

NEWBUILDCON - Standard Newbuilding Contract – PART II

any invalidity, unenforceability or otherwise of the Contract, nor the liquidation, bankruptcy or similar of either you or the Builder nor any act, omission, defence, counterclaim or circumstances whatsoever that would could or might otherwise impair or discharge our liability as guarantor under this Guarantee.

4. Subject to paragraph 5 below, this Guarantee shall remain in force until the first to occur of (a) due delivery of the Vessels to, and acceptance of the Vessels by, you, as evidenced by the exchange and acceptance of two Protocols of Delivery and Acceptance (one for each Vessel) each signed by you and by the Builder; or (b) the payment to you by the Builder or by us of all sums secured by this Guarantee; or ~~and~~ (c) on 5th April 2019 being one hundred and eighty (180) ~~three hundred (300)~~ days after the Contractual Date of Delivery. However, notwithstanding the foregoing, if within twenty-eight (28) days after our receipt of a Demand we receive a written notice from you or the Builder that your claim for the repayment of any sums referred to in the Demand has been disputed (the "Dispute") and that such ~~dispute~~ Dispute will be resolved in accordance with the Contract (including, as may be, by Class, an Expert, a Mediator or in arbitration), the period of validity of this Guarantee shall be extended until thirty (30) days after the dispute has been finally determined in accordance with paragraph 5 below.
5. Notwithstanding the other terms of this Guarantee, if within twenty-eight (28) days after our receipt of a Demand we receive a written notice of a Dispute from you or from the Builder stating that your claim for repayment of any sums referred to in ~~the Demand has been disputed and that such dispute~~ which will be resolved in accordance with the Contract (including, as may be, by Class, an Expert, a Mediator or in arbitration), then we shall not be obliged to make any payment to you under this Guarantee until ~~thirty (30)~~ twenty (20) days after the ~~dispute~~ Dispute has been finally determined or an agreed settlement is reached between you and the Builder (evidenced by a settlement agreement signed by you and by the Builder) ~~or in~~ in the event of an appeal from an arbitration award then we shall not be obliged to make any payment to you under this Guarantee, until ~~thirty (30)~~ twenty (20) days after delivery of the final unappealable judgment; or in the event that the court remits the matter to the arbitrator, until ~~thirty (30)~~ twenty (20) days after the publication of the revised final award or in the event of an appeal from the award, until ~~thirty (30)~~ twenty (20) days after delivery of the final unappealable judgment. We shall not be obliged to make any payment to you unless the final determination of the Dispute or the agreed settlement reached between you and the Builder requires the Builder to make a repayment to you.
6. Notwithstanding the other terms of this Guarantee, if after two (2) years following our receipt of a written notice of a Dispute, the Dispute is yet to be finally determined or settled between you and the Builder then at any time thereafter (but before the final determination or settlement of the Dispute), we may elect on fourteen (14) days' prior written notice to you, to pay to you an amount equal to the Maximum Liability. Upon receipt by you of the aforementioned payment (in an amount equal to the Maximum Liability) we shall be released from our obligations under this Guarantee.
- 6.7. All payments to be made under this Guarantee shall be made without any set off or counterclaim and without deduction or withholding for or on account of any taxes, duties or charges whatsoever unless we are compelled by law to deduct or withhold the same in which case we shall make the minimum deduction or withholding permitted and will pay such additional amounts as may be necessary in order that the amount received by you after such deductions or withholdings shall be equal to the amount which would have been received had no such deduction or withholding been made.
- 7.8. All payments to be made by us under this Guarantee shall be made [REDACTED]
- 8.9. Notwithstanding any provision in the Contract, this Guarantee shall be freely assignable by you, subject to our prior written consent which shall not be unreasonably withheld, conditioned or delayed and by any assignee. Upon assignment, all references in this Guarantee to "you" shall be read as references to the assignee or subsequent assignees.
- 9.10. This Guarantee is governed by and construed in accordance with the laws of ~~here state applicable law. In the absence of any statement the laws of~~ England and Wales. ~~shall apply] and we hereby submit to the exclusive jurisdiction of [here state place of dispute resolution. In the absence of any statement the High Court of England and Wales shall apply].~~ Any disputes arising out of or in connection with this Guarantee shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof. The arbitration shall be conducted in

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accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. We hereby authorise and nominate the following agent to accept service of any arbitration or court proceedings on our behalf: Societe Generale, London Branch, SG House, 41 Tower Hill, London, EC3N 4SG. [here insert name and address.]

