



Camera di Commercio  
Salerno



The International Propeller Club Port of Salerno

# ARBITRATO MARITTIMO

## Casi e materiali



A cura dell'International Propeller Club Port of Salerno, con la collaborazione della Camera di Commercio di Salerno.



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## PRESENTAZIONE

Le Camere di Commercio, fin dalla loro costituzione, sono state le sedi naturali per la composizione delle liti fra gli operatori economici e, in particolare, in attuazione della legge n.580 del 1993, sono state loro attribuite funzioni di arbitrato e conciliazione per la risoluzione alternativa di ogni tipologia di controversia che coinvolgesse imprese e consumatori. In questa ottica le Camere di Commercio e, tra queste anche quella di Salerno, in linea con quanto previsto dalla normativa vigente, hanno istituito una rete di servizi di qualità, organizzata con il coordinamento di Unioncamere, adottando Regolamenti e tariffe omogenee a livello nazionale, per dirimere le controversie secondo procedure alternative alla giustizia ordinaria in modo soddisfacente, rapido ed economico. Negli ultimi anni, forte del supporto normativo il sistema camerale ha agito in prima linea sul fronte della giustizia alternativa a tutela dei diritti dei consumatori e della salvaguardia degli interessi delle imprese, dotandosi di strumenti utili a superare i limiti di una giustizia lenta e farraginoso. Tale impegno ha trovato, peraltro, conferma nei risultati registrati in termini di pratiche gestite presso gli Organismi di Mediazione delle Camere di Commercio.

Secondo una stima elaborata da Unioncamere, nel periodo da marzo 2011, quando è stata introdotta l'obbligatorietà del tentativo di conciliazione, il numero delle istanze di mediazione è passato da 22mila a oltre 95mila. Alto il "tasso di produttività" delle Camere: da aprile 2011 a giugno 2016 gli Sportelli camerale hanno smaltito il 92% dei procedimenti definiti.

Peraltro, diverse azioni di intervento del sistema sono state messe a punto da Unioncamere a livello nazionale, anche attraverso la stipula di convenzioni con l'Autorità per le Garanzie nelle Comunicazioni e da ultimo, nel 2016, con l'Autorità per l'Energia Elettrica, il Gas e i Servizi Idrici (AEEGSI), al fine di definire le modalità e i principi applicabili alle conciliazioni obbligatorie tra utenti e operatori del settore energetico, del gas e idrico.

Dall'avvio delle attività di conciliazione la Camera di Commercio di Salerno, da sempre attenta alle esigenze delle imprese del territorio, ha svolto anche attività di arbitrato, in forma di giustizia privata, disciplinata dagli artt. 806 e ss. del c.p.c., che equivale ad un primo grado di giudizio, a conclusione del quale, viene emesso un lodo con valore di una sentenza.

In tal senso l'istituto dell'arbitrato assume un ruolo determinante quale possibile e valida alternativa cui l'impresa ricorre per la risoluzione di controversie di natura economica e commerciale a costi e tempi contenuti.

In particolare, in tema di controversie marittime, la Camera di Commercio di Salerno si sta muovendo nel senso di potenziare l'offerta di servizi istituzionali sul fronte della giustizia alternativa attraverso un sistema in cui le imprese possano riconoscere nell'Ente camerale un valido referente sul territorio provinciale.

L'arbitrato marittimo, nel contesto salernitano, ha ragione di esistere anche in considerazione della presenza non solo del porto di Salerno, ma anche della capillare distribuzione di porti turistici connessa alla diffusione della nautica da diporto.

La specificità della materia richiede una preliminare e dettagliata conoscenza della casistica; in tal senso è senza dubbio prezioso il lavoro svolto dall'International Propeller Club Port of Salerno, con cui la Camera di Commercio di Salerno ha già avviato un rapporto di collaborazione.

La realizzazione di questo e book rappresenta la sintesi del proficuo lavoro svolto da un *pool* di professionisti quale esperienza conclusiva relativa ai vari casi affrontati.

*Ing. Andrea Prete*

*Presidente Camera di Commercio di Salerno*

## IL PORTO DI SALERNO E IL RUOLO DEL PROPELLER CLUB

Molte aziende del Salernitano lavorano, producono e vendono i loro prodotti grazie al porto di Salerno, che rappresenta oggi il cuore pulsante ed un fattore propulsivo dell'economia regionale. Grazie ad ingenti investimenti infrastrutturali, alla favorevole posizione geografica ed all'efficiente gestione si è affermato nell'ambito della portualità nazionale dimostrando di possedere una straordinaria capacità di affermazione e di attrazione di crescenti flussi di traffici assurgendo a nodo strategico per i collegamenti internazionali.

Salerno è inoltre diventato un importante capolinea delle Autostrade del Mare, offrendo, attraverso moderne navi Ro/Pax, regolari e puntuali collegamenti nazionali ed internazionali. È inoltre inserito nel circuito dei più importanti scali crocieristici del Mediterraneo.

Dalla passione per il mare, per la storia e per il commercio, è nata l'associazione che oggi si chiama *The International Propeller Clubs*. Il nome deriva dall'elica (in inglese = *propeller*), che è propulsore della nave, il primo mezzo che l'uomo ha utilizzato per intraprendere il commercio sul mare. Il fatto che si tratti di una parola inglese è un omaggio agli ideatori e fondatori, che – nel lontano 1922 – sono stati alcuni imprenditori marittimi di New York. L'associazione si è poi sviluppata in tutti quei Paesi del mondo dove il mare ed il trasporto con le navi sono vitali per l'economia. In questo scenario globale non poteva mancare l'Italia, terra di navigatori allungata per migliaia di chilometri sul mare, che aderì alla proposta americana dando vita – fin dal 1932 – ad un proprio Propeller Nazionale, al di fuori del Paese ideatore. Oggi conta una ventina di *Clubs* locali, situati in tutti i principali porti italiani ma anche in quei centri che ospitano le più importanti aziende operanti nel trasporto marittimo. Il comune interesse per il mare vede riuniti agenti marittimi, armatori, assicuratori, avvocati, doganalisti, giornalisti, operatori della logistica, scrittori, spedizionieri, ufficiali di Marina e tutti coloro che hanno fatto del mare una componente determinante della propria vita e del proprio lavoro. L'idea di questo *e -book* nasce a seguito dell'impegno preso proprio dal Propeller Club Port of Salerno di fornire un piccolo *vademecum* per le imprese e nasce dall'iniziativa camerale volta a diffondere la conoscenza e la possibilità di avvalersi degli strumenti di giustizia alternativa nella risoluzione delle controversie in ambito commerciale ai fini del consolidamento delle relazioni commerciali nel settore marittimo e portuale.

Il potenziamento dell'arbitrato quale modello alternativo di risoluzione delle controversie si fonda su una molteplicità di ragioni di politica legislativa, tra le quali assumono preminente importanza la particolare competenza dell'organo decisionale, i tempi ristretti per la soluzione della lite e la riservatezza del procedimento.

Tali requisiti rispondono all'esigenza di garantire anche nei procedimenti arbitrali i principi del contraddittorio, di parità fra le parti e di imparzialità del giudice, nonché assicurare, da parte degli arbitri, il corretto esercizio di un potere analogo a quello esercitato dai giudici statali.

Tale orientamento si fonda sulla convinzione ormai diffusa che il ricorso agli strumenti predetti garantisce la riduzione notevole dei tempi e dei costi ormai a fronte delle farragini che appesantiscono la giustizia ordinaria.

La sinergia tra Propeller Club Port of Salerno con un Ente, come quello camerale, istituzionalmente preposto, tra l'altro, alla gestione delle procedure conciliative ed arbitrali, è indubbiamente strategica sul fronte dei rapporti e il supporto all'imprenditoria locale.

La diffusione di una cultura arbitrale nel settore marittimo e portuale, in Campania, ha ragione di esistere anche in considerazione della presenza, nel territorio regionale, di due porti di caratura internazionale come Napoli e Salerno, di numerose imprese marittime e portuali presenti sul territorio e della capillare distribuzione di porti turistici connessa alla diffusione della nautica da diporto.

E' motivo di vanto poter essere i primi ad usufruire, nel Sud, di questo affidabile e peculiare strumento soprattutto perché Salerno è erede della tradizione giuridica marittimistica risalente alla *Tabula de Amalphi* il più antico statuto marittimo italiano

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	2009	2010	2011	2012	2013	2014	2015	2016	Inc. % 2016/2009	Inc.% medio annuo
<b>Merci in contenitori</b>	2.443.038	2.874.032	2.959.169	2.681.336	3.337.293	4.109.763	4.647.548	5.008.303	<b>105,0%</b>	<b>10,8%</b>
<b>Ro-Ro</b>	5.273.636	5.931.240	6.596.581	6.539.495	6.613.158	6.994.620	7.045.070	6.947.049	<b>31,7%</b>	<b>4,0%</b>
<b>Altro General Cargo</b>	932.726	1.036.726	977.585	952.289	1.017.795	1.107.275	1.251.351	1.193.251	<b>27,9%</b>	<b>3,6%</b>
<b>Totale (t)</b>	<b>8.649.400</b>	<b>9.841.998</b>	<b>10.533.335</b>	<b>10.173.120</b>	<b>10.968.246</b>	<b>12.211.658</b>	<b>12.943.969</b>	<b>13.148.603</b>	<b>52,0%</b>	<b>6,2%</b>

	2009	2010	2011	2012	2013	2014	2015	2016	Inc. % 2016/2009	Inc.% medio annuo
<b>Contenitori (Teus)</b>	269.300	234.809	235.209	208.591	263.405	320.044	359.328	388.572	<b>44,3%</b>	<b>5,4%</b>

	2009	2010	2011	2012	2013	2014	2015	2016	Inc. % 2016/2009	Inc.% medio annuo
<b>Veicoli nuovi (n)</b>	232.343	294.594	253.284	273.651	343.163	397.803	400.517	402.800	<b>73,4%</b>	<b>8,2%</b>

	2009	2010	2011	2012	2013	2014	2015	2016	Var. % 2016/2009	Var.% media annua
<b>Passeggeri (n)</b>	248.110	244.935	267.205	247.413	203.899	204.834	132.807	109.164	<b>-56,0%</b>	<b>-11,1%</b>
<b>Auto al seguito dei passeggeri (n)</b>	62.087	60.399	50.960	54.675	36.628	31.314	23.441	20.328	<b>67,3%</b>	<b>14,7%</b>
<b>Veicoli commerciali (n)</b>	153.760	172.039	194.734	192.047	192.419	202.490	204.260	201.228	<b>30,9%</b>	<b>3,9%</b>

	2009	2010	2011	2012	2013	2014	2015	2016	Inc. % 2015/2010	Inc.% medio annuo
<b>Toccate navi da crociera (n)</b>	<b>35</b>	54	50	71	78	74	102	<b>77</b>	<b>88,9%</b>	<b>13,6%</b>
<b>Crocieristi (n)</b>	<b>37.600</b>	98.815	99.274	113.268	121.919	143.346	189.545	<b>111.395</b>	<b>91,8%</b>	<b>13,9%</b>

	2009	2010	2011	2012	2013	2014	2015	2016	Inc. % 2016/2009	Inc.% medio annuo
<b>Passeggeri (n)</b>	279.219	282.011	273.499	257.396	275.357	326.998	364.916	439.580	<b>57,4%</b>	<b>6,7%</b>

Fig. 1 Dati di traffico del porto di Salerno 2009 – 2016 (FONTE: Autorità Portuale di Salerno)

## CAPITOLO 1

### *Cos'è un Arbitrato? Cenni generali*

I vantaggi dell'arbitrato, forma primaria di *Alternative Dispute Resolution*, sono noti a professionisti e operatori: rapidità delle decisioni, riservatezza, competenza dei giudici, maggiore flessibilità nell'individuazione delle regole applicabili.

L'arbitrato si definisce come strumento attraverso il quale, con una serie di attività poste in essere dagli arbitri, si giunge alla risoluzione di una controversia senza ricorrere ai giudici dello Stato. La decisione, anziché essere presa da giudici togati, viene presa da privati cittadini (gli arbitri appunto) scelti liberamente dalle parti e ai quali le stesse sottopongono una controversia, chiedendo di analizzarla e infine di deciderla.

