

1. **DEFINITIONS**
- 1.1 In these conditions:
- “**Acceptable Quality Levels**” means the acceptable quality levels for normal inspection agreed in writing between Solarcentury and the Seller;
- “**Affiliate**” means, in relation to a body corporate, any entity that directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control with, such body corporate, ‘control’ for this purpose meaning the ability to direct the affairs of another person whether by virtue of the ownership of shares, by contract or otherwise;
- “**Business Day**” means any day other than a Saturday, Sunday, Public or other Bank Holiday in England;
- “**Contract**” means the Order and the Seller’s acceptance of the Order;
- “**Intellectual Property**” means any patent, rights to inventions, utility model, registered design, copyright and related right, database right, design right, topography right, trade mark, service mark, trade, business and domain name, right in goodwill or to sue for passing off, unfair competition right, right in computer software, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection whatsoever in any part of the world;
- “**Manufacturing Specification**” means the manufacturing specification agreed in writing between Solarcentury and the Seller referred to in, incorporated into or annexed to the Order;
- “**Order**” means Solarcentury’s written instruction to purchase the Products, signed by an authorised signatory on behalf of Solarcentury, incorporating these conditions;
- “**Products**” means products, materials or services which Solarcentury agrees to purchase from the Seller pursuant to a Contract;
- “**Seller**” means the person, firm or company who accepts Solarcentury’s Order; and
- “**Solarcentury**” means Solarcentury Benelux B.V. whose registered office is at Binnen Parallelweg 10, 5701 PH Helmond, Netherlands.
- 1.2 In these conditions unless the context otherwise requires:
- a. any reference to “writing” or related expressions includes a reference to cable, facsimile transmission, e-mail or comparable means of communication;
- b. any reference to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time; and
- c. all headings and titles are for convenience only and do not affect the interpretation of these conditions.
2. **APPLICATION**
- 2.1 Subject to any variation under 2.3 these conditions shall govern and be incorporated in every Contract made by or on behalf of Solarcentury with the Seller and shall prevail over any terms and conditions contained or referred to in any documentation submitted by the Seller or in correspondence or elsewhere or implied by trade custom practice or course of dealing.
- 2.2 Each Order for Products by Solarcentury from the Seller shall be deemed to be an offer by Solarcentury to buy Products subject to these conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in parts accepts the offer.
- 2.3 A variation of these conditions is only valid if it is in writing and signed by Solarcentury.
3. **QUALITY AND DEFECTS**
- 3.1 The Products shall be of the best available design, of the best quality, material and workmanship and conform in all respects with the Order and Manufacturing Specification.
- 3.2 Solarcentury’s rights under these conditions are in addition to any conditions implied in favour of Solarcentury by law.
- 3.3 At any time prior to delivery of the Products to Solarcentury, Solarcentury shall have the right to inspect and test the Products.
- 3.4 If the results of such inspection or testing cause Solarcentury to be of the opinion that the Products do not conform or are unlikely to conform with the Order, Manufacturing Specification or Acceptable Quality Level, Solarcentury shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition Solarcentury shall have the right to require and witness further testing and inspection.
- 3.5 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Products and any such inspection or testing shall not diminish or otherwise affect the Seller’s obligations under the Contract.
- 3.6 If any of the Products fail to comply with the provisions set out in this condition 3 Solarcentury shall be entitled to avail itself of any one or more remedies listed in condition 13.

4. INDEMNITY

4.1 The Seller shall keep Solarcentury indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by Solarcentury as a result of or in connection with:

- a. defective workmanship, quality or materials;
- b. an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Products; and
- c. any claim made against Solarcentury in respect of any liability, loss, damage, injury, cost or expense sustained by Solarcentury's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Products as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

5. DELIVERY

5.1 Unless otherwise agreed in writing the Products shall be delivered, carriage paid, to Solarcentury's place of business or to such other place of delivery as is agreed by Solarcentury in writing prior to delivery of the Products. The Seller shall off-load the Products at its own risk as directed by Solarcentury.

5.2 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within twenty eight (28) days of the Order.

5.3 The Seller shall invoice Solarcentury upon, but separately from, despatch of the Products to Solarcentury.

5.4 The Seller shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

5.5 Time for delivery shall be of the essence.

5.6 Unless otherwise stipulated by Solarcentury in the Order, deliveries shall only be accepted by Solarcentury in normal business hours.

5.7 If the Products are not delivered on the due date then, without prejudice to any other rights which it may have, Solarcentury reserves the right to:

- a. cancel the Contract in whole or in part;
- b. refuse to accept any subsequent delivery of the Products which the Seller attempts to make;
- c. recover from the Seller any expenditure reasonably incurred by Solarcentury in obtaining the Products in substitution from another supplier; and
- d. claim damages for any additional costs, loss or expenses incurred by Solarcentury which are in any way attributable to the Seller's failure to deliver the Products on the due date.

5.8 If the Seller requires Solarcentury to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to Solarcentury and any such packaging material shall only be returned to the Seller at the cost of the Seller.

5.9 Where Solarcentury agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Seller to deliver any one instalment shall entitle Solarcentury at its option to treat the whole Contract as repudiated.

5.10 If the Products are delivered to Solarcentury in excess of the quantities ordered Solarcentury shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense.

5.11 Solarcentury shall not be deemed to have accepted the Products until it has had 14 days to inspect them following delivery. Solarcentury shall also have the right to reject the Products as though they had not been accepted for 14 days after any latent defect in the Products has become apparent.