10. Any notice, claim or Demand to be given or made by you under this Guarantee shall be in writing signed by one of your officers and may be served on us either by post or by telex/authorised SWIFT or equivalent, and if sent by post to Societe Generale S.A. Oddzial w Polsce, Marszalkowska 111, 00-102 Warsaw, Poland [here insert address] (or such other address as we may notify to you in writing) and if by telex at [here insert number] or if by SWIFT or equivalent at SOGEPLPW [here insert number] via your bank and shall be effective only upon actual receipt.
11. To the extent that we may be or may hereafter become entitled, in any jurisdiction, to claim for ourselves or our property, assets or revenue immunity (whether by reason of sovereignty or otherwise) in respect of our obligations under this Guarantee from service of process, suit, jurisdiction, judgment, order, award, attachment (before or after judgment or award), set off, execution of a judgment or other legal process and to the extent that in any such jurisdiction there may be attributed to us or any of our property, assets or revenue such an immunity (whether or not claimed) we hereby irrevocably agree not to claim and hereby irrevocably waive such immunity to the fullest extent permitted by the laws of such jurisdiction.
12. We hereby warrant that we are permitted by any relevant law to which we are subject (including, where relevant, the laws of the place or places of each of our incorporation, establishment, regulation, registration and residence) to:
- 12.1 issue a guarantee in this form,
12.2 make payment under this Guarantee in a currency other than that of the place of (where relevant) each of our incorporation, establishment, regulation, registration and residence in case of a Demand for payment under this Guarantee, and
12.3 designate the place stated in paragraph 9-10 above as the forum and the place of jurisdiction to which we irrevocably submit.
13. We hereby warrant that this Guarantee has been, or will be, duly registered with the relevant State authority in any legal jurisdiction in which such registration is required for any reason.
14. We hereby warrant that we have obtained all necessary approvals and authorisations to issue this Guarantee.

Dated the [] day of 2016

..... (signature)

for and on behalf of Societe Generale S.A. Oddzial w Polsce [here insert name of Guarantor]



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ANNEX A(iv)

IRREVOCABLE LETTER OF GUARANTEE FOR BUILDER'S OBLIGATIONS UNDER [CLAUSE 27]/[CLAUSE 54]

To: [here insert name and address of the Buyer]

1. In this Guarantee, the following terms have the following meanings:

'Award Interest' means any interest which may be awarded against the Builder in connection with the final determination of any dispute notified to us in accordance with paragraph 5 below.

'Contract' means the contract dated [here insert date] made between the Builder and you for the construction of the Vessels, as the same may be amended at any time.

'Demand' means a written demand for payment under this Guarantee.

'Maximum Liability' means our maximum liability under this Guarantee, including Award Interest which shall be [here insert amount].

'Builder' means [here insert name and address of shipbuilder]

'Vessels'/'Vessel' means two (2) vehicle/passenger ferries [here insert technical description and/or name]