In altri termini, attraverso l'arbitrato, le parti, senza ricorrere alla giurisdizione ordinaria, possono risolvere le controversie tra loro insorte ovvero quelle che insorgeranno. Costituisce, quindi, uno strumento alternativo alla cognizione ordinaria, da qui le principali caratteristiche: gli arbitri sono scelti direttamente dalle parti e sono le parti stesse a agli conferire agli arbitri il relativo potere di decisione.

Sono evidenti le profonde differenze tra tale mezzo di risoluzione delle controversie e quello costituito dall'ordinaria via giudiziaria: mentre ai giudici statali è sempre possibile rivolgersi o si può essere convenuti senza alcun bisogno di previa accettazione della loro autorità, affinché si possa avviare un arbitrato è, invece, necessario il previo consenso, normalmente manifestato in una clausola compromissoria, a seguire tale via in alternativa a quella ordinaria. Inoltre, mentre la via giudiziaria ordinaria si svolge anche nei confronti di persone che, almeno in un primo momento, le sono estranee, l'arbitrato si svolge solo nei confronti di coloro che lo hanno voluto.

Secondo la migliore dottrina processualcivilistica, grazie alle riforme apportate all'istituto nel 1983 e nel 1994, ed ora ancora maggiormente in seguito alla riforma del 2006, l'arbitrato può considerarsi a tutti gli effetti un mezzo di risoluzione della controversia sostitutivo di quello ordinario. Infatti, in seguito di tali modifiche l'atto con cui si introduce il giudizio di arbitrato è totalmente equiparato all'atto di citazione introduttivo del processo ordinario e lo stesso lodo (ossia la pronuncia degli arbitri) è equiparato, quanto all'efficacia, alla sentenza (ossia la pronuncia dei giudici) indipendentemente dal suo deposito. L'eventuale deposito sarà necessario solo per

fare acquisire al lodo medesimo efficacia esecutiva ed idoneità all'iscrizione di ipoteca ed alla trascrizione.

Naturalmente, le parti potranno farsi assistere, così come avviene in un normale procedimento giudiziario, da propri periti e legali di fiducia. Questa è una fase assai importante: essendo gli stessi arbitri degli esperti del settore, quanto più sarà importante scegliere al meglio i propri consulenti, sia tecnici che legali.

Ciò detto, i vantaggi dell'arbitrato possono sicuramente essere individuati in due fattori: tempi e costi. I tempi sono essenzialmente relegati alle attività peritali, alle fasi valutative e di preparazione e, naturalmente, comprensivi dei tempi riguardanti la valutazione del caso da parte degli arbitri.

I costi sono forfettizzati e di facile consultazione. Questi ultimi vengono computati in relazione al valore della lite, alla quale si sommano le spese amministrative, gli onorari agli arbitri e da una percentuale sull'eccedenza. Vanno naturalmente aggiunti gli onorari dei periti e dei consulenti legali, qualora nominati dalle parti.

In termini di tariffe, gli enti arbitrali provvedono ad individuare, solitamente, i costi in relazione al valore della lite, alla quale si sommano le spese amministrative, gli onorari agli arbitri e da una percentuale sull'eccedenza.

L'istituto dell'arbitrato presenta numerosi vantaggi, che vanno dalla preparazione tecnica e specifica degli arbitri, alla celerità del procedimento arbitrale rispetto al processo ordinario. A seguito della sottoscrizione di numerose convenzioni internazionali, in particolare quella di New York del 1958, ratificata da oltre 145 Stati, il lodo arbitrale può essere riconosciuto ed eseguito in gran parte del mondo, rappresentando un notevole vantaggio nella risoluzione di controversie che coinvolgano parti di nazionalità diverse.

## CAPITOLO 2

*Arbitrato amministrato e ruolo della Camera di Commercio: l'Organismo Arbitrale e il relativo Regolamento.*

Nell'arbitrato amministrato o istituzionale il procedimento si svolge in base ad un regolamento di un istituzione arbitrale, pubblica o privata, a cui le parti rinviano nella convenzione arbitrale, che andrà a regolare non solo tutti gli aspetti della procedura arbitrale ma anche la gestione della stessa procedura in tutti gli aspetti.

L'istituzione prescelta e il regolamento arbitrale da questa predisposto si danno carico di disciplinare e amministrare l'intero procedimento arbitrale nelle sue varie fasi.

Tutti gli aspetti della procedura sono disciplinati dal regolamento emanato dall'Organismo Arbitrale che si fa carico del corretto svolgimento della procedura, intervenendo in diverse situazioni (es. nomina e sostituzione degli arbitri) ed evitando così il ricorso al giudice ordinario.

Ciò produce inevitabili vantaggi, in quanto attraverso tale strumento le parti possono già prevedere *ex ante*, attraverso lo studio del regolamento arbitrale, le regole applicabili ed il funzionamento della procedura anche in termini di possibile annullamento del lodo, anche perché l'istituzione che amministra il procedimento, normalmente, cura anche la verifica ed il controllo formale del lodo proprio al fine di ridurre al minimo il rischio di vizi che lo possano inficiare.

Inoltre, nonostante nel procedimento amministrato agli onorari degli arbitri si aggiungono anche le tariffe dell'istituzione arbitrale per la gestione del procedimento, per le attività di segreteria che svolge, per le comunicazioni che cura, normalmente, il costo complessivo può risultare anche minore rispetto ad una diversa forma di arbitrato, in quanto l'istituzione offre tariffe omogenee e predeterminate, per cui il costo della procedura è già prevedibile e quantificabile dalle parti.

La pubblicazione del regolamento è inoltre qualificabile come offerta al pubblico da parte dell'istituzione, per tanto il contratto si conclude con la presentazione della domanda di arbitrato, atto con il quale la volontà negoziale dei compromittenti è portata a conoscenza dell'Organismo Arbitrale.

La legislazione che regola il servizio è la legge 29.12.1993, n. 580 e le Camere di Commercio - per la particolare competenza, terzietà ed esperienza - appaiono

naturalmente preposte dall'ordinamento giuridico al rafforzamento dei sistemi di tutela previsti a favore delle imprese e dei consumatori, apportando ai soggetti coinvolti notevoli vantaggi in termini di costi per l'accesso alla giustizia nonché sotto il profilo della durata temporale dei procedimenti.

L'arbitrato, sviluppato e potenziato dal sistema camerale, permette di affidare ad un terzo (o ad un collegio), al posto del giudice, la decisione della controversia insorta tra imprenditori e tra imprenditori e consumatori. Nel caso di arbitrato presso le Camere di commercio si parla di arbitrato amministrato, con il quale le parti si obbligano a rispettare i regolamenti dell'ente camerale nella gestione della procedura relativa. Affidare la risoluzione delle controversie all'arbitrato comporta spese di gran lunga inferiori a quelle occorrenti se si ricorre alla giustizia ordinaria e la riduzione dei tempi di attesa, in quanto la composizione delle controversie presenta caratteri di maggiore elasticità, non essendo soggetta ai vincoli formali e burocratici richiesti dal sistema giudiziale.

La legge di riordinamento n. 580 del 1993 ha ribadito l'affidamento di questo compito alle Camere di commercio prevedendo che esse, singolarmente o in forma associata, promuovano la costituzione di commissioni arbitrali e conciliative per la risoluzione delle controversie tra imprese e tra imprese e consumatori. Le Camere arbitrali sono gli organismi appositi istituiti dalle Camere di commercio per lo svolgimento dell'attività arbitrale. La legittimazione dell'arbitrato trae origini dal Codice di Procedura Civile, il quale prevede che le parti possono far decidere da arbitri le controversie tra loro insorte. In altri termini il deferimento della lite alla competenza arbitrale deve essere stabilito dalle parti, le quali vi possono provvedere preventivamente, con una clausola compromissoria contenuta nel contratto che stipulano. In mancanza di detta clausola compromissoria, una volta insorta la controversia, le parti possono far ricorso alla procedura arbitrale mediante il cosiddetto compromesso, il quale deve essere fatto per iscritto e indicare l'oggetto della controversia, a pena di nullità. Il compromesso, o la clausola compromissoria, deve contenere l'indicazione dell'Organismo Arbitrale alla quale rivolgersi in caso di controversia, ovvero deve contenere la nomina degli arbitri, oppure fissare il loro numero e le modalità di nomina.

Gli Organismi Arbitrali si servono di regolamenti preventivamente adottati e recanti norme sullo svolgimento dei giudizi arbitrali. Detti regolamenti sono vincolanti soltanto per le parti contendenti che li hanno recepiti nel momento in cui si sono obbligate a

far decidere la controversia insorta innanzi al medesimo organismo. La decisione del collegio arbitrale è denominata lodo, deve essere deliberata a maggioranza di voti e deve essere redatta per iscritto. In essa devono figurare le date e il luogo dell'atto di compromesso, o della clausola compromissoria, nonché l'esposizione sommaria dei motivi della decisione arbitrale e il dispositivo finale. Ne consegue che l'arbitrato, in materia commerciale, assume un ruolo rafforzato di strumento alternativo alla giustizia togata, per la celerità delle decisioni, che si perfezionano nell'arco di mesi anziché di anni; per la "competenza" dei giudici, scelti tra esperti del settore o addirittura tra esperti della materia; per l'"indipendenza" degli arbitri, che riposa – o dovrebbe riposare – su di una solida cultura e deontologia arbitrale; per la "riservatezza" del procedimento e della decisione.

Il problema è ovviamente più avvertito in un settore specialistico come quello marittimo e si è accertato tale limite analizzando nel dettaglio svariate sentenze in materia. È difatti emerso più volte quanto la non previsione di sezioni specializzate per questioni marittime abbia portato come inevitabile risultato come una decisione non legittima a causa di una evidente non completa cognizione anche tecnica della problematica da parte dell'organo giudicante con tutti i prevedibili malumori della parte soccombente la quale non si è vista riconoscere le proprie ragioni.

Per quanto concerne la celerità del giudizio è doveroso ricordare come il deposito del lodo arbitrale da parte degli arbitri o del singolo arbitro avviene solitamente nello spazio di pochi mesi. Sappiamo invece bene i tempi della giustizia ordinaria in Italia, e la generale poca credibilità nei confronti del sistema da parte del cittadino.

Quanto ai costi della procedura va ricordato che un arbitrato non costa certamente di più di un giudizio ordinario.

### CAPITOLO 3

#### *L'arbitrato come strumento di risoluzione alternativa delle controversie in campo marittimo e portuale*

Nel mondo dello *shipping* è frequente il ricorso all'arbitrato come strumento privilegiato di risoluzione delle controversie marittime internazionali e, per la sua "specialità", gli arbitri vengono selezionati fra soggetti che hanno uno specifico *background* professionale nel settore ove hanno maturato una significativa esperienza pratica. Infatti la natura delle controversie riguarda maggiormente elementi di fatto e non di diritto e l'esigenza degli operatori è quella di una giustizia rapida e senza aggravio di costi.

Come è noto il settore dei traffici marittimi è contraddistinto da un elevato tasso di internazionalità ed i relativi rapporti giuridici da un punto di vista soggettivo, coinvolgono imprese ed operatori localizzati in ordinamenti statali diversi e, da un punto di vista oggettivo, sono destinati ad avere esecuzione in ambiti spaziali appartenenti a Stati diversi; si pensi, per fare l'esempio più banale, ad un contratto stipulato tra un caricatore ed un vettore di nazionalità diversa per il trasporto di merci tra porti di Stati diversi.

Pertanto, l'arbitrato marittimo, in ragione delle sue peculiarità, può essere collocato nell'ampia nozione di arbitrato commerciale internazionale, per via della sua implicita natura mercantile e transnazionale.

Un arbitrato si definisce *marittimo* quando ha ad oggetto questioni connesse tra la materia del contendere e il fenomeno della navigazione, l'industria o il traffico marittimo. Ma nonostante l'indubbia efficacia di tale classificazione, non va omessa la circostanza per cui il trasporto marittimo si colloca sempre più spesso nell'ambito di più ampie operazioni di trasporto multimodale che, anche in virtù dell'evoluzione tecnologica, rendono sempre più incerta la tradizionale funzione della nave quale mezzo esclusivo ed essenziale per l'esecuzione del trasporto stesso

Perché per gli operatori dello *shipping* e per la relativa filiera è conveniente un arbitrato in materia marittima e portuale? Molteplici sono i fattori: a) le parti di un contratto internazionale potrebbero essere assai riluttanti a sottoporsi alla giurisdizione degli organi giudiziari dello Stato in cui è localizzata la propria controparte.

