*\*\* Facility requirement/unit

**Machine Dimension :**

Length/width/height (approx.):

\*\*\*

Total weight of machine:

\*\*\*

**Electric energy**

Voltage/Frequency:

\*\*\*

Maximum power consumption:

\*\*\*

Electric supply must be stable during machine running.

\*\*\*

**Compressed air**

Pressure:

\*\*\*

Quantity:

\*\*\*

**Air exhaust**

Quantity:

\*\*\*

**Cooling water**

Cooling water quantity:

\*\*\*

Temperature min./max.

\*\*\*

Pressure min./max.

\*\*\*

(Between water supply and water return must be a pressure difference of at least 2 bar.)

Cooling power:

\*\*\*

## Temperature

Environment temperature:

\*\*\*

Temperature fluctuation during a complete cut:

\*\*\*

**Internet communication interface has to be available inside the workshop.**

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

### **Unpacking, Installation and Commissioning**

1. The installation and commissioning must be ready within \*\*\* after shipment. Within two weeks after receipt of the buyer' s written notice, Meyer Burger shall send engineer(s) to the buyer' s site for installation, commissioning and acceptance test. The buyer guarantees that the equipment will only be unpacked with the presence of the seller unless it is required by the relevant Chinese authority. The buyer will inform the seller of the date of Customs clearance so that the seller can present in the unpacking if it happens. The buyer shall provide the local transportation, working conditions, ingots and the consumable commodities for the installation, commissioning and the finial acceptance test.
2. Broad band for internet communication interface has to be available inside the workshop of the Buyer. In case the Buyer cannot equip the broad band available which cause the delay of installation and service, the Buyer has to be responsible and pay the Seller additional cost caused by lack of broad band.

## Acceptance

### Wire Saw \*\*\*

The Wire Saw will be checked and tested according to the relevant standards.

1. Material of acceptance test:

\*\*\*

2. Target wafer thickness: \*\*\*

3. Acceptance criteria

\*\*\*

\*\*\*

\*\*\*

6. Conditions:

\*\*\*

7. Sampling and measuring system

\*\*\*

8. Once a test fails to meet the acceptance requirement, both parties will study together the reason and one or two tests will be carried as soon as possible.

9. After the acceptance test meets above standards, the acceptance certificate must be issued at once by the Buyer.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

## Special service and support

### Factory layout and facility set up support

Meyer Burger will support the customer with project specialist for the planning of layout, facility and infrastructure set-up.

### Service/Installation

Meyer Burger will have an installation and support team continuously on site available during entire delivery period for 1st delivery \*\*\*, from Jan., 2009 continuously. The team contains one senior engineer and according to the need, \*\*\* additional engineers. This is under condition that delivery schedule can be followed according to the contract stipulated.

### Training

Based on concept “train the trainer”, Meyer Burger will organize on site training for key operators, process engineers, maintenance engineers in a way that they are capable to train their own staff.

### Training in Switzerland

The buyer will send \*\*\* engineers to be trained at Meyer +Burger AG, Switzerland prior to 1<sup>st</sup> shipment or before mid of Dec., 2008. The international travel cost will be covered by the buyer.

Meyer +Burger will train the buyer’ s engineers free of charge, including local transportation and accommodation. The Seller shall provide the Chinese translation. It is suggested that at least one of trained engineers could speak English.

The buyer should provide the silicon ingots for trial cut during training period. The quantity of ingots should be discussed and confirmed by both parties. The quality of ingots should meet the relevant standards.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



---

The training period should be \*\*\*.

### **Workshop**

Meyer Burger will organize an annual seminar with Meyer Burger senior experts at the customer site to update the customer's key persons on the latest development and know-how.

### **Joint development agreement**

Meyer Burger is willing to enter a joint development agreement with the customer to improve the quality, performance and yield along the process chain. Possible topic could be:

1. Increase utilization of material to reach Silicon consumption below \*\*\*
2. Increase the wafer line yield from \*\*\* up to \*\*\*
3. Reduce cost of ownership especially consumable cost along the latest technology.

Other topics can be agreed among both parties.

### **Spare parts and repair**

Beside on site engineers, Meyer Burger will maintain a repair service center in Wuxi and Shanghai, to repair parts with reduced down time.

Meyer Burger will deliver a \*\*\* with value around \*\*\* CHF at the customer site as first level support, to reduce down time, additional to this, Meyer Burger maintains an Asia spare parts inventory in Shanghai.

### **Latest technology**

Meyer Burger continuously develops machine and process technology to reduce cost of ownership, increase performance and material utilization. This will be introduced to the customer and if needed and agreed, the parties will find a solution to adjust the specification as in the contract described.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

### **Latest wafer line technology**

Meyer Burger will continuously inform the customer about latest technology to reach and optimize the material flow along the wafer line according to latest development.

**CONTRACT**

NO. GCL-K980  
DATE: June 27, 2008

**THE BUYER:** NAME: JIANGSU ZHONGNENG POLYSILICON  
TECHNOLOGY DEVELOPMENT CO LTD.  
ADDRESS: NO. 66 YANGSHAN ROAD, XUZHOU ECONOMIC DEVELOPMENT ZONE, JIANGSU PROVINCE,  
CHINA  
TEL: + 86 516 8586 8888  
Fax: +86 516 8315 2877

**THE SELLER:** NAME: MIYAMOTO TRADING LIMITED  
ADDRESS: WBG W-26, 2-6 NAKASE, MIHAMA-KU, CHIBA, JAPAN  
POSTCODE: 261-7126  
TEL: (0081)43-297-8551 FAX: (0081)43-297-8555

THIS CONTRACT IS MADE BY AND BETWEEN THE BUYER AND THE SELLER, WHEREBY THE BUYER AGREES TO BUY  
AND THE SELLER AGREES TO SELL THE UNDER-MENTIONED CONTRACT PRODUCTS ACCORDING TO THE TERMS AND  
CONDITIONS STIPULATED BELOW.