2. In consideration of you entering into the Contract, agreeing to take delivery of the Vessels, and agreeing to accept this Guarantee pursuant to the Contract, at the request of the Builder we irrevocably and unconditionally guarantee (but as primary obligor and not by way of secondary liability only) to you and your successors and assigns that if the Builder becomes liable to pay any sum to you in accordance with the terms of [Clause 27(d)(iv)]/[Clause 54(d)(iv)] of the Contract in respect of [Sea-trial Defects]/[Delivery Defects], as defined in the Contract, we shall, upon receipt by us from you of a Demand for the same ~~(together with a copy of a demand made by you against the Builder for payment)~~, pay to you or to your order upon the expiry of thirty (30) days from receipt of such Demand the sum demanded by you and Award Interest (if any) provided that our total liability shall not exceed the Maximum Liability.
3. This Guarantee shall not be affected by any waiver, forbearance or other indulgence or delay allowed to the Builder nor by any amendment to, or variation of, the Contract whether as to time or otherwise that may be agreed between you and the Builder nor by any legal limitations, invalidity, unenforceability or otherwise of the Contract, nor the liquidation, bankruptcy or similar of either you or the Builder nor any act, omission, defence, counterclaim or circumstances whatsoever that would could or might otherwise impair or discharge our liability as guarantor under this Guarantee.
4. Subject to paragraph 5 below, this Guarantee shall become effective from the date of this Guarantee and shall remain in force until the first to occur of (a) the repair of the [Sea-trial Defects]/[Delivery Defects] and (b) the payment to you by the Builder or by us of all sums secured by this Guarantee.
5. Notwithstanding the other terms of this Guarantee, if within twenty-eight (28) days after our receipt of a Demand we receive written notice from you or from the Builder stating that your claim to payment of the sums referred to in the Demand has been disputed and that such dispute will be resolved in accordance with the Contract (including, as may be, by Class, an Expert, a Mediator or in arbitration), then we shall not be obliged to make any payment to you under this Guarantee until thirty (30) days after the dispute has been finally determined or in the event of an appeal from an arbitration award, until thirty (30) days after delivery of the final unappealable judgment; or in the event that the court remits the matter to the arbitrator, until thirty (30) days after the publication of the revised final award or in the event of an appeal from the award, until thirty (30) days after delivery of the final unappealable judgment.
6. All payments to be made under this our Guarantee shall be made without any set off or counterclaim and without deduction or withholding for or on account of any taxes, duties or charges whatsoever unless we are compelled by law to deduct or withhold the same in which case we shall make the minimum deduction or withholding permitted and will pay such additional amounts as may be necessary in order that the amount received by you after such deductions or withholdings shall be equal to the amount which would have been received had no such deduction or withholding been made.
7. All payments to be made under this Guarantee shall be made in Great British Pounds [here insert currency].
8. Notwithstanding any provision in the Contract, this Guarantee shall be freely assignable by you and by any assignee.

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Upon assignment, all references in this Guarantee to "you" shall be read as references to the assignee or subsequent assignees.

9. This Guarantee is governed by and construed in accordance with the laws of ~~[here state applicable law. In the absence of any statement the law of England and Wales. shall apply]~~ and we hereby submit to the exclusive jurisdiction of ~~[here state place of dispute resolution. In the absence of any statement the High Court of England and Wales shall apply]~~. ~~[We hereby authorise and nominate the following agent to accept service of any court proceedings on our behalf. [here insert name and address.]]~~ Any disputes arising out of or in connection with this Guarantee shall be referred to arbitration in London in accordance with clause 42(c) of the Contract.
10. Any notice, claim or Demand to be given or made by you under this Guarantee shall be in writing signed by one of your officers and may be served on us either by post or by tested telex/authorised SWIFT or equivalent, and if sent by post to [here insert address] (or such other address as we may notify to you in writing) and if by tested telex at [here insert number] or if by SWIFT or equivalent at [here insert number] via your bank and shall be effective only upon actual receipt
11. To the extent that we may be or may hereafter become entitled, in any jurisdiction, to claim for ourselves or our property, assets or revenue immunity (whether by reason of sovereignty or otherwise) in respect of our obligations under this Guarantee from service of process, suit, jurisdiction, judgment, order, award, attachment (before or after judgment or award), set off, execution of a judgment or other legal process and to the extent that in any such jurisdiction there may be attributed to us or any of our property, assets or revenue such an immunity (whether or not claimed) we hereby irrevocably agree not to claim and hereby irrevocably waive such immunity to the fullest extent permitted by the laws of such jurisdiction.
12. We hereby warrant that we are permitted by any relevant law to which we are subject (including, where relevant, the laws of the place or places of each of our incorporation, establishment, regulation, registration and residence) to:
 - 12.1 issue a guarantee in this form,
 - 12.2 make payment under this Guarantee in a currency other than that of the place of (where relevant) each of our incorporation, establishment, regulation, registration and residence in case of a Demand for payment under this Guarantee, and
 - 12.3 designate the place stated in paragraph 9 above as the forum and the place of jurisdiction to which we irrevocably submit.
13. We hereby warrant that this Guarantee has been, or will be, duly registered with the relevant State authority in any legal jurisdiction in which such registration is required for any reason.
14. We hereby warrant that we have obtained all necessary approvals and authorisations to issue this Guarantee.