5.12 Solarcentury reserves the right to amend or cancel any Order without charge at any time before it has been signed for by an authorised representative of Solarcentury.

6. PROPERTY AND RISK

6.1 Risk and ownership in the Products passes on delivery (including off-loading) from the Seller to Solarcentury.

7. PRICE

7.1 The price payable for the Products and delivery is as stated in the Order given to the Seller and unless otherwise agreed in writing by Solarcentury shall be inclusive of value added tax, any similar sales tax or any tax that replaces such sales tax and inclusive of all other charges (the "Price").

- 7.2 No variation in the Price nor extra charges shall be accepted by Solarcentury.
- 8. PAYMENT**
- 8.1 Solarcentury shall pay the Price within 30 days after the end of the month in which the Seller's invoice is received by Solarcentury, but time for payment shall not be of the essence of the Contract.
- 8.2 Without prejudice to any other right or remedy, Solarcentury reserves the right to set off any amount owing at any time from the Seller to Solarcentury against any amount payable by Solarcentury to the Seller under the Contract.
- 8.3 Payment for the Products by Solarcentury shall be payable in the currency specified in the Order.
- 9. CONFIDENTIALITY**
- 9.1 The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by Solarcentury or its agents and any other confidential information concerning Solarcentury's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to Solarcentury and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Seller.
- 10. INTELLECTUAL PROPERTY RIGHTS**
- 10.1 Seller acknowledges that any and all of the Intellectual Property in the drawings, concepts or other materials that Solarcentury may provide to Seller in connection with the Contract shall remain the exclusive property of Solarcentury and Seller shall not during or at any time after the expiry or termination of the Contract in any way question or dispute the ownership of any such rights of Solarcentury.
- 10.2 Seller agrees that any new Intellectual Property that arises in connection with the Contract, or products belonging to Solarcentury, shall be owned absolutely by Solarcentury. Seller hereby assigns to Solarcentury with full title and guarantee all rights in and to any such new Intellectual Property for the full duration of such rights, wherever in the world enforceable, and shall procure such an assignment from any employee, consultant or any other party who is involved with the Contract. Seller agrees to execute (or procure that the employee, consultant or any other party it shall involve with the Contract executes) all documents and assignments and do all such things as may be necessary to perfect Solarcentury's title to the new Intellectual Property or to register Solarcentury as owner of all registrable rights.
- 10.3 Without prejudice to 10.1 Seller agrees that, if called on to do so by Solarcentury, it will, agree to execute such documents, perform such acts and cooperate in the provision of all necessary assistance and information reasonably required by Solarcentury for purposes of ensuring that any new Intellectual Property is absolutely assigned to and vested in it, provided always that Solarcentury shall reimburse Seller for any expenses reasonably incurred by it in such regard.
- 11. LICENCES AND CONSENTS**
- 11.1 If a licence or consent of any governmental or other authority is required in connection with Solarcentury's purchase of the Products, the Seller shall obtain the licence or consent at its own expense and produce evidence of it to Solarcentury on demand.
- 12. FORCE MAJEURE**
- 12.1 Solarcentury reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Products ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Solarcentury including, but not limited to, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 150 days, the Seller shall be entitled to give notice in writing to Solarcentury to terminate the Contract.
- 13. TERMINATION**
- 13.1 On or at any time after the occurrence of any of the events in condition 13.2, Solarcentury may, at its sole discretion, stop any Products in transit, suspend further deliveries and/or terminate any Contract with the Seller with immediate effect by written notice to the Seller.
- 13.2 The events are:
- a. the Seller being in material breach of an obligation under a Contract;
 - b. the Seller passing a resolution for its winding up or a court of competent jurisdiction making an order for the Seller's winding up or dissolution;
 - c. the making of an administration order in relation to the Seller or the appointment of a receiver order, or an encumbrancer taking possession of or selling, any of the Seller's assets; or

- d. the Seller making an arrangement or composition with its creditors generally or applying to a court of competent jurisdiction for the protection of its creditors.

13.3 The termination of a Contract for whatsoever reason, shall be without prejudice to the rights and duties of Solarcentury accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

14. REMEDIES

14.1 Without prejudice to any other right or remedy which Solarcentury may have, if any Products are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract Solarcentury shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Products have been accepted by the Solarcentury:

- a. to rescind the Order;
- b. to reject the Products (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Products so returned shall be paid forthwith by the Seller;
- c. at Solarcentury's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Products or to supply replacement Products and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- d. to refuse to accept any further deliveries of the Products but without any liability to the Seller;
- e. to carry out at the Seller's expense any work necessary to make the Products comply with the Contract; and
- f. to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

15. ASSIGNMENT

15.1 The Seller may not assign or transfer, or purport to assign or transfer, any of its rights or obligations under a Contract without Solarcentury's prior written consent. Solarcentury may assign all or any of its obligations under a Contract to any Affiliate of Solarcentury.

16. DELAY NOT A WAIVER

16.1 No delay by either Solarcentury or the Seller in enforcing any of these conditions shall be deemed a waiver of that party's right subsequently to enforce such condition.

17. GOVERNING LAW

17.1 These conditions and any Contract made under them shall be governed by and construed in accordance with the laws of the Netherlands and the court of Den Bosch shall have exclusive jurisdiction. Nothing in these conditions shall limit the right of Solarcentury to take proceedings against the Seller in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.