1. NAME OF COMMODITY, QUANTITY, & SPECIFICATIONS:

A. MULTI-WAFER MAKER MODEL: \*\*\*

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED  
SEPARATELY WITH THE COMMISSION.

NAME: MULTI-WIRE SAWING MACHINE

QUANTITY: \*\*\*

B. MULTI BLOCK SLICER MODEL: \*\*\*

NAME: MULTI BLOCK SLICER

QUANTITY: \*\*\*

THE SELLER GRANTS THE BUYER AN OPTION TO BUY ADDITIONAL \*\*\* MULTI BLOCK SLICERs ACCORDING TO THE TERMS AND CONDITIONS OF THIS CONTRACT BY GIVING THE SELLER A WRITTEN NOTICE BY MARCH 31, 2009.

FOR DETAILS OF THIS SECTION 1B, PLEASE REFER TO THE DELIVERY SCHEDULE OF THE APPENDIX II.

THE COMMODITIES TO BE BOUGHT BY THE BUYER UNDER THIS SECTION 1 WILL BE HEREINAFTER REFERED TO THE "CONTRACT PRODUCTS" OR THE "CONTRACT PRODUCT" AS THE CASE MAY BE.

2. UNIT PRICE AND TOTAL VALUE OF THE CONTRACT PRODUCTS:

2.1 UNIT PRICE

THE UNIT PRICE OF THE CONTRACT PRODUCTS SHALL BE AS DISPLAYED IN THE FOLLOWING FORM:

NAME AND MODEL OF THE CONTRACT PRODUCT	UNIT PRICE (JP¥)
MULTI-WIRE SAWING MACHINE: ***	***

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

MULTI BLOCK SLICER: \*\*\*

\*\*\*

\* Note: JPY refers to JAPANESE YEN.

## 2.2. TOTAL VALUE

CIF SHANGHAI SEAPORT JPY \*\*\*.

IF THE BUYER EXERCISES THE OPTION UNDER THE SECTION 1B OF THE CONTRACT TO PURCHASE  
ADDITIONAL \*\*\* MULTI BLOCK SLICERS, TOTAL VALUE BECOMES:

CIF SHANGHAI SEAPORT JPY \*\*\*.

## 3. COUNTRY OF ORIGIN AND MANUFACTURERS

NIPPEI TOYAMA CORPORATION, JAPAN

## 4. TIME OF DELIVERY:

FOR DETAILS OF THIS SECTION 4, PLEASE REFER TO THE DELIVERY SCHEDULE OF THE APPENDIX II OF THE  
CONTRACT.

## 5. PORT OF SHIPMENT:

JAPANESE MAIN SEAPORT

## 6. PORT OF DESTINATION:

SHANGHAI, CHINA

## 7. SHIPPING MARK

GCL-K980

SHANGHAI CHINA

## 8. PAYMENT TERMS:

8.1 THE BUYER WILL PAY RMB \*\*\*. - AS THE DEPOSIT (THE "DEPOSIT") BY T/T INTO A BANK ACCOUNT  
THAT REQUIRES JOINT SIGNATURE BY BOTH THE SELLER AND BUYER, PROVIDED THAT THE FIRST  
PERFORMANCE BOND HAS BEEN ISSUED TO THE BUYER UNDER THE SECTION 8.5 OF THE CONTRACT.

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED  
SEPARATELY WITH THE COMMISSION.

- 8.2 IF THE BUYER TERMINATES THE CONTRACT FOR REASONS OTHER THAN THOSE STIPULATED IN SECTION 13, 17, 19.2 and 19.3. THEN THE BUYER WILL FORFEIT THE DEPOSIT. IF THE SELLER TERMINATES THE CONTRACT FOR REASONS OTHER THAN THOSE STIPULATED IN SECTION 13, 17, 19.2 and 19.3, THE BUYER WILL BE ENTITLED TO ACQUIRE THE TOTAL AMOUNT OF THE FIRST PERFORMANCE BOND.
- 8.3 THE SELLER WILL RETURN THE DEPOSIT TO THE BUYER UPON THE DATE WHEN THE LETTER OF CREDIT IS ISSUED BY THE BUYER' S BANK FOR THE LAST DELIVERY OF THE CONTRACT PRODUCT OR UPON THE DATE OF COMPLETION OF THE CONTRACT, WHICHEVER IS EARLIER.
- 8.4 THE BUYER SHALL OPEN AN IRREVOCABLE LETTER OF CREDIT IN JAPANESE YEN AT SIGHT WITH THE BUYER' S BANK IN FAVOR OF THE SELLER FOR AN AMOUNT OF \*\*\* OF THE TOTAL VALUE OF THE CONTRACT PRODUCTS FOR EACH DELIVERY - \*\*\* BEFORE SHIPMENT. THE LETTER OF CREDIT WILL BE NEGOTIATED ACCORDING TO THE FOLLOWING.
- 8.4.1 AN AMOUNT OF \*\*\* OF THE TOTAL VALUE OF THE DELIVERED CONTRACT PRODUCTS SHALL BE AVAILABLE AGAINST THE FOLLOWING DOCUMENTS.
- a. FULL CLEAN ON BOARD B/L (THE SHIPMENT DATE SHALL CONFORM WITH THAT PRESCRIBED UNDER THIS CONTRACT), BLANK ENDORSED,
  - b. 5 SETS INVOICE,
  - c. 5 SETS PACKING LIST,
  - d. 1 SET MACHINE INSPECTION REPORT,