Dated the [] day of 2016

..... (signature)

for and on behalf of [here insert name of Guarantor]

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Handwritten initials

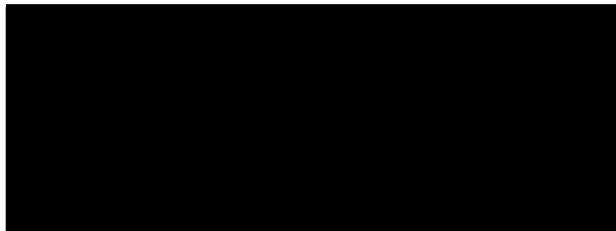
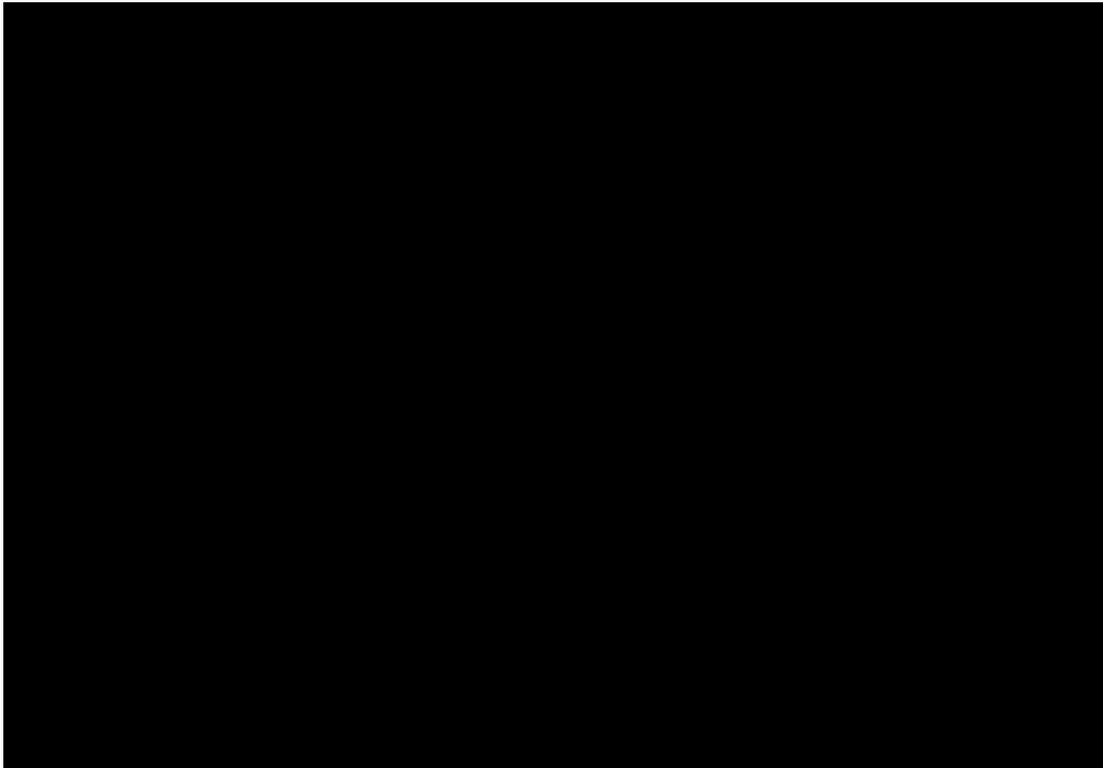
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ANNEX "B" - (SPECIFICATION)
BIMCO STANDARD NEWBUILDING CONTRACT
CODE NAME: NEWBUILDCON