L'arbitrato si presenta invece come una sede "neutrale", nella quale nessuna delle parti gode del vantaggio di "giocare in casa", avvalendosi di norme processuali e sostanziali con le quali la controparte ha scarsa familiarità; b) in molte giurisdizioni non esistono organi specializzati per le controversie marittime e i giudici nazionali investiti di tali controversie possono quindi non avere una conoscenza specifica ed approfondita del settore e delle sue particolari regole operative. Il ricorso all'arbitrato consente invece alle parti di scegliere il giudicante in funzione della sua specifica esperienza e specializzazione, che lo rendono più idoneo a risolvere controversie con problematiche tecniche, contrattuali e normative del tutto particolari; c) gli organi giurisdizionali statali sono legati al rispetto di norme di procedurali rigide e complesse, che possono, specialmente in relazione a controversie di natura commerciale, risultare inutili o inadeguate o addirittura controproducenti rispetto alle esigenze delle parti. Il procedimento arbitrale è più flessibile e consente alle parti di modellare lo svolgimento della procedura secondo le necessità del caso specifico; d) gli arbitri godono anche di una maggiore libertà nella determinazione delle norme sostanziali applicabili al merito della controversia. Mentre i giudici nazionali applicheranno sempre un diritto statale gli arbitri sono in grado di tener conto in misura maggiore degli usi tipici del settore in cui operano le parti, con ragionevole certezza che i conseguenti lodi, anche se fondati soltanto sulla base delle ora indicate regole del commercio marittimo internazionale, saranno regolarmente attuati ed eseguiti nei vari ordinamenti statali in virtù delle rilevanti norme di diritto internazionale uniforme in tema di arbitrato; e) si ritiene comunemente che, rispetto alla giustizia ordinaria, la giustizia arbitrale sia più veloce e meno costosa salvo eccezioni ma, proprio per evitare tale incognita di non poco conto, sono state recentemente messe a punto procedure semplificate per i c.d. *small claims*.

Le tipologie di dispute oggetto di arbitrato marittimo hanno ad oggetto l'inadempimento di obblighi contrattuali da parte di uno dei contraenti (mancato pagamento del nolo, danneggiamento della nave o del carico occorso durante il trasporto, questioni concernenti il computo di stallie e contro stallie e ogni altra questione afferente alle operazioni di carico e scarico delle merci) ma le liti non di rado hanno altresì ad oggetto altri tipi di rapporti marittimi quali vizi o inadempimento nella costruzione o vendita di navi, questioni assicurative ovvero obbligazioni derivanti da avaria comune, prestazione di soccorso o urto in mare.

In aggiunta, l'arbitrato marittimo ha tradizionalmente ad oggetto questioni tecniche o di fatto la cui risoluzione presuppone un'approfondita conoscenza del commercio

marittimo e dei relativi meccanismi economici oltre alle questioni strettamente giuridiche.

Fonti dell'arbitrato marittimo sono le convenzioni internazionali in materia di trasporto marittimo merci e passeggeri, le *UNCITRAL Rules* (elaborate dalle Nazioni Unite) le *ICC Rules* della Camera di Commercio Internazionale, la prassi degli operatori marittimi (gli *INCOTERMS*) e, non ultima in ordine di importanza, la volontà delle parti.

Le diverse fonti che abbiamo elencato trovano applicazione in Italia ma, investendo questioni transnazionali e a contenuto tecnico, raramente riescono ad essere gestite con la dovuta perizia da parte del giudice interno. L'arbitrato, dunque, è lo strumento più idoneo a conseguire una "giustizia del caso concreto" ed aderente ai contenuti delle regole condivise dagli operatori commerciali. Ed è proprio a causa dell'estrema tecnicità delle controversie che talune clausole prevedono la sussistenza di particolari qualifiche soggettive in capo agli arbitri.

Ma quali sono queste fonti a cui fare riferimento?

*In primis* occorre menzionare la Convenzione di New York del 10 giugno 1958 e quella di Ginevra del 21 aprile 1961 sul riconoscimento ed esecuzione dei lodi stranieri. Nelle convenzioni descritte la materia marittima rientra chiaramente in quella commerciale internazionale.

In tema di trasporto marittimo internazionale è la Convenzione di Bruxelles del 25 agosto 1924 sull'unificazione di alcune regole in materia di trasporto marittimo su polizza di carico modificata dai protocolli aggiuntivi che vanno sotto il nome di Regole dell'Aja – Visby a regolare la materia. Nella convenzione non c'è accenno all'arbitrato o proroga della giurisdizione e occorre, pertanto, fare riferimento, come vedremo nello specifico, alle previsioni contenute nel retro delle singole polizze di carico.

Nella Convenzione di Atene del 1974 sul trasporto marittimo dei passeggeri e dei loro bagagli è riconosciuta espressamente la possibilità alle parti di deferire ad arbitrato le loro controversie (art. 17).

Nelle Regole di Amburgo del 1978 (art. 22) e in quelle di Rotterdam del 2009 (art.75), non ancora ratificate dall'Italia, trova spazio l'arbitrato ma esso rimane una previsione opzionale vincolante esclusivamente gli Stati contraenti che dichiarino di sottoporvisi.

Nella Convenzione di Bruxelles del 10 maggio 1952 sulla competenza civile in materia di urto tra navi all'art. 2 si prevede l'arbitrato come deroga pattizia alla giurisdizione.

La Convenzione di Bruxelles del 10 maggio 1952 sull'unificazione di alcune regole nel sequestro conservativo di navi all'art. 7, comma 3, stabilisce un termine per iniziare il procedimento arbitrale se il tribunale nella cui giurisdizione è stata sequestrata la nave non sia competente e le parti hanno inserito la clausola di deroga alla giurisdizione.

La Convenzione di Londra del 28 aprile 1989 sul soccorso in mare all'art. 23 fa cenno della prescrizione in materia arbitrale e all'art. 27 è contenuta un'esortazione a ricorrere allo strumento arbitrale.

Considerata l'affinità con la materia marittima non si può non fare cenno alla Convenzione di Montreal del 28 maggio 1999 per l'unificazione di alcune regole relative al trasporto aereo internazionale che all'art. 34 in materia di trasporto di merci menziona la possibilità di risoluzione delle controversie tramite arbitrato richiamando i criteri di cui all'art. 33 circa la giurisdizione.

Per quanto concerne la prassi commerciale dei traffici marittimi il ricorso all'arbitrato marittimo è inserito nelle clausole compromissorie presenti nei formulari di contratto internazionalmente diffusi in cui sono contenuti i regolamenti arbitrali e che, per opportuna conoscenza, sono collocati in appendice alla presente pubblicazione.

Le clausole compromissorie contenute in detti formulari disciplinano la sede dell'arbitrato, le modalità di nomina degli arbitri, i poteri ad essi conferiti e lo svolgimento della procedura, le regole applicabili al merito, la rinuncia ai mezzi di ricorso contro la sentenza nei limiti ammessi ecc.

## CAPITOLO 4

### *Casistica*

L'arbitrato marittimo nasce per lo *shipping* cioè per la navigazione commerciale. Avendo storicamente Londra e New York quali principali piazze di riferimento, è da notare come, oramai, non sono più le uniche: molte città tra cui Parigi, Madrid, Rotterdam e Amburgo hanno delle camere arbitrali specializzate nel settore navale.

Il ricorso alla procedura arbitrale è pressoché una prassi consolidata, sia da parte delle compagnie di navigazione che dai P&I. In questo capitolo ci soffermeremo su quelli che possono essere i *caselaw* più importanti sia nell'esperienza italiana che in quella degli altri Paesi ove sono già istituiti organismi arbitrali *ad hoc*.

#### *4.1. Arbitrato e trasporto marittimo*

Il trasporto marittimo ha per il oggetto il trasferimento di cose o persone da un luogo ad un altro verso il corrispettivo di un prezzo (nolo – *freight*).

I soggetti che intervengono nel trasporto marittimo sono: a) il proprietario della nave (*ship owner*): che può esercitare l'attività di navigazione o concedere la nave in locazione; b) l'armatore (*disponent owner*) : che equipaggia la nave con uomini e mezzi, può essere una persona o più, nel qual caso si denomina compagnia di navigazione; c) il comandante della nave (*master*): dirige la nave e ha competenza tecnica, commerciale e legale; d) il vettore marittimo (*carrier*) : può essere lo stesso armatore oppure chi ha noleggiato la nave dall'armatore (*charterer*) equipaggiandola per un certo periodo di tempo e svolgendo trasporti marittimi per conto terzi; e) il raccomandatario marittimo (*agent*): rappresenta l'armatore e i vettori marittimi nei porti di scalo e si occupa dei rifornimenti e delle problematiche doganali e portuali; f) l'agente marittimo: svolge le stesse funzioni del raccomandatario, inoltre procaccia clientela per l'armatore; g) lo spedizioniere (*forwarder*): stipula i contratti di trasporto e si incarica di tutte le operazioni relative alla spedizione delle merci agendo per conto di mittenti o dei destinatari; h) il *broker* in noleggi: mette in contatto esportatori-importatori con gli armatori, favorendo la stipulazione di un contratto di noleggio o di trasporto.

Ma chi sono i soggetti che stipulano materialmente tale contratto?

La normativa convenzionale uniforme li individua nel caricatore (*shipper*), vettore (*carrier*) e ricevitore (*consignee*). Il contratto può avere per oggetto un trasporto di carico totale o parziale oppure un trasporto di cose determinate.

Nel primo caso è documentato da un *voyage - charter party*; nel secondo caso invece è documentato da un altro documento denominato polizza di carico (*bill of lading*).

Il *charter party* è, o meglio documenta, un contratto di utilizzazione della nave, bene che viene impiegato commercialmente nei traffici marittimi riguardanti il trasporto di merci e di passeggeri, e tale impiego avviene da lungo tempo mediante ricorso a strumenti contrattuali atti a disciplinarne l'uso per la realizzazione degli interessi delle parti. Trattasi di strumenti estremamente flessibili sia per il contenuto delle prestazioni e delle obbligazioni reciproche che per la relativa disciplina applicabile, essendo frutto di ampia e libera esplicazione della volontà delle parti contraenti.

I *charterparties* costituiscono veri e propri formulari prestampati, trasposti in modelli standardizzati dal contenuto ben definito. Esistono, infatti, molteplici modelli di contratti *charter party* universalmente noti e riconosciuti nel settore che sono ampiamente impiegati dagli operatori marittimi a seconda dell'affare da realizzare.

Tra essi spicca il BIMCO *charter party guarantee* (realizzato dal *Baltic and International Maritime Council*).

Quando il trasporto è caratterizzato dalla presenza di un *voyage charter party* accompagnata dall'emissione della polizza di carico rileverà anche la clausola arbitrale. Ne consegue che ogni valutazione delle pattuizioni intercorse fra le parti, inclusa la validità ed operatività di una clausola arbitrale, deve essere fatta alla luce di questa documentazione.

Pertanto, proprio il binomio *charter party-polizza di carico*, (d'ora in avanti – per brevità – c/p – p/c) costituisce l'aspetto più delicato di tutta l'operazione di ricostruzione dei rapporti contrattuali fra le parti. E questo perché la polizza di carico è un documento avente la duplice funzione di contratto di trasporto e di titolo rappresentativo della merce.

La polizza di carico rinvia la sua disciplina agli artt. 463 e ss. cod. nav, alla quale si aggiunge quella più specifica e dettagliata di diritto uniforme data dalla Convenzione di Bruxelles del 1924 e succ. mod. derivanti dalle Regole dell'Aja-Visby del 1968 e dalla Convenzione di Amburgo del 1978 (quest'ultima, ripetiamo, non in vigore in Italia).

La coesistenza di p/c e c/p è da sempre all'origine delle questioni più spinose da risolvere soprattutto in caso di controversia riconducibile ad un trasporto marittimo di merci.

La questione principale risiede nell'inadempimento delle obbligazioni, *in primis* quella/e del vettore in caso di perdita o avarie delle cose del relativo regime di responsabilità del medesimo caratterizzato da una particolare disciplina (c.d. responsabilità *ex recepto*) e dalla predominante regolamentazione di diritto internazionale (Convenzione di Bruxelles- Aja-Visby Rules, etc.).