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

- e. 1 SET CERTIFICATE OF ORIGIN BY MANUFACTURER, AND
  - f. 2 SETS CERTIFICATE OF MARINE INSURANCE.
- 8.4.2 AN AMOUNT OF \*\*\* OF THE TOTAL VALUE OF THE DELIVERED CONTRACT PRODUCTS SHALL BE AVAILABLE AGAINST FOLLOWING DOCUMENTS:
- a. 5 SETS INVOICE, AND
  - b. FINAL ACCEPTANCE REPORT SIGNED BY THE BUYER AND SELLER.
- 8.5 PERFORMANCE BOND
- 8.5.1 THE SELLER WILL PROVIDE THE BUYER WITH A PERFORMANCE BOND IN FAVOR OF THE BUYER, , IN A FORM SATISFIED BY THE BUYER, WITH THE AMOUNT OF JPY \*\*\* ISSUED BY A REPUTABLE BANK (“THE FIRST PERFORMANCE BOND”) WITHIN \*\*\* OF THE EXECUTION OF THE CONTRACT. THE FIRST PERFORMANCE BOND WILL EXPIRE UPON THE DATE WHEN THE LETTER OF CREDIT IS ISSUED BY THE BUYER’ S BANK FOR THE LAST DELIVERY OF THE CONTRACT PRODUCT OR UPON THE DATE WHEN THE SECOND PERFORMANCE BOND BECOMES EFFECTIVE, WHICHEVER COMES LATER. IN THE EVENT THAT THERE IS ANY BREACH OF THE CONTRACT BY THE SELLER AND IT IS LIABLE FOR THE BUYER FOR ANY OTHER REASONS, THE BUYER MAY BE INDEMNIFIED BY THE SELLER FROM THE FIRST PERFORMANCE BOND DURING ITS EFFECTIVE PERIOD.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

8.5.2 THE SELLER SHALL PROVIDE THE BUYER WITH A PERFORMANCE BOND IN FAVOR OF THE BUYER, IN A FORM SATISFIED BY THE BUYER, WITH THE AMOUNT OF JP ¥ \*\*\* OR \*\*\* OF THE TOTAL AMOUNT OF THE LAST DELIVERY, WHICHEVER IS LARGER, ISSUED BY A REPUTABLE BANK ("THE SECOND PERFORMANCE BOND") WHEN THE BUYER'S BANK ISSUES THE LETTER OF CREDIT FOR THE LAST DELIVERY OF THE CONTRACT PRODUCT AND THE SECOND PERFORMANCE BOND WILL EXPIRE WHEN THE WARRANTY PERIOD FOR THE CONTRACT PRODUCTS DELIVERED LASTLY EXPIRES. IN THE EVENT THAT THERE IS ANY CLAIM RAISED BY THE BUYER UNDER THE SECTION 12 OF THE CONTRACT, THE BUYER MAY BE INDEMNIFIED BY THE SELLER FROM SUCH PERFORMANCE BOND DURING ITS EFFECTIVE PERIOD.

9. SHIPPING ADVICE:

IMMEDIATELY AFTER THE CONTRACT PRODUCTS HAVE BEEN SHIPPED, THE SELLER SHALL NOTIFY THE BUYER BY FAX THE CONTRACT NUMBER, NAME OF GOODS, QUANTITY, WEIGHT, TOTAL VALUE OF THE CONTRACT PRODUCTS, NAME AND SAILING DATE OF THE CARRYING VESSEL, AND PORT OF DESTINATION FOR SUCH DELIVERY.

10. PACKING:

TO BE PACKED IN STRONG WOODEN CASE(S), SUITABLE FOR LONG DISTANCE OCEAN TRANSPORTATION AND TO CHANGE OF CLIMATE, WELL PROTECTED AGAINST MOISTURE, SHOCKS AND RUST.

THE SELLER SHALL BE LIABLE FOR ANY DAMAGE OF THE COMMODITY AND EXPENSES INCURRED ON ACCOUNT OF IMPROPER PACKING AND FOR ANY RUST ATTRIBUTABLE TO INADEQUATE OR IMPROPER PROTECTIVE MEASURES TAKEN BY THE SELLER REGARDING TO THE PACKING.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



## 11. TECHNICAL DOCUMENTATION:

FOR DETAILS OF THIS SECTION 11, PLEASE REFER TO THE APPENDIX I OF THE CONTRACT.

## 12. GUARANTEE OF QUALITY AND CLAIMS:

THE SELLER WARRANTS THAT ALL OF THE CONTRACT PRODUCTS SUPPLIED UNDER THIS CONTRACT SHALL BE BRAND-NEW, UNUSED, FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP, OF MERCHANTABLE QUALITY AND IN GOOD WORKING ORDER, AND COMPLY IN ALL RESPECTS WITH THE QUALITY AND SPECIFICATION STIPULATED UNDER THIS CONTRACT. THE WARRANTY PERIOD SHALL BE \*\*\* COUNTING FROM THE DATE ON WHICH THE CONTRACT PRODUCTS COMMENCE THE OPERATION OR \*\*\* AFTER THE DELIVERY OF THE CONTRACT PRODUCTS, WHICHEVER COMES FIRST.

