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ICC INTERNATIONAL COURT OF ARBITRATION

CASE NO. 15542/JEM/CYK

EPA SPOLKA Z OGRANICZONA ODPOWIEDZIALNOSCIA

(POLAND)

vs/

HAIHUA ELECTRONICS ENTERPRISE (CHINA) CORPORATION

(P.R. CHINA)

This document is an original of the Final Award by Consent rendered in conformity with the Rules of Arbitration of the ICC International Court of Arbitration.

**INTERNATIONAL CHAMBER OF COMMERCE
INTERNATIONAL COURT OF ARBITRATION**

IN THE MATTER OF AN ICC ARBITRATION

Case No 15542/JEM/CYK

BETWEEN:

EPA Spolka z Ograniczona Odpowiedzialnoscia

Claimant

-and-

Haihua Electronics Enterprise (China) Corporation

Respondent

FINAL AWARD BY CONSENT

The Parties

1. The Claimant is EPA Spolka z Ograniczona Odpowiedzialnoscia, a company organised and existing under the laws of Poland, with its place of business at Wojska Polskiego 154, 71-324 Szczecin, Poland. The Claimant was the buyer under the Contract that is the subject of this arbitration. The Claimant is represented by Mr. William Leung of William KW Leung & Co, Unit No 01, 11th Floor, Beautiful Group Tower, 77 Connaught Road Central, Hong Kong, ref: WL/4187/07, tel: +852 2810-6199, fax: +852 2810-1055.
2. The Respondent is Haihua Electronics Enterprise (CHINA) Corporation, a company organised and existing under the laws of the People's Republic of China, with its place of business at 163 Ping Yun Road West HuangPu Avenue, 510656 Guangzhou, China. The Respondent was the seller under the Contract that is the subject of this arbitration. The Respondent is represented by Mr. Paul KC Chan of Paul KC Chan & Partners, 8th Floor, Chinachem Tower, 34-37 Connaught Road Central, Hong Kong, ref: PC/NS/5919, tel: +852 2868-1388, fax: +852 2868-0737.

Background

3. This is our Final Award in this arbitration reference and is made by consent of the parties. This Award determines all issues in the arbitration.
4. By a written Original Equipment Manufacturing Agreement dated 8 December 2006, as supplemented by Annex No.1 dated 16 March 2007 ("the Contract"),

the Respondent as the seller and the Claimant as the buyer agreed that the Respondent would sell and the Claimant would buy various products, being marine electronics products as described in the Contract.

5. The Contract contained an arbitration clause, clause 21, in the following terms:

"21 Settlement of Disputes/Governing Law

21.1 Governing Law. This Agreement shall be governed by and be interpreted in accordance with The United Nations Convention on Contracts for the International Sale of Goods drawn up in Vienna at 11th April 1980.

21.2 All disputes arising in connection with the Agreement or in the execution thereof, should be settled amicably through negotiations. If no mutually acceptable settlement of such dispute is reached within 60 [sixty] days of the written notice of such dispute by a party, then such dispute shall be finally settled by arbitration in accordance with the Rules of Conciliation and Arbitration of the International chamber of Commerce (ICC Paris) by three arbitrators appointed in accordance with the said rules. The arbitration shall be held in Hong Kong. The language of arbitration shall be English. The arbitral decision shall also extend to the costs of said proceedings and shall be final and binding."