La polizza di carico marittima, conosciuta anche come *bill of lading* è il documento principale in uso nel trasporto marittimo, che attesta l'imbarco della merce da un porto di partenza ad un porto di sbarco designato su una nave specificamente indicata.

Viene impiegata esclusivamente nel trasporto marittimo, fluviale e per acque interne, sia con riferimento ai contratti di nolo per il noleggio di una nave a tempo a viaggio a scafo nudo, sia per quanto riguarda il trasporto di cose determinate. Per il trasporto di cose determinate essa riporta nelle clausole stampate sul retro, le condizioni generali di trasporto indicando la convenzione di riferimento.

E veniamo alle sue precipue funzioni : a) certifica la presa in carico delle merci da parte del vettore marittimo e/o del suo agente; b) comprova l'esistenza e il contenuto del contratto di trasporto inerente le merci in essa descritte; c) attribuisce al detentore del titolo il possesso delle merci e il potere di trasmettere tale possesso ad altri attraverso il suo trasferimento che si perfeziona mediante girata.

La polizza di carico deve contenere almeno le seguenti indicazioni: a) nome della compagnia di navigazione; b) nome dello *shipper*; c) nome e indirizzo del *consignee*; d) nome e indirizzo della persona/ditta da informare dell'arrivo della spedizione a destinazione (di solito si indica l'importatore e/o il suo spedizioniere); e) nome della nave; f) indicazione del porto di carico (*loading*) e di quello di scarico (*discharge*) ; g) indicazione del pagamento del nolo mare (*prepaid* cioè prepagato dal mittente, *collect* se da pagare a destinazione); h) numero degli originali di polizza di carico emessi (di norma 5); i) marche e numeri che identificano la merce; l) breve descrizione della merce; m) numero dei colli, loro pesi e misure; n) firma del comandante della nave, della compagnia di navigazione o dell'agenzia marittima che la rappresenta; o) data di caricamento della merce a bordo (con l'apposizione del timbro *on board* ).

La polizza di carico marittima viene rilasciata al caricatore dal vettore, dal comandante della nave o da loro agenti. L'emissione della polizza di carico si realizza con la consegna, da parte del caricatore, della ricevuta di bordo al vettore e presuppone il possesso della merce da parte del vettore stesso, ciò significa che lo stesso si impegna a riconsegnare la merce solo in cambio della polizza di carico.

L'inserimento della clausola arbitrale nei *charterparties* relativi a traffici marittimi non di linea è molto diffuso. Questo accade perché i contratti sono espressione di una ampia autonomia negoziale fra le parti, generalmente operatori commerciali del settore dotati di specifiche competenze ed esperienze e che si muovono su un piano di sostanziale parità ma anche e soprattutto per l'idoneità dell'arbitrato come strumento più funzionale per la soluzione delle controversie ad essi relative, l'uso diffuso del formulario impiegato nel quale è inserita la *arbitration clause*, la qualità di operatori professionali delle parti, i collegamenti tra vettore e giratario della polizza di carico.

Il contenuto della clausola arbitrale può essere determinato convenzionalmente dalle parti. Nella pratica lo scambio degli accordi che poi confluiscono nel *charter party* avviene attraverso i *broker* che provvedono alla negoziazione delle condizioni contrattuali e che "girano" all'una e all'altra parte contraente.

Il richiamo in polizza di carico al contratto sottostante sovente è espresso con la dicitura: *all terms and conditions of the charter party* oppure *all terms and conditions, including the arbitration clause, of the charter party*.

#### *4.2. Arbitrato nel soccorso e salvataggio*

Gli istituti dell'assistenza e del salvataggio di navi e passeggeri disciplinati dalla Convenzione di Londra del 28.4.1989 (detta *Salvage 1989* - in vigore nei confronti dell'Italia dal 14 luglio 1996) ed, in via residuale, dal codice della navigazione (artt. 489 – 513) sono obbligatori per tutte le navi battenti bandiera italiana anche in acque internazionali. L'obbligo legale è stabilito a carico del comandante, con esclusione dell'armatore, ed è esteso ai comandanti di navi straniere in acque italiane. L'obbligo è subordinato alla possibilità di prestare soccorso senza grave rischio per la nave che lo presta, per l'equipaggio e per i suoi passeggeri e nelle circostanze di "pericolo di perdersi" della nave.

La disciplina in vigore prevede tre tipi: a) soccorso obbligatorio: in adempimento di un obbligo derivante direttamente dalla legge ovvero imposto dall'autorità amministrativa

in tutti i casi in cui vi è pericolo per le vite umane; b) soccorso contrattuale: portato a seguito di stipulazione di un contratto di soccorso (avente quale “causa” il salvamento delle proprietà in pericolo e la regolamentazione dei diritti del soccorritore e quelli dei proprietari dei beni); c) soccorso spontaneo: portato ad iniziativa del soccorritore e spontaneamente prestato (e accettato o almeno non ragionevolmente rifiutato).

Il soccorso spontaneo anche senza richiesta del comandante della nave in pericolo, che viene prestato a nave che abbia persone a bordo, è qualificato obbligatorio *ex lege*, anche di fronte ad un rifiuto di assistenza e soccorso, nella misura in cui tale rifiuto non sia “ragionevole”.

Il pericolo deve essere serio e “al momento nel quale il soccorso viene richiesto, in corso ed imminente” ed il comandante di una nave che batta la sua bandiera, nei limiti del possibile e senza che la nave, l’equipaggio ed i passeggeri corrano gravi rischi (non un rischio qualunque, dunque!) deve: a) prestare assistenza a chiunque si trovi in pericolo in mare; b) andare al più presto possibile in soccorso delle persone in difficoltà se viene informato che persone in difficoltà hanno bisogno d’assistenza, nei limiti della ragionevolezza dell’intervento; c) prestare soccorso, in caso di collisione all’altra nave, al suo equipaggio ed ai passeggeri e, nella misura del possibile, indichi all’altra nave il nome ed il porto d’iscrizione e il primo porto del suo approdo.

La prestazione del soccorso in mare, al di fuori dei casi obbligatori per legge o per ordine dell’Autorità Amministrativa, può essere spontanea o pattuita, non importa la forma, essendo necessaria sempre la manifestazione di volontà, anche tacita, delle due parti in causa: salvato e salvatore.

Per quanto concerne la procedura arbitrale questa è espressamente prevista nel formulario standard del contratto di soccorso: il Lloyd’s Open Form 2011 (LOF). Il LOF prevede che le Parti che hanno stipulato il contratto, qualora non raggiungano un accordo sulla determinazione del compenso, deferiscano ad un arbitro la relativa decisione.

La materia del contendere di solito verte sui diritti per i soccorritori (compensi di salvataggio, costi per la rimozione o lo smaltimento del relitto; spese di assistenza, rimorchio al porto più vicino).

Il compito precipuo degli arbitri si tradurrà quindi in trattative per quantificare la somma di denaro da corrispondere al soccorritore, proporzionale al valore

commerciale della nave soccorsa e degli oggetti che si trovano a bordo, compresi il rimborso delle spese sostenute e un vero e proprio compenso.

#### 4.3. *Arbitrato e compravendita di nave*

Il codice della navigazione non prevede una specifica disciplina della compravendita della nave e, pertanto, essa profondamente influenzata dalla prassi contrattuale, che assolve la funzione di colmare le lacune lasciate dalla scarsa normativa speciale sul tema.

Tra i sistemi utilizzati nella prassi contrattuale italiana, uno di questi, prevede la redazione di una scrittura privata, detta "compromesso", a cui fa poi seguito la formazione di un atto pubblico, innanzi al notaio ai fini dell'adempimento delle formalità pubblicitarie. Nel suddetto atto pubblico vengono indicati i soggetti e l'oggetto della vendita, ed inoltre si dà atto dell'avvenuto pagamento del prezzo e si autorizzano le competenti Autorità ad eseguire le necessarie formalità pubblicitarie.

Un secondo sistema, più comune nella prassi, prevede l'utilizzo di formulari di uso internazionale, oramai diffusi anche per la vendita cosiddetta "interna", cui segue la redazione di un atto pubblico, ricevuto dal notaio. Può accadere, poi, che tali formulari vengano riempiti senza nemmeno procedere alla traduzione degli stessi in lingua italiana.

Il formulario largamente più utilizzato nel nostro Paese, è quello denominato Sale form e comunemente noto come Memorandum of Agreement (MOA), la cui ultima versione risale al 2012 e si compone di sedici articoli.

Il MOA prevede che nel contratto vadano inseriti alcuni punti e si stabiliscano patti di seguito elencati: a) l'identificazione dell'unità navale (nome o numero di registro, cantiere di costruzione, bandiera e porto di registrazione); b) l'indicazione del prezzo di vendita; c) l'impegno dell'acquirente – a garanzia della corretta esecuzione del contratto – a versare un deposito pari al 10% del prezzo determinato entro un termine stabilito; d) il pagamento del prezzo deve avvenire alla consegna della nave ma non oltre tre giorni da quando essa è possibile.

Nel formulario sono evidenziati gli obblighi del venditore: a) la dichiarazione di vendita (*bill of sale*), documento da cui risulta che la nave è libera da gravami; b) il certificato di proprietà; c) il certificato di classe; d) garanzia che l'unità non è data in locazione o

noleggio a terzi; e gli obblighi dell'acquirente: a) cambiare il nome dell'unità navale e modificarne i segni distintivi.

L'articolo 16 del MOA stabilisce la legge regolatrice del contratto e prevede una clausola compromissoria in caso di liti scaturenti dal contratto stesso.

#### *4.4. Arbitrato e costruzione di nave*

La disciplina del contratto di costruzione di nave è regolamentata dal codice della navigazione (artt. 232 – 244) e dai formulari predisposti dagli operatori del settore.

In Italia *form* tipico è quello dello Standard Shipbuilding Contract predisposto dalla FINCANTIERI.

Il controllo tecnico sulle costruzioni è esercitato per legge dal Registro Italiano Navale a cui sono equiparati *American Bureau of Shipping, Bureau Veritas e Germanischer Lloyd*.

Il contratto deve essere fatto per iscritto a pena di nullità e reso pubblico mediante trascrizione nel Registro delle navi in costruzione.

Le controversie tra committenti e costruttori richiedono la soluzione di problemi tecnici e che impongono alle parti di nominare arbitri esperti del settore che, a loro volta, debbono avvalersi di periti nel ramo navalmeccanico con il compito di stabilire: a) se la nave corrisponda ai dati forniti dal costruttore (lunghezza, larghezza, profondità, stazza, capacità di stiva, pescaggio e sistema di propulsione); b) sia o meno consegnabile, affetta da vizi che giustificano il rifiuto della consegna o non vi è corrispondenza con le performances promesse dopo il varo; c) una domanda di risarcimento danni.

Le clausole compromissorie prevedono: a) la nomina di un esperto tecnico di gradimento comune, o eventualmente scelto da un ente di classifica o da una qualche istituzione di tecnici, per le vertenze di natura puramente tecnica; b) un arbitro o un collegio arbitrale, per le controversie che richiedano la soluzione di problemi giuridici o comunque di ricostruzione in generale del comportamento delle parti.

Quanto alla legge applicabile alle controversie nascenti dai contratti di costruzione di nave ricordiamo: a) il diritto internazionale privato; b) la legge inglese; c) la legge del

luogo di costruzione della nave; d) la legge del luogo dell'arbitrato; e) la disciplina dei formulari; f) la prassi degli operatori.