WITHIN \*\*\* AFTER RECEIPT OF THE CONTRACT PRODUCTS BY THE BUYER, SHOULD THE QUALITY, SPECIFICATION OR THE QUANTITY BE FOUND NOT IN CONFORMITY WITH THE STIPULATIONS OF THE CONTRACT EXCEPT THOSE CLAIMS FOR WHICH THE INSURANCE COMPANY ARE LIABLE, SHOULD THE CONTRACT PRODUCTS BE PROVED THAT THERE ARE DEFECTS INCLUDING LATENT DEFECTS OR TO BE MADE WITH UNSUITABLE MATERIALS, THE BUYER SHALL, ON THE STRENGTH OF THE INSPECTION CERTIFICATE ISSUED BY THE CHINA INSPECTION & QUARANTINE BUREAU (CIQ), HAVE THE RIGHT TO CLAIM FOR REPLACEMENT WITH NEW QUALIFIED ONES. THE BUYER SHALL RETURN ALL DEFICIENT CONTRACT PRODUCTS TO THE SELLER BASED ON FOB TERMS IMMEDIATELY AFTER RECEIPT OF THE FAX/E-MAIL OF B/L OF REPLACEMENT MADE BY THE SELLER. ALL THE EXPENSES (SUCH AS INSPECTION CHARGES, FREIGHT FOR RETURNING DEFICIENT CONTRACT PRODUCTS, INSURANCE PREMIUM, AND STORAGE & PORT CHARGES ETC.) SHALL BE BORNE BY THE SELLER.

THE SELLER SHALL GUARANTEE TO REPLACE THE DEFICIENT CONTRACT PRODUCTS WITH QUALIFIED ONES WHICH MUST BE IN CONFORMITY WITH THE SPECIFICATIONS, QUALITY & PERFORMANCE AS STIPULATED IN THE AGREEMENT, AND SHIP THE QUALIFIED CONTRACT PRODUCTS TO THE BUYER BASED ON CIF TERMS \*\*\*. ALL OF THE COSTS AND FEES INCURRED HEREUNDER FOR DELIVERY OF THE QUALIFIED CONTRACT PRODUCTS AS THE REPLACEMENT OF THE DEFICIENT CONTRACT PRODUCTS SHALL BE BORN BY THE SELLER. IF THE SELLER FAILS TO ANSWER THE BUYER WITHIN THIS PERIOD, THE CLAIMS SHALL BE RECKONED AS HAVING BEEN ACCEPTED BY THE SELLER.

THE INSPECTION CERTIFICATE ISSUED BY CIQ IS FINAL AND BINDING UPON BOTH PARTIES.

13. FORCE MAJEURE:

THE EVENT WOULD BE EVENT OF FORCE MAJEURE IF THE PARTY WHO CLAIMS NOT TO PERFORM ITS OBLIGATIONS UNDER THE CONTRACT CAN PROVE THAT THE FAILURE WAS DUE TO AN IMPEDIMENT BEYOND ITS CONTROL, NOT REASONABLY BEEN FORESEEN BY IT AT THE TIME OF PERFORMANCE OF THE CONTRACT AND NOT BEEN REASONABLY AVOIDED OR OVERCOME BY IT (COLLECTIVELY THE "THREE CONDITIONS"). EVENTS OF FORCE MAJEURE INCLUDE WITHOUT LIMITATION WAR, HOSTILITIES, EXPLOSIONS, FIRES, NATURAL DISASTERS, AND ADVERSE WEATHER WHICH MEETS ANY AND ALL THREE CONDITIONS. THE SELLER SHALL NOT BE HELD RESPONSIBLE FOR ANY DELAY IN DELIVERY OR NON-DELIVERY OF THE CONTRACT PRODUCTS DUE TO FORCE MAJEURE. HOWEVER, THE SELLER SHALL ADVISE THE BUYER IMMEDIATELY BY FAX/CABLE OF SUCH OCCURRENCE AND WITHIN \*\*\* THEREAFTER, SEND BY THE COMPETENT GOVERNMENT AUTHORITIES OR CHAMBER OF COMMERCE OF THE PLACE WHERE THE ACCIDENT OCCURS AS EVIDENCE THEREOF. UNDER SUCH CIRCUMSTANCES THE SELLER, HOWEVER, IS STILL UNDER THE OBLIGATION TO TAKE ALL NECESSARY MEASURES TO HASTEN THE DELIVERY OF THE CONTRACT PRODUCTS.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

## 14. COMMODITIES INSPECTIONS AND CLAIM

AFTER ARRIVAL OF THE CONTRACT PRODUCTS AT THE PORT OF DESTINATION THE BUYERS SHALL APPLY TO THE CHINA ENTRY-EXIT INSPECTION AND QUARANTINE BUREAU (HEREINAFTER CALLED CIQ) FOR A PRELIMINARY INSPECTION OF THE CONTRACT PRODUCTS IN RESPECT OF THEIR QUALITY, SPECIFICATIONS & QUANTITY/WEIGHT OR BOTH.

