

NEWBUILDCON - Standard Newbuilding Contract - PART II

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The Parties acknowledge and agree that the Builder is to enter into a technical support agreement (the "TSA") with Norwegian Electric Systems (the "System Supplier") to provide 24/7 support for the System.

The Parties further acknowledge that the TSA shall include a lifetime performance agreement (the "LPA") for all of the batteries in the System. The LPA includes (but is not limited to) real time monitoring, 24/7 technical support, scheduled maintenance and repair or replacement of parts and labour from a certified technician.

(b) As soon as reasonably practicable following this Contract becoming effective in accordance with Clause 44, the Builder shall enter into a TSA with the System Supplier on terms and of a scope that are to be approved by the Buyer prior to the execution of the TSA, provided always that the Buyer shall bear any additional cost arising from any changes to the scope of the TSA made at the Buyer's request. Such terms shall include (but not be limited to) the following:

(1) the TSA shall be governed by and construed in accordance with Norwegian law;

(2) the initial term of the TSA shall be five (5) years commencing on the delivery of the Vessels under this Contract;

(3) the TSA shall include a provision:

(i) obliging the Builder to assign the TSA to the Buyer (on terms to be agreed) at the end of the Guarantee Period under this Contract; and

(ii) confirming the System Supplier's prior consent to said assignment to the Buyer;

(4) the Builder shall, regardless of any assignment of the TSA to the Buyer, pay to the System Supplier all charges and costs arising under the TSA during the initial five (5) year term of the TSA, provided always that the Buyer shall bear any additional cost arising from any changes to the scope of the TSA made at the Buyer's request. For the avoidance of doubt any costs incurred pursuant to sub-clause (5) below shall not be deemed as charges and costs arising under the TSA during the initial five (5) year term of the TSA and shall be for the Buyer's account;

(5) the TSA shall include the following options in the customer's favour (i.e. in favour of the party receiving the services under the TSA), to:

(i) extend the term of the TSA by up to an additional five (5) years (i.e. resulting in a maximum potential term of ten (10) years commencing on the delivery of the Vessels under this Contract) at a cost of [REDACTED] of extension pro rata (as may be adjusted in accordance with the terms of this sub-clause (5)); and

(ii) require the System Supplier to replace all of the cells in the batteries in the System with new battery cells (the "Battery Re-coring") at a cost of [REDACTED] as may be adjusted in accordance with the terms of this sub-clause (5)). Subject to the following provisions of this sub-clause (5) the timing of the Battery Re-coring shall be at the customer's discretion and the new battery cells shall provide a guaranteed life of a minimum of five (5) years commencing on the date of installation of the new battery cells on each Vessel.

Each of the above options is only capable of being exercised after the assignment of the TSA by the Builder to the Buyer. Furthermore, and in any event, option (i) above, if

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exercised, must be declared before the end of the initial five (5) year term of the TSA, whilst option (ii) above, if exercised, must be declared no later than the sixth (6th) anniversary of the Contractual Date of Delivery.

The prices stated in sub-clauses 5(i) and 5(ii) are based on a EUR/GBP exchange rate of 1/0.87 (the "Initial Exchange Rate"). In the event that the European Central Bank's EUR/GBP exchange rate differs from the Initial Exchange Rate at the time of exercising each option, with said difference exceeding 1% of the Initial Exchange Rate, then the price of the relevant option (stated above) shall be increased or decreased accordingly (as the case may be) by the percentage difference in excess of 1%.

### 56. Builder's Bank Account Details

As soon as possible after the signature of this Contract by the Parties, the Builder shall provide to the Buyer the sort code, account number, account name and IBAN number for the Builder's bank account into which each and every Instalment of the Contract Price is to be paid pursuant to this Contract (the "Outstanding Bank Account Details"). The Parties acknowledge and agree that receipt of the Outstanding Bank Account Details by the Buyer is one of the pre-conditions for Contract effectiveness as set out in Box 25. Furthermore the Parties acknowledge that each and every Instalment of the Contract Price must be paid into the same bank account held by the Builder with the Refund Guarantor as set out within the Refund Guarantee.

### 57. Counterparts

This Contract may be executed in any number of counterparts, each of which will constitute an original, but which will together constitute one agreement. No counterpart shall be effective until each Party has received a counterpart executed by the other Party. The term "counterpart" includes a pdf. copy of this Contract.

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ANNEX "A" – (GUARANTEES)  
BIMCO STANDARD NEWBUILDING CONTRACT  
CODE NAME: NEWBUILDCON

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ANNEX A(I)

BUYER'S IRREVOCABLE LETTER OF GUARANTEE FOR THE 2ND & 3RD INSTALMENTS

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

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

'Award Interest' means any interest which may be awarded against the Buyer 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 Buyer and you for the construction of the Vessel, as the same is amended at any time.

'Contractual Interest' means the sum payable on an Instalment at the Interest Rate in accordance with the terms of the Contract.

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

'Instalment' means the amount of each of the [here identify the instalments to be guaranteed] payments in respect of the contract price under the Contract (to the extent that it has not been paid) which is made on, before or after the date of this Guarantee to you by the Buyer.

'Interest Rate' means the rate of interest prescribed by the Contract as applicable to any part of an Instalment which the Buyer is obliged to pay under the terms of the Contract calculated from such date as is prescribed by the Contract to the date of your receipt of the payment.