Le categorie di controversie che emergono più frequentemente sono le seguenti:

- a) il cantiere navale non completa la costruzione entro il termine ultimo concesso (*cancelling date*), e il committente afferma il proprio diritto di cancellare il contratto chiedendo la restituzione degli acconti versati e invocando un rimborso (*refund guarantee*);
- b) il cantiere navale sostiene di aver completato la nave e la offre in consegna, ma il committente sostiene che la nave ha difetti così gravi che non consentono di ritenerla consegnabile (*deliverable*) e quindi invita il cantiere a rimediare a tali difetti. Nel frattempo viene a scadenza la *cancelling date* e il compratore risolve il contratto;
- c) il compratore diviene insolvente, oppure ha problemi con il proprio finanziatore, e cerca di recedere dal contratto. Il cantiere navale invece pretende l'adempimento e cerca di escutere la garanzia bancaria per incassare almeno una rata di prezzo;
- d) il compratore contesta il raggiungimento di uno specifico stadio di avanzamento dei lavori e rifiuta di pagare la relativa rata di prezzo, mentre il cantiere promuove l'arbitrato per ottenere tale pagamento ed escutere la garanzia bancaria del compratore;
- e) dopo la consegna, il compratore contesta l'esistenza di vizi e difetti sostenendo che essi non erano individuabili al momento della consegna e chiede la risoluzione del contratto, invocando in subordine la garanzia contrattuale;
- f) il committente rifiuta di prendere in consegna la nave sostenendo che la costruzione non è stata ancora completata a regola d'arte e che, quindi, la nave non è ancora *deliverable*.

#### 4.5. Arbitrato e assicurazioni marittime

Il contratto di assicurazione marittima è disciplinato dal codice della navigazione (artt. 514 – 547), copre, normalmente, tutti i rischi inerenti alla navigazione, che incombono sia sulle cose materiali, siano esse gli stessi mezzi di trasporto che le merci trasportate, sia su altri beni, come il nolo o il profitto sperato. Richiedono, invece, autonomi contratti di assicurazione, la responsabilità del vettore di merci e gli infortuni dei passeggeri.

Possiamo affermare che il ramo assicurativo più sviluppato è sicuramente quello relativo ai trasporti ed in modo particolare ai trasporti marittimi, sia per ciò che

riguarda il trasporto delle merci, definito “settore merci”, sia per il mezzo di trasporto usato, la nave, definito “settore corpi”.

All'assicurazione delle merci provvedono le imprese che ne effettuano la spedizione; mentre all'assicurazione della nave provvede la compagnia di navigazione (proprietario, armatore, ecc.).

Nell'ambito della copertura dei rischi relativi alle merci trasportate, possiamo effettuare una prima suddivisione del tipo di polizza, valida a livello internazionale, tra polizza a viaggio singolo e polizza globale.

La prima è stipulata per assicurare un'unica spedizione; le polizze globali, relative a più spedizioni, sono, a loro volta, distinte in: a) polizza in abbonamento (*open cover*), quando il contratto si riferisce alle spedizioni effettuate nell'arco di un periodo di tempo più o meno lungo, di solito un anno, con cui il contraente deve notificare ogni singola spedizione, a mezzo speciali moduli; l'assicuratore rilascia, a sua volta, se richiesto, un certificato di assicurazione, che costituisce titolo di prova della copertura, a tutti gli effetti; b) polizza a esaurimento, detta anche polizza aperta o flottante, quando il contratto fa riferimento ad un importo massimo di valore assicurato, relativo a più spedizioni; c) polizza sul fatturato merci, che assicura tutte le spedizioni, effettuate a titolo di vendita o trasferimento interno, in cui il premio da corrispondere viene commisurato al volume di affari.

A questo punto ci sembra opportuno soffermarci brevemente sul significato da attribuire al termine *avaria* cui si fa spesso riferimento nel clausolario assicurativo.

Per *avaria* si intende qualsiasi danno subito dal mezzo di trasporto o dalle cose trasportate, durante il viaggio, o nelle operazioni connesse al trasporto.

Esse si distinguono in: a) particolari, se i danni sono provocati da eventi fortuiti o da cause di forza maggiore, questi danni sono a carico di chi li ha subiti; b) comuni, si tratta di danni e spese provocati volontariamente dal capitano della nave per la salvezza comune, (ad es. quando viene allagata una stiva, provocando danni alle merci, per spegnere un incendio che potrebbe distruggere tutta la nave); questi danni vanno ripartiti a carico di tutti i partecipanti al rischio di perdita della nave (proprietario della nave, eventuale armatore se diverso dal proprietario, caricatori); per coprire anche il rischio per il contributo di ciascuno ai danni di *avaria* comune è necessario ricorrere a una clausola aggiuntiva (con pagamento di un premio più elevato).

Per ciò che riguarda le clausole alle quali i contratti di assicurazione fanno riferimento, esistono e vengono applicate a livello internazionale le cosiddette *cargo clauses* inglesi, elaborate per la disciplina dei più diffusi contratti assicurativi.

Queste clausole, nate in Inghilterra, hanno diffusione mondiale e consentono di omogeneizzare i contratti di assicurazione merci e di disciplinare in modo uniforme gli obblighi delle parti, i rischi coperti, le prestazioni accessorie ecc., specialmente nei trasporti marittimi.

Le clausole più importanti sono: a) P.T. (*perdita totale*): l'assicuratore si impegna a risarcire la perdita totale delle cose trasportate in seguito a distruzione o perdita totale del mezzo di trasporto (ad esempio, naufragio della nave); b) P.T.M. (*perdita totale merce*): l'assicuratore rimborsa la perdita totale della merce a qualsiasi eventi sia attribuibile; c) F.A.P. (*franco avaria particolare*): l'assicuratore si impegna a risarcire la perdita totale della merce (come nel caso P.T.M.) e in più la quota di contribuzione per avaria comune a carico dell'assicurato; d) F.A.P.S. (*franco avaria particolare salvo quattro casi*): l'assicuratore si impegna a rimborsare i danni previsti nella clausola F.A.P. e in più quattro casi di avaria particolare: incendio, investimento, urto e sommersione; e) C.A.P. (*con avaria particolare*): con questa clausola l'assicuratore si impegna a risarcire danni per perdita totale della merce e per avaria comune e particolare; f) *all risks* (tutti i rischi): con questa clausola l'assicuratore si impegna a risarcire tutti i rischi ai quali può essere soggetta la merce viaggiante, ad esclusione dei soli rischi non assicurabili o assicurabili con patti speciali (ad esempio i rischi per furti, colaggio, manomissione delle merci e simili). Qualora siano presenti clausole compromissorie in talune polizze assicurative, esse sono specificamente pattuite.

Nella copertura di grandi rischi, ad esempio, specie nel rapporto tra assicuratori e gruppi industriali che assicurano rischi diversi, inclusi i trasporti, non è infrequente imbattersi in clausole *ad hoc* che deferiscono la controversia ad arbitri privati o ad istituzioni.

In generale, le clausole compromissorie contenute nei diversi formulari disciplinano, in modo più o meno analitico, le modalità di nomina degli arbitri, i poteri ad essi conferiti, oltre che lo svolgimento della procedura.

Inoltre, a causa dell'elevato grado di tecnicità necessario nelle controversie relative ai traffici marittimi, talune clausole prevedono altresì la sussistenza di particolari qualifiche soggettive in capo agli arbitri.

Un'altra forma assicurativa è quella prevista dai P & I Clubs, associazione mutualistiche specializzate in coperture "*Protection and Indemnity*".

L'acronimo sta ad indicare una particolare forma di assicurazione marittima che prevede la copertura dei rischi della navigazione a favore dei propri membri (armatori, noleggiatori e altri utilizzatori della nave) che contribuiscono versando al Club una sorta di "premio", una sorta di *membership contract* definita "*call*". Un P & I è al servizio dei soli suoi membri e opera come ente no profit.

I Clubs forniscono un'ampia gamma di servizi ai propri associati relativamente a richieste risarcitorie, problematiche legali e di prevenzione e giocano un ruolo preminente nella gestione dei sinistri marittimi (*claim handling*).

Ogni Club adotta differenti regole e coperture rispetto agli altri unitamente alle garanzie più svariate che includono le ipotesi di responsabilità verso i passeggeri, i lavoratori marittimi ovvero tutte le persone a bordo di una nave terza che subiscono danni o morte per condotta colposa dell'equipaggio della nave coperta dal P & I. Le coperture includono, altresì, le spese sostenute dall'armatore per il salvataggio delle vite umane in mare o rimozione dei relitti, quelle occorrenti in occasione di danni ad infrastrutture portuali causati durante un rimorchio, danni da inquinamento marino dovuto a fuoriuscita di idrocarburi, danni per perdita o deterioramento del carico imbarcato sulla nave, danni da collisione e ogni altra spesa o costo ritenuto meritevole di protezione come ad esempio la quota dovuta a titolo di contribuzione in avaria generale in eccesso a quella corrisposta dall'assicurazione corpo o quella inerente la quota di credito verso soggetti interessati al carico per avaria generale non recuperabile dall'armatore derivante dal suo inadempimento.

Sono, di regola, esclusi da tale copertura gli *excepted perils* (ossia i rischi di guerra, terrorismo, atti di Dio ecc.) oltre ai danni per radiazioni ionizzanti o contribuzioni nucleari e i rischi collegati al commercio illegale o di materiali pericolosi, perdita del nolo e della nave.

## CAPITOLO 5

### *L'arbitrato a tutela delle imprese operanti nel settore della nautica da diporto*

Chiaramente, rivolgersi ad un arbitrato è oramai possibile anche per le questioni riguardanti il diporto, dove le tematiche e le relative controversie non sono affatto dissimili rispetto allo *shipping*.

Le motivazioni, che in campo internazionale hanno reso l'arbitrato lo strumento privilegiato dagli operatori per la risoluzione delle controversie marittime, possono senza dubbio ritenersi valide anche per il settore del diporto nautico, ovvero del c.d. "*yachting law*" come viene denominato nel mondo anglosassone, nel quale si riflettono le stesse esigenze di celerità e competenza specifica dei giudicanti, proprie dei traffici marittimi.

Ed infatti, l'applicazione dell'arbitrato al mondo dello *yachting* è un fenomeno già ampiamente diffuso sia in ambito internazionale, dove è sempre più frequente la previsione di un arbitrato, all'interno dei formulari e contratti maggiormente utilizzati, sia sul piano nazionale, dove, anche se in misura inferiore rispetto che all'estero, il ricorso all'arbitrato è molto praticato soprattutto con riguardo al settore della compravendita o costruzione di *megayachts*.

Pertanto, va aggiunto che, dal punto di vista nazionale, il Legislatore negli ultimi anni ha introdotto misure e disposizioni volte a diffondere e favorire l'utilizzo di tale strumento in alternativa alla giurisdizione ordinaria, proprio al fine di diminuire il carico dei processi e l'eccessiva durata degli stessi.

La navigazione da diporto, considerata un tempo la figlia minore della navigazione *tout court*, è diventata oggi fenomeno sociale, per la facilità con cui il consumatore medio accede all'acquisto dell'unità. Anche nel mondo della nautica, che trova la sua disciplina nel D.Lgs. n. 171/2005 (c.d. Codice della Nautica da Diporto) il fenomeno dell'arbitrato resta soluzione ottimale per gli operatori del settore alla luce delle profonde modifiche del sistema giudiziario avviate negli ultimi anni, che vedono di nuovo tornare questo strumento alternativo alla giustizia ordinaria alla ribalta, e in quanto la contrattualistica del diporto viene redatta principalmente in lingua inglese e la quasi totalità dei committenti è straniera. La conseguenza inevitabile è che la maggior parte di questi accordi abbia rinvio, anche per ovvi motivi di estraneità a

giurisdizione straniera, quella inglese prevalentemente, con apposita clausola compromissoria.

Un'unità da diporto può essere impiegata anche in attività commerciali e, segnatamente, per attività di locazione e di noleggio.

Per locazione si intende il contratto con cui una delle parti si obbliga in cambio di un corrispettivo a far godere all'altra parte per un dato periodo di tempo l'unità da diporto. In tal caso l'unità passa in godimento autonomo del conduttore il quale esercita con essa la navigazione e ne assume la responsabilità. In tale regime l'unità è condotta con la patente nautica, se prescritta, e può imbarcare il numero dei passeggeri indicati nella licenza di navigazione. Per noleggio, invece, si intende il contratto con cui una delle parti, in corrispettivo del nolo pattuito, si obbliga a mettere a disposizione dell'altra parte l'unità per un determinato periodo di tempo da trascorrere a scopo ricreativo in zone marine o acque interne di sua scelta, da fermo o in navigazione, alle condizioni stabilite dal contratto. L'unità noleggiata rimane nella disponibilità del noleggiante, alle cui dipendenze resta anche l'equipaggio.

L'istituto dell'arbitrato resta indubbiamente strumento indispensabile anche per risolvere le controversie nel mondo del diporto, che possono essere di varia natura: civilistica, commerciale, demaniale nonché di diritto marittimo puro.