## 15. BANKING CHARGE:

DURING EXECUTION OF THIS CONTRACT, ALL THE BANKING CHARGES INCURRED IN CHINA SHALL BE BORNE BY THE BUYER WHILE ALL THE BANKING CHARGES INCURRED OUTSIDE CHINA SHALL BE BORNE BY THE SELLER.

## 16. ARBITRATION AND APPLICABLE LAW:

ALL DISPUTES IN CONNECTION WITH THIS CONTRACT OR THE EXECUTION THEREOF SHALL BE SETTLED THROUGH FRIENDLY NEGOTIATIONS. IN CASE NO SETTLEMENT CAN BE REACHED THROUGH NEGOTIATIONS, THE CASE SHOULD THEN BE SUBMITTED FOR ARBITRATION TO CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION (CIETAC), IN ACCORDANCE WITH THE "ARBITRATION RULES OF CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION (the "CIETAC"). THE ARBITRAION SHALL TAKE PLACE IN BEIJING AND AWARD RENDERED BY THE SAID COMMISSION SHALL BE FINAL AND BINDING UPON BOTH PARTIES; NEITHER PARTY SHALL SEEK RECOURSE TO A LAW COURT OR OTHER ANTHORITIES FOR REVISING THE AWARD. THE ARBITRATION FEE(INCLUDING THE REASONABLE ATTORNEY' S FEES INCURRED BY THE WINNING PARTY) SHALL BE BORNE BY THE LOSING PARTY.

THE CONSTRUCTION, VALIDITY, INTERPRETATION, PERFORMANCE, IMPLEMENTATION AND ALL MATTERS RELATING TO THIS CONTRACT AND ANY AMENDMENT THERETO SHALL BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR INTERNATIONAL SALE OF GOODS. TO THE EXTENT THE UNITED NATIONS CONVENTION ON CONTRACTS FOR INTERNATIONAL SALE OF GOODS DOES NOT COVER, PRC LAW SHALL APPLY.

17. DELAYED DELIVERY AND PENALTY:

IN CASE OF DELAYED DELIVERY, EXCEPT FOR FORCE MAJEURE CASES, THE SELLER SHALL PAY TO THE BUYER FOR EVERY WEEK OF DELAY A PENALTY AMOUNTING TO \*\*\*. THE TOTAL AMOUNT OF PENALTY \*\*\* AND IS TO BE DEDUCTED FROM THE TOTAL VALUE OF THE CONTRACT PRODUCTS INVOLVED IN LATE DELIVERY AND IS TO BE DEDUCTED FROM THE AMOUNT DUE TO THE SELLER BY THE PAYING BANK, OR BY THE BUYER DIRECTLY AT THE TIME OF PAYMENT.

IN CASE THE PERIOD OF DELAY EXCEEDS \*\*\* AFTER STIPULATED DELIVERY DATE, THE BUYER HAS THE RIGHT TO TERMINATE THIS CONTRACT BUT THE SELLER SHALL NOT THEREBY BE EXEMPTED FROM THE PAYMENT OF PENALTY. HOWEVER, THE SELLER WON' T BE LIABLE TO PAY SUCH PENALTY IF THE DELAY IS DUE TO THE FORCE MAJEURE. AS FOR ONE MULTI BLOCK SLICER SCHEDULED TO BE SHIPPED IN 31 DECEMBER 2008, \*\*\* OF GRACE PERIOD WILL BE GIVEN TO THE DELIVERY OF SUCH MULTI BLOCK SLICER, AND THE SELLER SHALL PAY PENALTY IN THE EVENT THAT SUCH MULTI BLOCK SLICER CAN' T BE SHIPPED BY JANUARY 21, 2009.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

18. \*\*\*

19. Termination of the Contract

- 19.1 Without prejudice to any rights and remedies to which the Buyer may be entitled, if the Seller neglects to perform the Contract with due diligence and expedition, or refuses or neglects to comply with any reasonable orders given to the Seller in writing by the Buyer in connection with the performance of the Contract, or contravenes the provisions thereof, or any stipulation in the Contract, the Buyer may give notice in writing to the Seller to make good the neglect, refusal, or contravention complained of.
- 19.2 Should the Seller fails to comply with a notice given by the Buyer in accordance with Section 19.1 within \*\*\* from the date of service thereof in the case of a failure, neglect or contravention capable of being made good within that time, or otherwise within such time as may be reasonably necessary for making it good, then, and in such case the Buyer may forthwith suspend, or terminate the Contract or any part thereof by notice in writing to the Seller.
- 19.3 Without prejudice to any other rights or remedies to which the Buyer may be entitled, if the Seller become bankrupt or insolvent, or have a receiving order made against it, or compound with its creditors, or be a corporation commence to be wound up (not being a member's voluntary winding up for the purpose of amalgamation or reconstruction) or have a receiver or manager of its business appointed, the Buyer may either:
- i) terminate the Contract forthwith by notice in writing to Seller or to the receiver or liquidator or to any person in whom the Contract may become vested; or
  - ii) give such receiver, liquidator, or other person the option of carrying out the Contract subject to his providing a guarantee for the due and faithful performance of the Contract up to an amount to be agreed.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

20. Adjustment of the Delivery

Buyer shall have the right to adjust the delivery schedule of the undelivered goods by giving a \*\*\* prior notice to the Seller.

21. Confidentially

21.1 The Seller shall at all times treat the Contract and everything contained therein as private and confidential except as may be reasonably necessary for the Seller to carry out the work under the Contract. In particular the Seller shall not publish any information, drawing or photographs concerning the Contract Product, the project that the Buyer is engaging in or the Contract except with the written consent of the Buyer and subject to such reasonable conditions as the Buyer may prescribe.