SS



VESSEL DESIGN SPECIFICATION
FOR
WOOLWICH PASSENGER / VEHICLE FERRY



JSP

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~~ANNEX "C" (MAKER'S LIST)~~
~~BIMCO STANDARD NEWBUILDING CONTRACT~~
~~CODE NAME: NEWBUILDCON~~



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ANNEX "C" -- (TIMBER STANDARDS APPENDIX)
BIMCO STANDARD NEWBUILDING CONTRACT
CODE NAME: NEWBUILDCON



Annex C: Timber Standards

Aim:

Implement the Mayor's Green Procurement Code

Implement the GLA Sustainable Timber Policy

Implement TfL environmental objective: Reduce resource consumption and improve green procurement

Reporting period	
Date	
Completed by	
Title	

Desired Outcome	Performance Indicator	Quantity (KG)	Value (£)	% of goods represented	Reporting Frequency	objective	[contract year]	[contract year]
Reduce resource consumption and improve green procurement	Timber complies with Sustainable Timber definition and obligations as per Contract.				6 monthly with Annual report.	Increase/maintain % of sustainable timber supplied		
Reduce resource consumption and improve green procurement	Timber does NOT comply with Sustainable Timber definition and obligations as per Contract				6 monthly with Annual report.	Reduce amount of Non Sustainable Timber procured.		

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ANNEX "D" - (ETHICAL SOURCING APPENDIX): THE ETI BASE CODE
BIMCO STANDARD NEWBUILDING CONTRACT
CODE NAME: NEWBUILDCON

1.1 EMPLOYMENT IS FREELY CHOSEN

1.1.1 There is no forced, bonded or involuntary prison labour.

1.1.2 Workers are not required to lodge deposits or their identity papers with their employer and are free to leave their employer after reasonable notice.

1.2 WORKING CONDITIONS ARE SAFE AND HYGIENIC

1.2.1 A safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

1.2.2 Workers shall receive regular and recorded health and safety training, and such training shall be repeated for new or reassigned workers.

1.2.3 Access to clean toilet facilities and to potable water, and, if appropriate, sanitary facilities for food storage shall be provided.

1.2.4 Accommodation, where provided, shall be clean, safe, and meet the basic needs of the workers.

1.2.5 The company observing the code shall assign responsibility for health and safety to a senior management representative.

1.3 CHILD LABOUR SHALL NOT BE USED

1.3.1 There shall be no new recruitment of child labour.

1.3.2 Companies shall develop or participate in and contribute to policies and programmes which provide for the transition of any child found to be performing child labour to enable her or him to attend and remain in quality education until no longer a child.

1.3.3 Children and young persons under 18 shall not be employed at night or in hazardous conditions.

1.3.4 These policies and procedures shall conform to the provisions of the relevant ILO standards.

1.4 LIVING WAGES ARE PAID

1.4.1 Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income.

1.4.2 All workers shall be provided with written and understandable information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid.

1.4.3 Deductions from wages as a disciplinary measure shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without the expressed permission of the worker concerned. All disciplinary measures should be recorded.

1.5 WORKING HOURS ARE NOT EXCESSIVE

1.5.1 Working hours comply with at least UK national laws and benchmark industry standards, whichever affords greater protection.

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1.6 NO DISCRIMINATION IS PRACTISED

1.6.1 There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation.

1.7 REGULAR EMPLOYMENT IS PROVIDED

1.7.1 To every extent possible work performed must be on the basis of recognised employment relationship established through national law and practice.