Per fare un esempio, potrebbe essere prezioso inserire una clausola compromissoria nei contratti aventi per oggetto compravendite, noleggi (sia a scafo nudo che in *time charter*), per le costruzioni o nei *refitting*, oltre che per molte altre situazioni.

Il ricorso alla procedura arbitrale è pressoché una prassi consolidata, sia da parte degli armatori che dai P&I. Le materie e le relative controversie possono avere per oggetto molti eventi: sinistri, avarie marittime, contestazioni presso i cantieri, danni al carico e, più in generale, in riferimento ad ogni evento che sfocia in una controversia in materia marittima.

Tra i fenomeni evolutivi verificatisi all'interno del mondo del diporto a cui si è assistito negli ultimi anni, tra questi certamente merita di essere citata la sempre più frequente necessaria previsione di un arbitrato all'interno degli accordi disciplinanti materia di *yachting* ed una buona parte dei contratti standard solitamente in uso dalle associazioni di categoria rimanda alla nota clausola arbitrale la risoluzione di un'eventuale controversia.

Non va sottaciuta, in tale contesto, l'influenza esercitata dai formulari marittimi internazionali nei confronti dei contratti più diffusi nel mondo del diporto redatti dalle più note associazioni nazionali ed internazionali, in particolare nel settore della vendita e del *charter*.

All'interno del nostro Stato spicca tra tutte ISYBA ma sono anche presenti associazioni minori che iniziano a richiedere l'utilizzo di questo strumento "tecnico". Certamente i modelli contrattuali utilizzati dalle citate associazioni, le più autorevoli, derivano tutti indirettamente dai formulari marittimi internazionali, naturalmente opportunamente modificati in virtù della diversità dell'oggetto, imbarcazioni e non navi, ma anche in quanto hanno dovuto recepire le prassi consuetudinarie di mercato.

Naturalmente tali modelli contrattuali sono soggetti ad un costante aggiornamento in considerazione dell'evoluzione generale della normativa di settore, nazionale ed internazionale a secondo della relativa diffusione. Tali modelli, tanto per il noleggio o la locazione, quanto per la compravendita dell'usato tramite *broker*, prevedono in caso di lite tra le parti un arbitrato, salvo che poi non si deroghi consensualmente tra le parti.

La diffusione di una tale formula alternativa alla risoluzione della lite, l'arbitrato e non la giustizia ordinaria, comporta che le singole aziende, e quindi tanto i cantieri costruttori, quanto gli importatori e i rivenditori di zona, così come alcuni porti turistici, prevedono tale strumento per risolvere eventuali situazioni conflittuali.



# BIMCO

## CHARTER PARTY GUARANTEE

CHARTERERS' GUARANTEE OF SUMS PAYABLE AND LIABILITIES UNDER TIME CHARTER PARTY

1. Place and date of guarantee		2. Date of charter party	
3. Guarantor ( <a href="#">Cl. 1</a> )  (i) Name of Guarantor:  (ii) Address of registered office:  (iii) Country of incorporation:		4. Owners ( <a href="#">Cl. 1</a> )  (i) Name of Owners:  (ii) Address of registered office:  (iii) Country of incorporation:	
6. Vessel's name ( <a href="#">Cl. 1</a> )		7. Rate of interest per annum ( <a href="#">Cl. 2(a)</a> )	
9. Guarantors' liability period (state number of months; if left blank, twelve (12) months after redelivery shall apply) ( <a href="#">Cl. 3(c)</a> )		10. Governing law ( <a href="#">Cl. 11(a)</a> )	
		8. Maximum liability (state amount) ( <a href="#">Cl. 2(e)</a> ) (if this Box is left blank, unlimited liability shall apply)	
		11. Exclusive jurisdiction ( <a href="#">Cl. 11(b)</a> )	

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- 1 **1. Definitions**
- 2 "Charter Party" means the charter party dated as per [Box 2](#).
- 3 "Charterers" means the party stated in [Box 5](#).
- 4 "Demand" means a Demand for payment under this Guarantee made in accordance with [Clause 6](#) (Demands for Payment).
- 5
- 6 "Guarantee" means this document and is made on the date and at the place stated in [Box 1](#).
- 7 "Guarantor" means the party stated in [Box 3](#).
- 8 "Guaranteed Amount(s)" means any:
- 9 **(a)** sum or sums due from the Charterers to the Owners under or in connection with the Charter Party, including
- 10 any recoverable costs and expenses that may be incurred by the Owners in enforcing any of their rights under or in
- 11 connection with the Charter Party, whether in legal proceedings or otherwise; and
- 12 **(b)** any liability on the part of the Owners to pay the cost of bunkers, port charges, stevedoring costs or any other
- 13 costs arising during the course of the Charter Party which would properly be the responsibility of the Charterers.
- 14 "Owners" means the owners/disponent owners stated in [Box 4](#).
- 15 "Vessel" means the vessel named in [Box 6](#).
- 16 **2. Guarantee**
- 17 **(a)** In consideration of the Owners agreeing to charter the Vessel to the Charterers and accepting this Guarantee
- 18 as security for the payment by the Charterers of sums due under this Charter Party, and subject only to [Sub-clause](#)
- 19 [2\(b\)](#) below, the Guarantor hereby unconditionally and irrevocably guarantees (as primary obligor and not by way of
- 20 secondary liability only) to pay any Guaranteed Amount within ten (10) banking days (in the Guarantor's country of

21 residence) following a Demand, together with interest at the rate as stated in [Box 7](#) per annum from the due date  
22 for payment by the Charterers to the date of payment by the Guarantor.

23 (b) If within ten (10) banking days after receipt of a Demand the Guarantor receives (i) a written notice from the  
24 Charterers stating that they dispute the Owners' claim for the Guaranteed Amount and (ii) evidence that the matter  
25 has been referred to court or arbitration (as may be applicable) under the Charter Party then the Guarantor shall  
26 not be obliged to make any payment under this Guarantee until the latest of thirty (30) days after the dispute has  
27 been finally determined, whether by way of agreement, or by way of final unappealable arbitration award (including  
28 an interim or partial award) or court judgment, in each case following the exhaustion of any appeal process  
29 therefrom. The Guarantor shall immediately provide the Owners with a copy of the written notice and the evidence  
30 of referral of the matter to court or arbitration.

31 (c) The Guaranteed Amount, as may be varied by an award, judgment or agreement, shall be paid immediately  
32 following the issue of such award or judgment, or conclusion of such agreement.

33 (d) The Guarantor's undertaking in [Sub-clause \(a\)](#) above will remain effective notwithstanding that the Charterers'  
34 obligations are or become unenforceable for any reason whatsoever.

35 (e) If the parties to this Guarantee have agreed a maximum liability figure as stated in [Box 8](#) this figure shall be the  
36 maximum total liability of the Guarantor, whether one or more Guaranteed Amounts are payable, pursuant to [Sub-](#)  
37 [clause 2\(a\)](#) above.

### 38 3. Continuing Nature of Guarantee

39 (a) This Guarantee shall not be affected by any indulgence or delay allowed to the Charterers nor by any  
40 amendment to, or variation of, the Charter Party whether as to time or otherwise that may be agreed between the  
41 Owners and the Charterers nor by any circumstances that would otherwise discharge the Guarantor's liability under  
42 this guarantee.

43 (b) The Guarantor's liability under this Guarantee shall not be discharged in whole or in part or otherwise be  
44 affected in any way by reason of the bankruptcy, insolvency, liquidation, dissolution, amalgamation, reconstruction  
45 or reorganisation of the Charterers or the appointment of a receiver, administrative receiver or administrator of any  
46 of the Charterers' assets (or the equivalent of any such matters occurring in any other jurisdiction).

47 (c) The Guarantor's liability under this Guarantee shall continue until such time as all obligations of the Charterers  
48 under the Charter Party have been fully performed subject to the condition that any demand on the Guarantor  
49 under the Guarantee shall be made within the number of months stated in [Box 9](#) or, if left blank, twelve (12) months  
50 of redelivery of the Vessel to the Owners unless and to the extent that proceedings have been commenced in  
51 accordance with [Sub-clause 2\(b\)](#), in which case the Guarantee shall continue for forty-five (45) days from the date  
52 of final agreement between the Owners and the Charterers, or the publication of a final unappealable judgment or  
53 arbitration award pursuant to the Charter Party.

54 (d) The Guarantor's liability hereunder is continuing and shall not be discharged or satisfied by any one Demand.  
55 For the avoidance of doubt the Owners shall be entitled to make multiple Demands.

### 56 4. No Deduction or withholding

57 All sums payable by the Guarantor under this Guarantee shall be paid to such account as the Owners shall specify  
58 free and clear of set-off or counterclaim or any other deduction or withholdings whatsoever.

### 59 5. Owners' rights, powers and remedies

60 The Owners shall not be obliged before exercising any of the rights, powers or remedies conferred upon them  
61 under this Guarantee or by law to:

62 (a) make any demand of the Charterers;

63 (b) take any action or obtain judgment in any court against the Charterers;

64 (c) make or file any claim or proof in a winding-up, liquidation, entering into administration or dissolution of the  
65 Charterers; or

66 (d) enforce or seek to enforce any other security taken in respect of the Charter Party.

### 67 6. Demands for Payment

68 (a) All Demands under this Guarantee shall be in writing and shall include a statement of the Guaranteed Amount  
69 or other amount claimed and to what it relates. Demands shall be sent to the address for the Guarantor stated in  
70 [Box 3](#) and may be sent by any effective means including, but not limited to, facsimile, e-mail, registered or recorded  
71 mail, or by personal service.

72 (b) Any Demand sent shall be deemed to have been received:

73 (i) if posted, on the seventh (7<sup>th</sup>) day after posting;

74 (ii) if sent by facsimile or electronically, on the day of transmission; and

75 (iii) if delivered by hand, on the day of delivery.

76 And in each case proof of posting, handing in or transmission shall be sufficient for the purposes of this Clause.

77 **7. Costs, charges and expenses**

78 The Guarantor agrees that it will reimburse the Owners on demand for all costs, charges and expenses incurred by  
79 the Owners in maintaining, exercising or enforcing any of their rights or powers under the Guarantee.

80 **8. Modification**

81 Neither this Guarantee nor any terms hereof may be amended, waived, discharged or terminated other than by  
82 instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination  
83 is sought.

84 **9. Assignment and Successors**

85 The Owners shall be entitled, at their sole discretion, to transfer to any party by way of assignment all their rights  
86 under this Guarantee and this right of assignment shall extend also to any assignee or subsequent assignee. The  
87 Guarantor may not assign, charge or transfer any of its rights or obligations under this Guarantee without the prior  
88 written consent of the Owner.

89 **10. Representations and Warranties**

90 The Guarantor hereby warrants to the Owners that it has all the corporate powers, and has taken all necessary  
91 corporate, administrative or other steps (including registration of the Guarantee, where appropriate), to enable it to  
92 execute, deliver and perform this Guarantee, and that this Guarantee constitutes valid and binding obligations of  
93 the Guarantor.

94 **11. Governing Law and Jurisdiction**

95 (a) The construction, validity and performance of this Guarantee shall be governed by and construed in accordance  
96 with the law of the country stated in [Box 10](#). If [Box 10](#) is blank then English law shall apply.

97 (b) The parties irrevocably submit to the exclusive jurisdiction stated in [Box 11](#). If [Box 11](#) is left blank then the  
98 exclusive jurisdiction of the English Courts shall apply.

99 **IN WITNESS** whereof the Guarantor has executed and delivered this Guarantee as of the date set forth in [Box 1](#).

100 **SIGNED by \_\_\_\_\_**

101 Authorised Director

102 *For and on behalf of the Guarantor*

103 **SIGNED by \_\_\_\_\_**

104 Authorised Director

105 *For and on behalf of the Owners*

## Recommended Additional Clause to be added to Charter Party

It is recommended that the following clause be inserted as an additional clause in the Charter Party in respect of which the Guarantee is to be issued:

“Not later than five (5) working days after concluding this Charter Party but always prior to the delivery of the Vessel, the Charterers shall arrange for the provision of a guarantee in substantially the form of the [BIMCO Charter Party Guarantee] [with a maximum amount guaranteed of not less than to be provided by or [a guarantor reasonably acceptable to the Owner]. The provision of such a guarantee acceptable to the Owners as being in a form that is valid and enforceable shall be a condition precedent to the Owners’ obligation to perform this Charter Party and in the event that the Owners have not received the guarantee within the permitted time, the Owners shall be entitled to cancel this Charter Party.