6. Disputes or differences arose between the Claimant and the Respondent regarding the Contract, in relation to the quality of goods supplied by the Respondent to the Claimant, and those disputes were referred to arbitration under and in accordance with the Contract. The Claimant's Request for Arbitration was dated 1 April 2008.
7. The Arbitral Tribunal was constituted as follows:
- 7.1. On 1 August 2008, in accordance with Article 9(3) of the ICC Rules of Arbitration ("the Rules"), the ICC International Court of Arbitration ("the Court") appointed Mr Glenn Haley as Chairman of the Arbitral Tribunal upon proposal of the Australian National Committee. Mr Haley's contact details are c/o Deacons, 5th Floor, Alexandra House, 18 Chater Road, Central, Hong Kong, Tel: +852 2825-9539, Fax: +852 2841-3205.
- 7.2. On 26 June 2008, the Secretary General of the Court, in accordance with Article 9(2) of the Rules, confirmed Mr Lee Fook Choon as co-arbitrator upon the nomination of the Claimant. Mr Lee's contact details are Toplis & Harding (Marine) Ltd, 100 Hau Ming Street, 11th Floor, Room 1105, One Landmark East, Hong Kong, Tel: +852 2866-7744, Fax: +852 2858-2633.
- 7.3. On 26 June 2008, the Secretary General of the Court, in accordance with Article 9(2) of the Rules, confirmed Mr Philip Yang as co-arbitrator upon the nomination of the Respondent. Mr Yang's contact details are 18A Casey Building, 38 Lok Ku Road, Sheung Wan, Hong Kong, Tel: +852 2544-1909, Fax: +852 2545-6079.

8. The Claimant's Request for Arbitration was dated 1 April 2008.
9. The Respondent's Answer to the Request for Arbitration dated 6 June 2008 was received by the ICC on 9 June 2008.
10. The Claimant delivered its Reply to the Respondent's Answer, on 9 December 2008.
11. The Respondent delivered a Rejoinder to the Claimant's Reply to the Respondent's Answer, on 21 January 2009.
12. The Terms of Reference were finalised and signed by the appointed representatives of both parties and by the three members of the Arbitral Tribunal on 12 January 2009.
13. During the course of this arbitration, the Arbitral Tribunal issued the following orders for directions:
 - 13.1. Order for Directions No 1, dated 21 March 2009. This set the initial directions and timetable for the arbitration.
 - 13.2. Order for Directions No 2, dated 8 December 2009. This made various directions in respect of the substantive hearing, which was scheduled to commence on 14 December 2009 in Hong Kong, for four hearing days at the Hong Kong International Arbitration Centre.
14. The parties reached a settlement on 12 December 2009 and have asked the Arbitral Tribunal to issue this Final Award by consent, to give effect to the parties' settlement.
15. The Arbitral Tribunal declared the proceedings closed in accordance with Article 22(1) of the Rules of Arbitration of the ICC on 22 December 2009. In light of the settlement reached between the parties, the Arbitral Tribunal vacated the dates for the substantive hearing and no substantive hearing was held.
16. From time to time and in particular at its session on 8 October 2008, the ICC International Court of Arbitration decided, pursuant to Article 24(2) of the Rules of Arbitration of the ICC, to extend the time limit for rendering this Final Award to 28 February 2010.

The settlement between the parties

17. By a letter dated 12 December 2009 from the Claimant's lawyers, counter-signed by the Respondent's lawyers and counter-signed also by authorised representatives of both of the parties, the Arbitral Tribunal was informed that the parties had settled their dispute and requested the Arbitral Tribunal to *"enter a Final Award by consent pursuant to Article 26 of the ICC Arbitration Rules on the Terms of Settlement ... attached [to the letter] and signed between the Claimant and the Respondent in this arbitration"*.
18. The *"terms of settlement"* that were attached to the letter dated 12 December 2009 from the Claimant's lawyers contained the following eight operative provisions:

1. *Without in any way or manner whatsoever admitting any liability on the part of the Respondent in respect of any and all claims, matters and things raised and/or averred by the Claimant in these Arbitral proceedings, the Respondent agrees to pay to the Claimant the total sum of USD380,000 (inclusive of a sum of USD42,500 in contribution by the Respondent towards the arbitration costs and expenses paid by the Claimant herein) in full and final settlement of any and all claims of the Claimants in these Arbitral proceedings, and the said sum of USD380,000 shall be paid by the Respondent to the Claimant by depositing a sum of USD30,000 into the bank account of the Claimant more particularly set out below on each consecutive business day (being a banking day in the City of Guangzhou, Province of Guangdong, P.R. China, other than a Saturday, Sunday or Public Holiday) commencing from the business day immediately following the date on which these terms of settlement between the parties to these Arbitral proceedings shall have been approved/endorsed by the Arbitral Tribunal and the International Chamber of Commerce under their respective Seals (where appropriate) Provided Always that the full amount of the said sum of USD380,000 shall be paid by the Respondent to the Claimant no later than 8th January 2010. Conditional upon the Respondent fully discharging its obligations on or before 8th January 2010 contained in this paragraph, the Claimant covenants and undertakes with the Respondent not to enforce the Final Award referred to hereinafter:*

*Name of Payee: EPA Spolka Z Organiczona Odpowiedzialnoscia
Bank Zachodni WBK S.A.*

I Oddzial w Szczecinie

Matejki 22

70-530 Szczecin

SWIFT: WBKPPLPP

IBAN: PL89 1090 2268 0000 0001 0649 6035

2. *The Claimant hereby covenants and undertakes, unless otherwise agreed in writing between the parties hereto, to (a) deliver to the Respondent or to such other person or persons as the Respondent shall otherwise direct in writing (collectively, the "Relevant Persons") within ninety (90) days from the date of hereof the remaining twenty-two units of SVDR type HEV 850 previously delivered by the Respondent to the Claimant (collectively, "the said SVDRs") in good condition and in appropriate and sturdy packaging for transportation and delivery to the Respondent or to the Relevant Persons as aforesaid; and (b) in the meantime, take any and all reasonable and necessary steps and measures, as are appropriate as an owner of the said SVDRs would normally do in these circumstances, to preserve and protect the said SVDRs and any of them from any and all harm and/or damages until any and all of the said SVDRs shall have been (i) placed by the Claimant in the possession of a freight forwarder nominated or appointed by the Respondent, or (ii) placed FOB onboard a vessel nominated or appointed by the Respondent, or (iii) otherwise delivered to the Relevant Persons as aforesaid Provided Always that the Respondent shall be entitled to engage and send its Engineers to the premises of the Claimant at which the said SVDRs are located to conduct or otherwise carry out such*

tests, inspections, examinations, additions, modifications, alterations, dismantling and refurbishments as such Engineers shall in their absolute discretion see fit or appropriate and the Claimant hereby covenants and undertakes with the Respondent to provide such reasonable assistance to such Engineers as may be necessary or appropriate in these circumstances.

3. *Each party shall bear its own legal costs and expenses for and incidental to these Arbitral proceedings.*
 4. *Each party covenants and undertakes with the other party herein to submit at its own costs and expenses no later than 14th December 2009 these terms of settlement to the Arbitral Tribunal for its Final Award in these Arbitral proceedings in accordance with Article 26 of the ICC Arbitration Rules and to the International Chamber of Commerce for their respective approval/endorsement under Seal (where appropriate).*
 5. *For the avoidance of doubt, it is agreed that this Settlement Agreement is made on the following understanding:*
 - (1) *in the event the Respondent fails to perform any of the obligations contained herein, the Claimant shall be at liberty to enforce the Final Award;*
 - (2) *time shall be of the essence of this Settlement Agreement.*
 6. *This Settlement Agreement shall be governed by and subject to the laws of the Hong Kong Special Administrative Region.*
 7. *This contains the entire agreement between the parties and supersedes any previous representation and/ or understanding (whether oral or in writing).*
 8. *The parties hereto hereby agreed that, upon the full payment of the said sum USD380,000 by the Respondent to the Claimant as aforesaid, all rights title benefits and interests of the said SVDRs shall belong to the Respondent.*
19. By the subsequent fax dated 21 December 2009 from the Respondent's lawyers, counter-signed by the Claimant's lawyers, the parties confirmed that the proviso to paragraph 1 of the "terms of settlement" that was attached to the letter dated 12 December 2009, should be amended to read as follows:

"Provided Always that the full amount of the said sum of USD380,000 shall be paid by the Respondent to the Claimant no later than the twenty (20) business day (being a banking day in the City of Guangzhou, Province of Guangdong, P.R. China, other than a Saturday, Sunday or Public Holiday) after the date of receipt by the Respondent or its Solicitors of the original ICC International Court of Arbitration Sealed Final Award. Conditional upon the Respondent fully discharging its obligations contained in this paragraph no later than the twenty (20) business day after the date of receipt by the Respondent or its Solicitors of the original ICC International Court of Arbitration Sealed Final Award, the Claimant covenants and undertakes with the Respondent not to enforce the Final Award referred to hereinafter."

Costs of arbitration

20. On 17 July 2008, the Court fixed the advance on costs at US\$85,000, which was fully paid by Claimant.
21. On 7 January 2010, the Court fixed the costs of arbitration at US\$70,000, which is covered by the monies paid by the Claimant for the advance on costs.
22. As the Claimant has paid the entire advance on costs, the Respondent is obliged to reimburse US\$42,500 to the Claimant. This reimbursement to be made by the Respondent to the Claimant is included in the "terms of settlement" agreed between the parties.
23. The parties agreed, as recorded in the letter dated 22 December 2009 from the Claimant's lawyers and the letter dated 23 December 2009 from the Respondent's lawyers, that any balance after deducting the costs of arbitration from the advance on costs should be reimbursed to the Claimant.

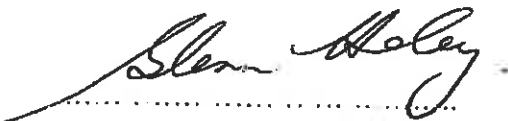
NOW, We, Glenn Rex Allen Haley, Lee Fook Choon and Philip Yang, hereby make and publish this our Final Award, by consent of the parties, as follows:

1. The Respondent shall pay to the Claimant the sum US\$380,000, in accordance with paragraph 1 of the "terms of settlement" agreed between the parties as revised by the parties on 21 December 2009, and in any event by no later than the twentieth (20th) business day (being a banking day in the City of Guangzhou, Province of Guangdong, P.R. China, other than a Saturday, Sunday or Public Holiday) after the date of receipt by the Respondent or its Solicitors of the Respondent's copy of this Final Award.
2. The Claimant shall comply with paragraph 2 of the "terms of settlement" agreed between the parties, regarding the return by the Claimant to the Respondent of the twenty-two units of SVDR type HEV 850 previously delivered by the Respondent to the Claimant.
3. Each party is to bear its own legal costs and expenses of and incidental to these arbitration proceedings.

Place of Arbitration: Hong Kong

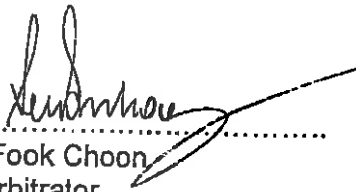
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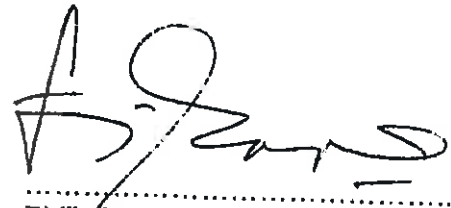
Signatures:




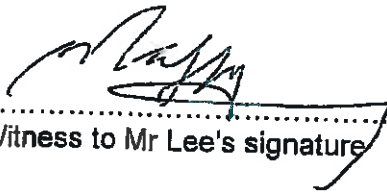
Glenn Haley
Chairman of Arbitral Tribunal




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Lee Fook Choon
Co-Arbitrator


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Philip Yang
Co-Arbitrator


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Witness to Mr Haley's signature


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Witness to Mr Lee's signature

Merdi Yuan
.....
Witness to Mr Yang's signature