1.7.2 Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting, sub-contracting, or home-working arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment, nor shall any such obligations be avoided through the excessive use of fixed-term contracts of employment.

1.8 NO HARSH OR INHUMANE TREATMENT IS ALLOWED

1.8.1 Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.

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ANNEX "E" - (CLASSIFICATION SOCIETY MILESTONE CERTIFICATE)
BIMCO STANDARD NEWBUILDING CONTRACT
CODE NAME: NEWBUILDCON

JS



Stage Construction Certificate

Office: LR Office

Date: 01 January 2017

This Certificate is issued to (Name of shipyard) to certify that at their request, the undersigned Surveyor did attend their (Name and location of ship yard) to witness the stage of construction described below;

Hull Number : XXXX
LR Number 9xxxxxx

Steel cutting, the marking and cutting of the first plate for the ship described above, was witnessed on (date)

XXXX
Surveyor to Lloyd's Register EMEA

a member of the Lloyd's Register group.

Lloyd's Register Group Limited, its affiliates and subsidiaries and their respective officers, employees or agents are, individually and collectively, referred to in this clause as 'Lloyd's Register'. Lloyd's Register assumes no responsibility and shall not be liable to any person for any loss, damage or expense caused by reliance on the information or advice in this document or howsoever provided, unless that person has signed a contract with the relevant Lloyd's Register entity for the provision of this information or advice and in that case any responsibility or liability is exclusively on the terms and conditions set out in that contract.

A handwritten signature in black ink, appearing to be 'SBS'.

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ANNEX F - (DELIVERY OF INCOMPLETE VESSELS)
BIMCO STANDARD NEWBUILDING CONTRACT
CODE NAME: NEWBUILDCON

In the event that the Buyer elects to exercise its rights under Clause 39(e)(ii) of this Contract, the following terms shall apply to enable the Buyer to take physical and legal possession of the incomplete Vessels, transport the incomplete Vessels to an alternative location or shipyard and complete the construction of the Vessels in accordance with the Specification.

1. Builder's Assistance

The Builder shall provide all reasonable support and assistance required by the Buyer which shall include but not be limited to:

(a) granting and/or procuring access for the Buyer (and the Buyer's Representative, Personnel and Sub-contractor(s) as required) to the Vessels and all locations that the Buyer reasonably requires access to in order to give effect to the terms of this Annex F including, but not limited to, locations where Buyer's Supplies are stored;

(b) providing to the Buyer physical control of the Vessels, all Buyer's Supplies and all other machinery, parts and equipment procured under this Contract to date (provided always that the Vessels must remain at the Builder's Shipyard until title to and risk in the Vessels has transferred to the Buyer – see paragraph 2 below);

(c) providing to the Buyer in both hard copy and suitable electronic format all documents including Plans and Drawings, certificates, reports, manuals and test results relating to the Vessels, their construction and/or this Contract that are in the possession of / under the control of the Builder. For the avoidance of doubt this includes all documents and correspondence pertaining to the Vessels exchanged with the Classification Society, Flag State and Regulatory Authorities. To the extent that any such documents are in the possession of / under the control of the Builder's Personnel and/or the Builder's Sub-contractors, the Builder shall exercise all reasonable endeavours to ensure that the Builder's Personnel and/or the Builder's Sub-contractors comply with the terms of this paragraph 1(c);

(d) the Builder shall exercise all reasonable endeavours to novate to the Buyer, at the Buyer's request and on terms reasonably acceptable to the Buyer, the Builder's sub-contracts relating to the Vessels (including, for the avoidance of doubt, the Builder's right, title and interest in and to all guarantees or warranties given by the Builder's Sub-contractors), provided always that any amounts due and payable to the Builder's Sub-contractor(s) pursuant to the terms of the relevant sub-contract(s) prior to the date of novation of the relevant sub-contract(s) shall be for the Builder's account. All amounts due and payable to the Builder's Sub-contractor(s) pursuant to the terms of the relevant sub-contract(s) from and including the date of novation of the relevant sub-contract(s) shall be for the Buyer's account;

(e) granting, to the extent legally permitted, and/or using all reasonable endeavours to procure the grant of all necessary licences, permissions and consents to allow the Buyer to use the Intellectual Property Rights of the Builder, the Builder's Personnel and the Builder's Sub-contractor(s), in order to complete the construction of the Vessels in accordance with the Specification; and

(f) procuring and/or providing any documents listed in Clause 29 (Documents on Delivery) of this Contract that the Buyer may reasonably require for the purposes of registering the Vessels (once construction is completed).