Neither the provision of such a guarantee nor the payment of any sums by the guarantor to the Owners under the terms of the guarantee shall amount to or be construed as a waiver of, or shall otherwise prejudice, any rights that the Owners may have against the Charterers under this Charter Party.” <https://t.co/AILjTd9QfU>

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Code Name: "NYPE 93"



Recommended by:  
The Baltic and International Maritime Council (BIMCO)  
The Federation of National Associations of  
Ship Brokers and Agents (FONASBA)

# TIME CHARTER<sup>©</sup>

New York Produce Exchange Form  
Issued by the Association of Ship Brokers and Agents (U.S.A.), Inc.

November 6th, 1913 - Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946;  
Revised June 12th, 1981; September 14th 1993.

**THIS CHARTER PARTY**, made and concluded in \_\_\_\_\_ 1  
this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ 2

Between \_\_\_\_\_ 3

Owners of the Vessel described below, and \_\_\_\_\_ 4  
5

Charterers. 6  
7  
8

**Description of Vessel** 9

Name \_\_\_\_\_ Flag \_\_\_\_\_ Built \_\_\_\_\_ (year). 10

Port and number of Registry \_\_\_\_\_ 11

Classed \_\_\_\_\_ in \_\_\_\_\_ 12

Deadweight \_\_\_\_\_ long\*/metric\* tons (cargo and bunkers, including freshwater and 13

stores not exceeding \_\_\_\_\_ long\*/metric\* tons) on a salt water draft of \_\_\_\_\_ 14

on summer freeboard. 15

Capacity \_\_\_\_\_ cubic feet grain \_\_\_\_\_ cubic feet bale space. 16

Tonnage \_\_\_\_\_ GT/GRT. 17

Speed about \_\_\_\_\_ knots, fully laden, in good weather conditions up to and including maximum 18

Force \_\_\_\_\_ on the Beaufort wind scale, on a consumption of about \_\_\_\_\_ long\*/metric\* 19

tons of \_\_\_\_\_ 20

\* Delete as appropriate. 21

For further description see [Appendix "A"](#) (if applicable ) 22

**1. Duration** 23

The Owners agree to let and the Charterers agree to hire the Vessel from the time of delivery for a period 24

of \_\_\_\_\_ 25

\_\_\_\_\_ 26

\_\_\_\_\_ 27

within below mentioned trading limits. 28

**2. Delivery** 29

The Vessel shall be placed at the disposal of the Charterers at \_\_\_\_\_ 30

\_\_\_\_\_ 31

\_\_\_\_\_ 32

The Vessel on her delivery 33

shall be ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted 34

for ordinary cargo service, having water ballast and with sufficient power to operate all cargo-handling gear 35

simultaneously. 36

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The Owners shall give the Charterers not less than _____ days notice of expected date of delivery.	37 38
<b>3. <u>On-Off Hire Survey</u></b>	39
Prior to delivery and redelivery the parties shall, unless otherwise agreed, each appoint surveyors, for their respective accounts, who shall not later than at first loading port/last discharging port respectively, conduct joint on-hire/off-hire surveys, for the purpose of ascertaining quantity of bunkers on board and the condition of the Vessel. A single report shall be prepared on each occasion and signed by each surveyor, without prejudice to his right to file a separate report setting forth items upon which the surveyors cannot agree. If either party fails to have a representative attend the survey and sign the joint survey report, such party shall nevertheless be bound for all purposes by the findings in any report prepared by the other party. On-hire survey shall be on Charterers' time and off-hire survey on Owners' time.	40 41 42 43 44 45 46 47
<b>4. <u>Dangerous Cargo/Cargo Exclusions</u></b>	48
(a) The Vessel shall be employed in carrying lawful merchandise excluding any goods of a dangerous, injurious, flammable or corrosive nature unless carried in accordance with the requirements or recommendations of the competent authorities of the country of the Vessel's registry and of ports of shipment and discharge and of any intermediate countries or ports through whose waters the Vessel must pass. Without prejudice to the generality of the foregoing, in addition the following are specifically excluded: livestock of any description, arms, ammunition, explosives, nuclear and radioactive materials, _____	49 50 51 52 53 54 55 56
<b>WORKING COPY</b>	
(b) If IMO-classified cargo is agreed to be carried, the amount of such cargo shall be limited to _____ tons and the Charterers shall provide the Master with any evidence he may reasonably require to show that the cargo is packaged, labelled, loaded and stowed in accordance with IMO regulations, failing which the Master is entitled to refuse such cargo or, if already loaded, to unload it at the Charterers' risk and expense.	57 58 59 60 61 62 63 64 65 66 67 68 69
<b>5. <u>Trading Limits</u></b>	70
The Vessel shall be employed in such lawful trades between safe ports and safe places within _____  _____ excluding _____  _____ as the Charterers shall direct.	71 72 73 74 75 76
<b>6. <u>Owners to Provide</u></b>	77
The Owners shall provide and pay for the insurance of the Vessel, except as otherwise provided, and for all provisions, cabin, deck, engine-room and other necessary stores, including boiler water; shall pay for wages, consular shipping and discharging fees of the crew and charges for port services pertaining to the crew; shall maintain the Vessel's class and keep her in a thoroughly efficient state in hull, machinery and equipment for and during the service, and have a full complement of officers and crew.	78 79 80 81 82
<b>7. <u>Charterers to Provide</u></b>	83
The Charterers, while the Vessel is on hire, shall provide and pay for all the bunkers except as otherwise	84

agreed; shall pay for port charges (including compulsory watchmen and cargo watchmen and compulsory garbage disposal), all communication expenses pertaining to the Charterers' business at cost, pilotages, towages, agencies, commissions, consular charges (except those pertaining to individual crew members or flag of the Vessel), and all other usual expenses except those stated in [Clause 6](#), but when the Vessel puts into a port for causes for which the Vessel is responsible (other than by stress of weather), then all such charges incurred shall be paid by the Owners. Fumigations ordered because of illness of the crew shall be for the Owners' account. Fumigations ordered because of cargoes carried or ports visited while the Vessel is employed under this Charter Party shall be for the Charterers' account. All other fumigations shall be for the Charterers' account after the Vessel has been on charter for a continuous period of six months or more.

The Charterers shall provide and pay for necessary dunnage and also any extra fittings requisite for a special trade or unusual cargo, but the Owners shall allow them the use of any dunnage already aboard the Vessel. Prior to redelivery the Charterers shall remove their dunnage and fittings at their cost and in their time.

## 8. Performance of Voyages

(a) The Master shall perform the voyages with due despatch, and shall render all customary assistance with the Vessel's crew. The Master shall be conversant with the English language and (although appointed by the Owners) shall be under the orders and directions of the Charterers as regards employment and agency; and the Charterers shall perform all cargo handling, including but not limited to loading, stowing, trimming, lashing, securing, dunnaging, unlashng, discharging, and tallying, at their risk and expense, under the supervision of the Master.

(b) If the Charterers shall have reasonable cause to be dissatisfied with the conduct of the Master or officers, the Owners shall, on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

## 9. Bunkers

(a) The Charterers on delivery, and the Owners on redelivery, shall take over and pay for all fuel and diesel oil remaining on board the Vessel as hereunder. The Vessel shall be delivered with: \_\_\_\_\_ long\*/metric\* tons of fuel oil at the price of \_\_\_\_\_ per ton; \_\_\_\_\_ tons of diesel oil at the price of \_\_\_\_\_ per ton. The vessel shall be redelivered with: \_\_\_\_\_ tons of fuel oil at the price of \_\_\_\_\_ per ton; \_\_\_\_\_ tons of diesel oil at the price of \_\_\_\_\_ per ton.

\* Same tons apply throughout this clause.

(b) The Charterers shall supply bunkers of a quality suitable for burning in the Vessel's engines and auxiliaries and which conform to the specification(s) as set out in [Appendix A](#).

The Owners reserve their right to make a claim against the Charterers for any damage to the main engines or the auxiliaries caused by the use of unsuitable fuels or fuels not complying with the agreed specification(s). Additionally, if bunker fuels supplied do not conform with the mutually agreed specification(s) or otherwise prove unsuitable for burning in the Vessel's engines or auxiliaries, the Owners shall not be held responsible for any reduction in the Vessel's speed performance and/or increased bunker consumption, nor for any time lost and any other consequences.

## 10. Rate of Hire/Redelivery Areas and Notices

The Charterers shall pay for the use and hire of the said Vessel at the rate of \$ \_\_\_\_\_ U.S. currency, daily, or \$ \_\_\_\_\_ U.S. currency per ton on the Vessel's total deadweight carrying capacity, including bunkers and stores, on \_\_\_\_\_ summer freeboard, per 30 days, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a month; hire shall continue until the hour of the day of her redelivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless Vessel lost) at \_\_\_\_\_

	132
	133
unless otherwise mutually agreed.	134
The Charterers shall give the Owners not less than _____ days notice of the Vessel's expected date and probable port of redelivery.	135
	136
For the purpose of hire calculations, the times of delivery, redelivery or termination of charter shall be adjusted to GMT.	137
	138
<b>11. <u>Hire Payment</u></b>	139
(a) <u>Payment</u>	140
Payment of Hire shall be made so as to be received by the Owners or their designated payee in _____, viz _____	141
	142
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in _____	145
currency, or in United States Currency, in funds available to the	146
Owners on the due date, 15 days in advance, and for the last month or part of same the approximate amount of hire, and should same not cover the actual time, hire shall be paid for the balance day by day as it becomes due, if so required by the Owners. Failing the punctual and regular payment of the hire, or on any fundamental breach whatsoever of this Charter Party, the Owners shall be at liberty to withdraw the Vessel from the service of the Charterers without prejudice to any claims they (the Owners) may otherwise have on the Charterers.	147
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At any time after the expiry of the grace period provided in <a href="#">Sub-clause 11 (b)</a> hereunder and while the hire is outstanding, the Owners shall, without prejudice to the liberty to withdraw, be entitled to withhold the performance of any and all of their obligations hereunder and shall have no responsibility whatsoever for any consequences thereof, in respect of which the Charterers hereby indemnify the Owners, and hire shall continue to accrue and any extra expenses resulting from such withholding shall be for the Charterers' account.	153
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(b) <u>Grace Period</u>	159
Where there is failure to make punctual and regular payment of hire due to oversight, negligence, errors or omissions on the part of the Charterers or their bankers, the Charterers shall be given by the Owners _____ clear banking days (as recognized at the agreed place of payment) written notice to rectify the failure, and when so rectified within those _____ days following the Owners' notice, the payment shall stand as regular and punctual.	160
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	164
Failure by the Charterers to pay the hire within _____ days of their receiving the Owners' notice as provided herein, shall entitle the Owners to withdraw as set forth in <a href="#">Sub-clause 11 (a)</a> above.	165
	166
(c) <u>Last Hire Payment</u>	167
Should the Vessel be on her voyage towards port of redelivery at the time the last and/or the penultimate payment of hire is/are due, said payment(s) is/are to be made for such length of time as the Owners and the Charterers may agree upon as being the estimated time necessary to complete the voyage, and taking into account bunkers actually on board, to be taken over by the Owners and estimated disbursements for the Owners' account before redelivery. Should same not cover the actual time, hire is to be paid for the balance, day by day, as it becomes due. When the Vessel has been redelivered, any difference is to be refunded by the Owners or paid by the Charterers, as the case may be.	168
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(d) <u>Cash Advances</u>	175
Cash for the Vessel's ordinary disbursements at any port may be advanced by the Charterers, as required	176