22. Training

22.1 The Seller shall provide, within 30 days of the delivery of the goods, \*\*\* free training in Japan for about \*\*\* employees of the Buyer. The Training will be conducted according to a standard training syllabus which will be provided by the Seller and will be satisfactory by the Buyer. The transportation fees and accommodation fees in Japan incurred by these employees will be born by the Seller and the international transportation fees will be born by the Buyer.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

## 23. Customer Service

The Seller shall maintain an installation and support team continuously on site available during each delivery period for fourteen days dating from the date when the delivered Contract Products arrive at the factory of the Buyer. The team contains at least \*\*\* engineers which could provide needed service.

The team is responsible to provide customer service to the Buyer. The Seller procures the team will provide on site restoration services in 24 hours upon the report of the Buyer and ensures to provide the Buyer standby equipment during the course of the restoration of the goods in the event it is within the warranty period.

Beside on site engineers, the Seller shall maintain a reasonable spare parts inventory in their repair service centers in Shanghai and Changzhou.

## 24. Assignment of the Rights and/or Obligations under the Contract

24.1 The respective rights and obligations of either party hereto may be assigned with the prior written consent of the other party, except that the Seller may assign its rights to receive payments under the Contract and the Buyer may assign its rights to receive goods under the Contract.

24.2 The Buyer will notify the Seller of the consignee within \*\*\* before the shipment of the Contract Products and the Buyer will make changes in the letter of credit to be issued under the Contract accordingly.

## 25. Software Updating and Latest technology

25.1 The Seller warrants it will provide the Buyer with the updated Goods and related software when available prior to the scheduled delivery of the Contract Products.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

- 25.2 The Seller warrants that it will provide the Buyer of the software updating for the Contract Products during the whole warranty period of such Contract Products if such updated software is available and the Seller won't charge the Buyer any fees for this. The software updating aforesaid includes remote software downloads and remote technical support.
- 25.3 The Seller continuously develops machine and process technology to reduce cost of ownership, increase performance and material utilization. This will be introduced to the Buyer and if needed and agreed, the Parties will find a solution to adjust the specification as in the contract described.
- 25.4 The Seller will continuously inform the Buyer about latest wafer line technology to reach and optimize the material flow along the wafer line according to latest development.

## 26 IP INDEMNIFICATIONS

### 26.1 REQUESTED INTELLECTUAL PROPERTY INDEMNITY

The Seller shall indemnify the Buyer and its affiliates, and their respective officers, directors, agents and employees (the "Buyer Indemnified Parties") from and against any cost, loss, liabilities, charge, expense (including attorneys' fees), damages and judgments incurred by any Buyer Indemnified Party arising from or incurred by reason of any action, claim, demand or proceeding that any of the Contract Product (including methodologies and technologies used or produced by such Contract Product), documentation and services provided by the Seller (or Buyer's receipt and use thereof) misappropriates or infringes any patent, copyright, trademark, trade name, trade secret or any other intellectual property right therein anywhere in the world.

### 26.2 ASSOCIATED POSSIBLE REPRESENTATION AND WARRANTY REGARDING INTELLECTUAL PROPERTY



The Seller warrants that it has the right and permission to supply to the Buyer the Contract Product, documentation and services in accordance with the terms of the Contract. The Seller represents and warrants that (i) the Seller is the owner of the Contract Product and the documentation and has the right to provide or license, as applicable, to the Buyer such Contract Product, documentation and services in accordance with the Contract (and that the Seller is duly authorized by any third party owner of any component the Contract Product and documentation to provide and to license to the Buyer, as applicable, such Contract Product, documentation and services in accordance with this Contract) (ii) the Seller has determined that the Contract Product (including the methodologies and technologies used or produced by such Contract Product), documentation and services may be disclosed to the Buyer without a valid claim of trade secret misappropriation by any party, (iii) the Contract Product (including the methodologies and technologies used or produced by such Contract Product), documentation and services (and Buyer' s receipt and use thereof) do not infringe any third party patent, copyright, trademark, trade secret or other intellectual property right anywhere in the world, and (iv) the sale anywhere in the world of products created utilizing the Contract Product does not infringe any third party patent, copyright, trademark, trade secret or other intellectual property right anywhere in the world.

27. SUPPLEMENTARY CLAUSES:

- A. ALL THE APPENDIXES ATTACHED TO THIS CONTRACT AND SIGNED BY THE SELLERS AND THE BUYERS ARE INTEGRAL PART OF THIS CONTRACT.
- B. THE CONTRACT SHALL BE EFFECTIVE UPON THE EXECUTION OF THE CONTRACT BY THE SELLER AND THE BUYER. THIS CONTRACT IS MADE IN CHINESE AND ENGLISH LANGUAGES. BOTH HAVE THE STATUS IN LAW.

- C. THESE TERMS AND CONDITIONS, BY THEIR NATURE, SHALL SURVIVE THE CONCESSION,  
TERMINATION, EXPIRATION, OR ABANDONMENT OF THE CONTRACT, SUCH AS SECTION 16, 21, AND 27.

REMARK: SELLER' BANK

NAME: BANK OF TOKYO-MITSUBISHI UFJ, TSUDANUMA BRANCH

ADD: 2-18-1, MAEHARA-NISHI, FUNABASHI, CHIBA, JAPAN

A/C NO.: \*\*\*

(NO TEXT BELOW)

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED  
SEPARATELY WITH THE COMMISSION.