2. Transfer of Title to and Risk in the Vessels

As soon as reasonably practicable following the Buyer's termination of this Contract and its election to exercise its right under Clause 39(e)(ii) of this Contract and in any event within 21 days of the Buyer's notice of its election; the Builder shall (i) transfer full legal title in the incomplete Vessels to the Buyer in accordance with this paragraph 2; and (ii) provide and/or enter into all documents that the Buyer may reasonably require in order for the transfer of full legal title in the incomplete Vessels to the Buyer to be effected including, but not limited to, the following documents:

(a) a Bill of Sale or other equivalent document (one per Vessel) that certifies that the title in the Vessel transfers to the Buyer;

(b) a Declaration of Warranty by the Builder (one per Vessel) that the incomplete Vessel is free and clear of any liens, claims, charges, mortgages and other encumbrances;

(c) a guarantee issued by a bank reasonably acceptable to the Buyer and in a form reasonably acceptable to the Buyer, securing the Builder's obligation to pay the Buyer's Additional Expense (as defined below); and

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(d) all other documents (one per Vessel, if required) that the Buyer may reasonably require in order to take full legal title to the incomplete Vessels including, but not limited to, those documents listed in Clause 29 (Documents on Delivery).

Title to and risk in the incomplete Vessels shall vest in the Buyer upon the exchange and acceptance by the Parties of a Protocol of Delivery and Acceptance (one for each Vessel) signed by each Party acknowledging delivery of the incomplete Vessels by the Builder to the Buyer, which shall also be entered into by the Parties within the 21 day period referred to in this paragraph 2.

Upon signing the Protocol of Delivery and Acceptance, the Buyer shall return any issued Refund Guarantee(s) to the party named in Box 32.

3. Builder's Liability for Buyer's Additional Expense

(a) In the event that the Buyer elects to exercise its rights under Clause 39(e)(ii) of this Contract the Buyer shall:

(i) procure at least two quotes from alternative builders/suppliers for the transportation of the incomplete Vessels to, and completion of the Vessels at, an alternative location or shipyard; and

(ii) shall select from the quotes referred to in sub-paragraph 3(a) above at its discretion (always acting reasonably), however, in the event that the Builder disputes the reasonableness of the Buyer's selection the dispute shall be referred for expert determination in accordance with Clause 42(b) of this Contract.

(b) In this sub-paragraph 3(b) the following terms shall have the following meanings:

"Total Construction Costs" means the sum of the instalments of the Contract Price already paid by the Buyer to the Builder at the time the Buyer elects to exercise its rights under Clause 39(e)(ii) of this Contract and the sums paid by the Buyer to the alternative builder/supplier for the transportation and completion of the Vessels.

"Buyer's Additional Expense" means the amount by which the Total Construction Costs exceed the Contract Price.

(i) Subject to sub-paragraph 3(b)(ii) hereof, in the event that the Buyer's Total Construction Costs exceed the Contract Price, the Builder shall pay to the Buyer, within fourteen (14) days of the Buyer's demand, an amount equal to the Buyer's Additional Expense plus interest thereon at the rate stated in Box 30 (calculated from the due date for payment until the date of payment by the Builder), provided always that:

(ii) In any event the Builder's liability to pay the Buyer's Additional Expense shall be limited to ten percent (10%) of the Contract Price.

(c) The Buyer shall at all times act reasonably when exercising its rights pursuant to Clause 39(e)(ii), including but not limited to, acting reasonably in incurring the Total Construction Costs.