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

'Buyer' means [here insert name and address of Buyer]

'Vessel' means [here insert technical description and/or name]

2. In consideration of you entering into the Contract, agreeing to construct the Vessel in accordance with the terms of the Contract, and agreeing to accept this Guarantee pursuant to the Contract, at the request of the Buyer we irrevocably and unconditionally guarantee (but as primary obligor and not by way of secondary liability only) that in the event that the Buyer fails punctually to pay to you any Instalment 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 Buyer 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 by way of the payment of any Instalment together with Contractual Interest and Award Interest (if any) provided that our total liability shall not exceed the Maximum Liability.

This Guarantee shall become effective in the amount corresponding to the amount of each Instalment with effect from the date when it becomes due to you under the Contract together with Contractual Interest, if any.

3. This Guarantee shall not be affected by any indulgence or delay allowed to the Buyer nor by any amendment to, or variation of, the Contract whether as to time or otherwise that may be agreed between you and the Buyer nor by any circumstances that would otherwise discharge our liability as guarantor.

4. Subject to paragraph 5 below, this Guarantee shall remain in force until the first to occur of (a) due delivery of the Vessel to, and acceptance of the Vessel by, the Buyer, (b) the payment to you by the Buyer or by us of all sums secured by this Guarantee, and (c) the Buyer's valid and lawful cancellation and/or rescission of the Contract pursuant to the terms of the Contract. However, notwithstanding the foregoing, if within twenty-eight (28) days of our receipt of a Demand we receive a written notice from you or the Buyer that your claim for payment of the sums referred to in the Demand has been disputed and that such dispute will be resolved in accordance with the Contract, 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.

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5. ~~Notwithstanding the other terms of this Guarantee, if within twenty-eight (28) days of our receipt of a Demand we receive written notice from you or from the Buyer stating that your claim for 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 Clause, 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 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 [here insert currency].~~
8. ~~Notwithstanding any provision in the Contract, this Guarantee shall be freely assignable by you 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. ~~This Guarantee is governed by 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.]]~~
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 \_\_\_\_\_ 2

\_\_\_\_\_  
(signature)

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

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ANNEX A(ii)

IRREVOCABLE LETTER OF GUARANTEE FOR PERFORMANCE OF BUYER'S OBLIGATIONS

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

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

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

'Buyer' means [here insert name and address of Buyer]

'Vessel' means [here insert technical description and/or name]

2. In consideration of you entering into the Contract, agreeing to construct the Vessel in accordance with the terms of the Contract, and agreeing to accept this Guarantee pursuant to the Contract, at the request of the Buyer we irrevocably and unconditionally guarantee (but as primary obligor and not by way of secondary liability only) performance by the Buyer of all its liabilities and responsibilities under the Contract, including but not limited to due and punctual payment of any instalment of the contract price by the Buyer to you under the Contract, and we shall, upon receipt by us from you of a written demand for the same (together with a copy of a demand made by you against the Buyer for payment), pay to you or to your order upon the expiry of thirty (30) days from receipt of such written demand the sum demanded by you together with interest due under the Contract.

3. This Guarantee is governed by 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.]]

Dated the day of 2

..... (signature)

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

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ANNEX A(iii)

REFUND GUARANTEE

To: ~~[here insert name and address of the Buyer]~~  
Transport for London  
Windsor House, 42-50 Victoria Street, London, SW1H 0TL, United Kingdom

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 is amended at any time.

'Contractual Interest' means the sum payable on an Instalment at the Interest Rate in accordance with the terms of the Contract.

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

'Instalment' means the amount of each payment in respect of the contract price for the Vessels under the Contract (to the extent that it has not been refunded) which is made on, before or after the date of this Guarantee to the Builder's account number: ~~[here insert account number]~~ held with ourselves (or at the Builder's direction) by you or on your behalf.

'Interest Rate' means the rate of interest being two percent (2%) prescribed by the Contract as applicable to any part of an Instalment which the Builder is obliged to repay under the terms of the Contract calculated from the date on which the Builder received the Instalment to the date of your receipt of the repayment.

'Maximum Liability' means our maximum liability under this Guarantee: [REDACTED]

Interest which shall be ~~[here insert amount]~~ plus any Award Interest.

'Builder' means ~~[here insert name and address of shipbuilder]~~ Remontowa Shipbuilding S.A. of Swojska 8, 80-958 Gdansk, Poland.

'Vessels'/'Vessel' means ~~[here insert technical description and/or name]~~ two (2) vehicle/passenger ferries with Builder's hull numbers B617/1 and B617/2.

2. In consideration of you entering into the Contract, agreeing to pay an Instalment or Instalments to the Builder, 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 under the Contract to repay any part of any Instalment 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 repayment and your statement that the Builder has failed to repay you despite your demand), pay to you or to your order upon the expiry of thirty (30) days from receipt of such Demand the sum demanded by you by way of the repayment of any Instalment together with Contractual Interest and Award Interest (if any) provided that our total liability shall not exceed the Maximum Liability.

This Guarantee shall become effective from the date of this Guarantee and shall be effective in the amount corresponding to the amount of each and every Instalment paid to the Builder under the Contract together with Contractual Interest as and when each such Instalment has been received by the Builder.

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