THIS IS THE SIGNING PAGE FOR THE CONTRACT (NO.: GCL-K980)

THE BUYER(买方):

JIANGSU ZHONGNENG POLYSILICON  
TECHNOLOGY DEVELOPMENT CO., LTD.

江苏中能硅业科技发展有限公司

Authorized Representative

授权代表:



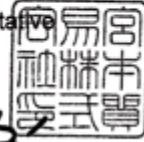
THE SELLER(卖方):

MIYAMOTO TRADING LIMITED

宫本贸易株式会社

Authorized Representative

授权代表:



*[Handwritten signature]*

SUPPLY LIST

A MULTI-WAFER MAKER

EVERY \*\*\*SETS CONSIST AS BELOW

(MULTI WIRE SAWING MACHINE)

MODEL: \*\*\*

A-1 (THIS MACHINE COMPRISES THE FOLLOWING UNITS) \*\*\*

\*\*\*

A-2 STANDARD ACCESSORIES

\*\*\*

B INLAND FREIGHT. STANDARD EXPORT PACKING CHARGE, \*\*\*  
FOB CHARGE, CIF CHARGE

C SUPERVISING FEE \*\*\*

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED  
SEPARATELY WITH THE COMMISSION.

D    SPECIAL ACCESSORIES  
    \*\*\*

E    SPARE PARTS  
    \*\*\*

UNIT PRICE	CIF SHANGHAI SEAPORT	JPY   ***
------------	----------------------	-----------

\*\*\*    CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED  
SEPARATELY WITH THE COMMISSION.

## SUPPLY LIST

(JPY)

A MULTI BLOCK SLICER MODEL: \*\*\*

\*\*\*

A-1 (THIS MACHINE COMPRISES THE FOLLOWING UNITS)

\*\*\*

A-2 STANDARD ACCESSORIES

\*\*\*

\*\*\*

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

B	SPECIAL ACCESSORIES	
	***	
C	INLAND FREIGHT, STANDARD EXPORT PACKING	***
	CHARGE, FOB & CIF CHARGE	
D	SUPERVISING FEE	***
	UNIT PRICE: CIF SHANGHAI, CHINA	<div>JPY ***</div>

---

Appendix II - Delivery Schedule

<u>CONTRACT NO.</u>	<u>SHIPMENT</u>	<u>UNIT PRICE</u>		<u>UNIT PRICE</u>		<u>TOTAL</u>
		<u>***</u>	<u>***</u>	<u>***</u>	<u>***</u>	
		<u>Q' TY</u>	<u>SUB-TOTAL</u>	<u>Q' TY</u>	<u>SUB-TOTAL</u>	
GCL- K980- 00	***	***	***	***	***	***
GCL- K980- 01	***	***	***	***	***	***
GCL- K980- 02	***	***	***	***	***	***
GCL- K980- 03	***	***	***	***	***	***
GCL- K980- 04	***	***	***			***
GCL- K980- 05	***	***	***			***
GCL- K980- 06	***	***	***			***
GCL- K980- 07	***	***	***			***
GCL- K980- 08	***	***	***			***
GCL- K980- 09	***	***	***			***
GCL- K980- 10	***	***	*			
GCL- K980- 11	***	***	*			
GCL- K980- 12	***	***	*			
	***	***		***		***

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.



---

## GUARANTY AGREEMENT

This Guaranty Agreement (hereinafter referred to as “Guaranty Agreement”) shall be signed and entered into on June 27, 2008 by and between:

Buyer: JIANGSU ZHONGNENG POLYSILICON TECHNOLOGY DEVELOPMENT CO LTD.

Address: NO. 66 YANGSHAN ROAD, XUZHOU ECONOMIC DEVELOPMENT ZONE, JIANGSU PROVINCE, CHINA

Guarantor: NIPPEI TOYAMA CORPORATION.

Address: 6-26-2, MINAMIOI, SHINAGAWA-KU, TOKYO, JAPAN

Seller: MIYAMOTO TRADING LIMITED

Address: WBG W-26, 2-6 NAKASE, MIHAMA-KU, CHIBA, JAPAN

Buyer, Guarantor and Seller are hereinafter collectively referred to as “the Parties” and each as “a Party”.

---

Whereas, the Buyer and the Seller has entered into a Contract on June 27, 2008 with the contract number of GCL-K980 (hereinafter referred to as the “Contract”). Based on this Contract, Seller shall supply the Buyer with \*\*\* of MULTI-WIRE SAWING MACHINE and \*\*\* of MULTI BLOCK SLICER and the Seller Grants the Buyer an option to buy additional \*\*\* MULTI BLOCK SLICER through giving the Seller a written notice By March 31, 2009 (hereinafter collectively referred to as “Contract Products”). The Seller is also obligated to provide other equipments, components, documentations and service and to perform the works associated with the Contract Products.

Whereas, the Seller, as a distributor of the Contract Products, has entered into the Contract with the Buyer, and the Guarantor, as the manufacture of the Contract Products, agrees to undertake jointly and severally all the responsibilities and obligations under the Contract to the Seller.

Whereas, the Seller, a legal entity duly established and validly existing in Japan with its principal place of business at WBG W-26, 2-6 NAKASE, MIHAMA-KU, CHIBA, JAPAN, and the Guarantor, a legal entity duly established and validly existing in Japan with its principal place of business at WBG W-26, 2-6 NAKASE, MIHAMA-KU, CHIBA, JAPAN.

Now therefore, the Parties, following friendly consultations, agree on the following terms and conditions and to sign this Guaranty Agreement.

---

\*\*\* CONFIDENTIAL TREATMENT REQUESTED. CONFIDENTIAL PORTIONS HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE COMMISSION.

---

The Guarantor hereby irrevocably guarantees and promises to undertake jointly and severally all the responsibilities and obligations under the Contract to the Seller (including the liabilities for breach of the Contract), if the Seller is failed to execute and perform, for any reason, any of its obligations under the Contract (including without limitation, timely delivery, quality guarantee in accordance with the Contract, liabilities for breach of the Contract, etc.). The Seller and the Guarantor shall be bound by this Guaranty Agreement.

The Guarantor and the Seller hereby further warrant and represent that:

1. The Guarantor, a legal entity organized and existing under the law of Japan, shall inform the Buyer timely of any events or facts which have changed or may change the status, position of the Guarantor.
2. Guaranty under this Guaranty Agreement shall be joint and several guaranty liability. The Guarantor shall undertake immediately all liabilities under the Contract which the Seller shall execute and perform upon a written notice by the Buyer (including performing

---

fully the Contract and / or bearing the liabilities for breach of the Contract). The Seller and Guarantor shall warrant that they and each of their successor and assignee will undertake jointly and severally the obligations to perform the Contract fully.

3. The Contract and this Guaranty Agreement shall be independent and effective each other.

4. The guaranty term under this Guaranty Agreement shall be ended at the date on which all obligations and responsibilities of the Seller under the Contract have been completed fully and become effective from the effectiveness of this Guaranty Agreement. Within the term of this Guaranty Agreement, if the Buyer and the Seller agree to change the volume, price, etc. under the Contract, the Guarantor shall be notified with such change and the Guarantor will undertake jointly and severally the obligations and liabilities under the changed Contract.

5. This Guaranty Agreement and its interpretation shall be governed by and construed in accordance with the laws of the People' s Republic of China. The settlement of any disputes arising out of or in connection with this Guaranty Agreement shall be executed in accordance with the agreement of arbitration stated in the Contract. This Guaranty Agreement shall become effective at the date of signing by the legal representative or the authorized representative of each the Buyer, Guarantor and Seller.

6. The Parties hereby confirm that this Guaranty Agreement shall be prepared in Chinese and English. Both languages are consistent and binding. In case disputes arise, the Chinese version should prevail.

This Guaranty Agreement is signed by:

For and on behalf of the Buyer

江苏中能硅业科技发展有限公司(盖章)

JIANGSU ZHONGNENG POLYSILICON TECHNOLOGY DEVELOPMENT CO  
LTD.(Seal)



/By: \_\_\_\_\_

/signature of authorized representative)

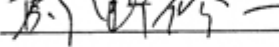
/Name: \_\_\_\_\_

/Title: \_\_\_\_\_

For and on behalf of the Guarantor

日本富山公司(盖章)

NIPPEI TOYAMA CORPORATION.(Seal)

由/By:  (授权代表签字/signature of authorized representative)




姓名/Name: KOMANO SHUICHI

职位/Title: GENERAL MANAGER /ASSOCIATE Director

For and on behalf of the Seller

宮本貿易株式会社(盖章)

MIYAMOTO TRADING LIMITED (Seal)

由/By:   
(授权代表签字/signature of authorized representative)

姓名/Name: MIYAMOTO NOBUHIDE

职位/Title: President

**Power of Attorney**

I hereby appoint Mr. Zhu Gongshan and Mr. Zhang Songyi as attorneys-in-fact with full power of substitution, for him or her in any and all capacities, to do any and all acts and all things and to execute any and all instruments which said attorney and agent may deem necessary or desirable to enable the registrant to comply with the Securities Act of 1933, as amended (the "Securities Act"), and any rules, regulations and requirements of the Securities and Exchange Commission thereunder, in connection with the registration under the Securities Act of ordinary shares of the registrant (the "Shares"), including, without limitation, the power and authority to sign my name in the capacity as Chief Financial Officer (Principal Financial Officer) and Chief Accounting Officer (Principal Financial Officer) to the Registration Statement on Form F-1 (the "Registration Statement") to be filed with the Securities and Exchange Commission with respect to such Shares, to any and all amendments or supplements to such Registration Statement, whether such amendments or supplements are filed before or after the effective date of such Registration Statement, to any related Registration Statement filed pursuant to Rule 462(b) under the Securities Act, and to any and all instruments or documents filed as part of or in connection with such Registration Statement or any and all amendments thereto, whether such amendments are filed before or after the effective date of such Registration Statement; and I hereby ratify and confirm all that such attorney and agent shall do or cause to be done by virtue hereof.

This power of attorney may be executed in any number of counterparts, which together shall constitute one and the same instrument.

[Signature Page Follows]

---

**IN WITNESS WHEREOF**, the undersigned has duly executed this power of attorney this 25<sup>th</sup> day of August, 2008

By: /s/ JASON LI

Name: Jason Li

Title: Chief Financial Officer (Principal Financial Officer)  
and Chief Accounting Officer (Principal Financial Officer)

ACCEPTED by each attorney-in-fact as of  
the date set forth above:

/s/ ZHU GONGSHAN

By: Mr. Zhu Gongshan

By: Mr. Songyi Zhang