by the Owners, subject to 2½ percent commission and such advances shall be deducted from the hire.	177
The Charterers, however, shall in no way be responsible for the application of such advances.	178
<b>12. <u>Berths</u></b>	179
The Vessel shall be loaded and discharged in any safe dock or at any safe berth or safe place that Charterers or their agents may direct, provided the Vessel can safely enter, lie and depart always afloat at any time of tide.	180 181 182
<b>13. <u>Spaces Available</u></b>	183
(a) The whole reach of the Vessel's holds, decks, and other cargo spaces (not more than she can reasonably and safely stow and carry), also accommodations for supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for the Vessel's officers, crew, tackle, apparel, furniture, provisions, stores and fuel.	184 185 186 187
(b) In the event of deck cargo being carried, the Owners are to be and are hereby indemnified by the Charterers for any loss and/or damage and/or liability of whatsoever nature caused to the Vessel as a result of the carriage of deck cargo and which would not have arisen had deck cargo not been loaded.	188 189 190
<b>14. <u>Supercargo and Meals</u></b>	191
The Charterers are entitled to appoint a supercargo, who shall accompany the Vessel at the Charterers' risk and see that voyages are performed with due despatch. He is to be furnished with free accommodation and same fare as provided for the Master's table, the Charterers paying at the rate of _____ per day. The Owners shall victual pilots and customs officers, and also, when authorized by the Charterers or their agents, shall victual tally clerks, stevedore's foreman, etc., Charterers paying at the rate of _____ per meal for all such victualling.	192 193 194 195 196 197
<b>15. <u>Sailing Orders and Logs</u></b>	198
The Charterers shall furnish the Master from time to time with all requisite instructions and sailing directions, in writing, in the English language, and the Master shall keep full and correct deck and engine logs of the voyage or voyages, which are to be patent to the Charterers or their agents, and furnish the Charterers, their agents or supercargo, when required, with a true copy of such deck and engine logs, showing the course of the Vessel, distance run and the consumption of bunkers. Any log extracts required by the Charterers shall be in the English language.	199 200 201 202 203 204
<b>16. <u>Delivery/Cancelling</u></b>	205
If required by the Charterers, time shall not commence before _____ and should the Vessel not be ready for delivery on or before _____ but not later than _____ hours, the Charterers shall have the option of cancelling this Charter Party.	206 207 208
<i><u>Extension of Cancelling</u></i>	209
If the Owners warrant that, despite the exercise of due diligence by them, the Vessel will not be ready for delivery by the cancelling date, and provided the Owners are able to state with reasonable certainty the date on which the Vessel will be ready, they may, at the earliest seven days before the Vessel is expected to sail for the port or place of delivery, require the Charterers to declare whether or not they will cancel the Charter Party. Should the Charterers elect not to cancel, or should they fail to reply within two days or by the cancelling date, whichever shall first occur, then the seventh day after the expected date of readiness for delivery as notified by the Owners shall replace the original cancelling date. Should the Vessel be further delayed, the Owners shall be entitled to require further declarations of the Charterers in accordance with this Clause.	210 211 212 213 214 215 216 217 218
<b>17. <u>Off Hire</u></b>	219

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In the event of loss of time from deficiency and/or default and/or strike of officers or crew, or deficiency of stores, fire, breakdown of, or damages to hull, machinery or equipment, grounding, detention by the arrest of the Vessel, (unless such arrest is caused by events for which the Charterers, their servants, agents or subcontractors are responsible), or detention by average accidents to the Vessel or cargo unless resulting from inherent vice, quality or defect of the cargo, drydocking for the purpose of examination or painting bottom, or by any other similar cause preventing the full working of the Vessel, the payment of hire and overtime, if any, shall cease for the time thereby lost. Should the Vessel deviate or put back during a voyage, contrary to the orders or directions of the Charterers, for any reason other than accident to the cargo or where permitted in lines 257 to 258 hereunder, the hire is to be suspended from the time of her deviating or putting back until she is again in the same or equidistant position from the destination and the voyage resumed therefrom. All bunkers used by the Vessel while off hire shall be for the Owners' account. In the event of the Vessel being driven into port or to anchorage through stress of weather, trading to shallow harbors or to rivers or ports with bars, any detention of the Vessel and/or expenses resulting from such detention shall be for the Charterers' account. If upon the voyage the speed be reduced by defect in, or breakdown of, any part of her hull, machinery or equipment, the time so lost, and the cost of any extra bunkers consumed in consequence thereof, and all extra proven expenses may be deducted from the hire.

18. **Sublet**

Unless otherwise agreed, the Charterers shall have the liberty to sublet the Vessel for all or any part of the time covered by this Charter Party, but the Charterers remain responsible for the fulfillment of this Charter Party.

19. **Drydocking**

The Vessel was last drydocked \_\_\_\_\_

\*(a) The Owners shall have the option to place the Vessel in drydock during the currency of this Charter at a convenient time and place, to be mutually agreed upon between the Owners and the Charterers, for bottom cleaning and painting and/or repair as required by class or dictated by circumstances.

\*(b) Except in case of emergency no drydocking shall take place during the currency of this Charter Party.

\* *Delete as appropriate*

20. **Total Loss**

Should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once.

21. **Exceptions**

The act of God, enemies, fire, restraint of princes, rulers and people, and all dangers and accidents of the seas, rivers, machinery, boilers, and navigation, and errors of navigation throughout this Charter, always mutually excepted.

22. **Liberties**

The Vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

23. **Liens**

The Owners shall have a lien upon all cargoes and all sub-freights and/or sub-hire for any amounts due under this Charter Party, including general average contributions, and the Charterers shall have a lien on the Vessel for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be

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returned at once.	263
The Charterers will not directly or indirectly suffer, nor permit to be continued, any lien or encumbrance, which might have priority over the title and interest of the Owners in the Vessel. The Charterers undertake that during the period of this Charter Party, they will not procure any supplies or necessaries or services, including any port expenses and bunkers, on the credit of the Owners or in the Owners' time.	264 265 266 267
<b>24. <u>Salvage</u></b>	268
All derelicts and salvage shall be for the Owners' and the Charterers' equal benefit after deducting Owners' and Charterers' expenses and crew's proportion.	269 270
<b>25. <u>General Average</u></b>	271
General average shall be adjusted according to York-Antwerp Rules 1974, as amended 1990, or any subsequent modification thereof, in _____ and settled in _____ currency.	272 273 274
The Charterers shall procure that all bills of lading issued during the currency of the Charter Party will contain a provision to the effect that general average shall be adjusted according to York -Antwerp Rules 1974, as amended 1990, or any subsequent modification thereof and will include the "New Jason Clause" as per <a href="#">Clause 31</a> .	275 276 277 278
Time charter hire shall not contribute to general average.	279
<b>26. <u>Navigation</u></b>	280
Nothing herein stated is to be construed as a demise of the Vessel to the Time Charterers. The Owners shall remain responsible for the navigation of the Vessel, acts of pilots and tug boats, insurance, crew, and all other matters, same as when trading for their own account.	281 282 283
<b>27. <u>Cargo Claims</u></b>	284
Cargo claims as between the Owners and the Charterers shall be settled in accordance with the Inter-Club New York Produce Exchange Agreement of February 1970, as amended May, 1984, or any subsequent modification or replacement thereof.	285 286 287
<b>28. <u>Cargo Gear and Lights</u></b>	288
The Owners shall maintain the cargo handling gear of the Vessel which is as follows: _____	289 290 291 292
providing gear (for all derricks or cranes) capable of lifting capacity as described. The Owners shall also provide on the Vessel for night work lights as on board, but all additional lights over those on board shall be at the Charterers' expense. The Charterers shall have the use of any gear on board the Vessel. If required by the Charterers, the Vessel shall work night and day and all cargo handling gear shall be at the Charterers' disposal during loading and discharging. In the event of disabled cargo handling gear, or insufficient power to operate the same, the Vessel is to be considered to be off hire to the extent that time is actually lost to the Charterers and the Owners to pay stevedore stand-by charges occasioned thereby, unless such disablement or insufficiency of power is caused by the Charterers' ste vedores. If required by the Charterers, the Owners shall bear the cost of hiring shore gear in lieu thereof, in which case the Vessel shall remain on hire.	293 294 295 296 297 298 299 300 301 302
<b>29. <u>Crew Overtime</u></b>	303
In lieu of any overtime payments to officers and crew for work ordered by the Charterers or their agents, the Charterers shall pay the Owners, concurrently with the hire _____ per month	304 305

or pro rata. 306

**30. Bills of Lading** 307

(a) The Master shall sign the bills of lading or waybills for cargo as presented in conformity with mates or tally clerk's receipts. However, the Charterers may sign bills of lading or waybills on behalf of the Master, with the Owner's prior written authority, always in conformity with mates or tally clerk's receipts. 308  
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(b) All bills of lading or waybills shall be without prejudice to this Charter Party and the Charterers shall indemnify the Owners against all consequences or liabilities which may arise from any inconsistency between this Charter Party and any bills of lading or waybills signed by the Charterers or by the Master at their request. 311  
312  
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(c) Bills of lading covering deck cargo shall be claused: "Shipped on deck at Charterers', Shippers' and Receivers' risk, expense and responsibility, without liability on the part of the Vessel, or her Owners for any loss, damage, expense or delay howsoever caused." 315  
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**31. Protective Clauses** 318

This Charter Party is subject to the following clauses all of which are also to be included in all bills of lading or waybills issued hereunder: 319  
320

(a) CLAUSE PARAMOUNT 321

"This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, the Hague Rules, or the Hague-Visby Rules, as applicable, or such other similar national legislation as may mandatorily apply by virtue of origin or destination of the bills of lading, which shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said applicable Act. If any term of this bill of lading be repugnant to said applicable Act to any extent, such term shall be void to that extent, but no further." 322  
323  
324  
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326  
327  
328

and 329

(b) BOTH-TO-BLAME COLLISION CLAUSE 330

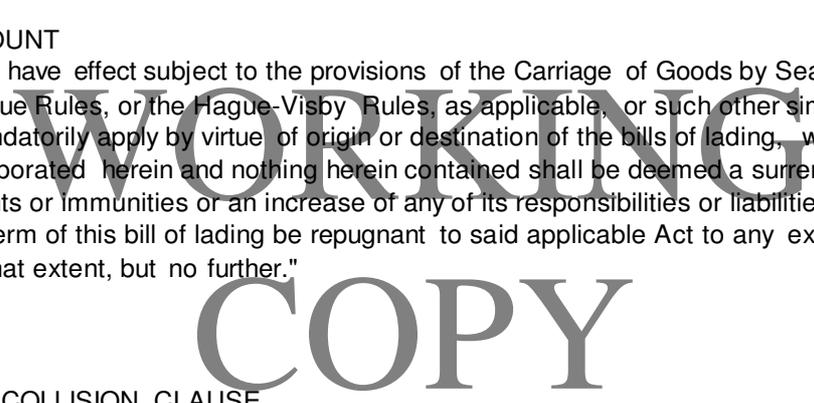
"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier. 331  
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The foregoing provisions shall also apply where the owners, operators or those in charge of any ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact." 338  
339  
340

and 341

(c) NEW JASON CLAUSE 342

"In the event of accident, danger, damage or disaster before or after the commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. 343  
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If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery." 349  
350  
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and 353

(d) U.S. TRADE -DRUG CLAUSE 354

"In pursuance of the provisions of the U.S. Anti Drug Abuse Act 1986 or any re-enactment thereof, the Charterers warrant to exercise the highest degree of care and diligence in preventing unmanifested narcotic drugs and marijuana to be loaded or concealed on board the Vessel. 355  
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Non-compliance with the provisions of this clause shall amount to breach of warranty for consequences of which the Charterers shall be liable and shall hold the Owners, the Master and the crew of the Vessel harmless and shall keep them indemnified against all claims whatsoever which may arise and be made against them individually or jointly. Furthermore, all time lost and all expenses incurred, including fines, as a result of the Charterers' breach of the provisions of this clause shall be for the Charterer's account and the Vessel shall remain on hire. 358  
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Should the Vessel be arrested as a result of the Charterers' non-compliance with the provisions of this clause, the Charterers shall at their expense take all reasonable steps to secure that within a reasonable time the Vessel is released and at their expense put up the bails to secure release of the Vessel. 364  
365  
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The Owners shall remain responsible for all time lost and all expenses incurred, including fines, in the event that unmanifested narcotic drugs and marijuana are found in the possession or effects of the Vessel's personnel." 367  
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369

and 370

(e) WAR CLAUSES 371

"(i) No contraband of war shall be shipped. The Vessel shall not be required, without the consent of the Owners, which shall not be unreasonably withheld, to enter any port or zone which is involved in a state of war, warlike operations, or hostilities, civil strife, insurrection or piracy whether there be a declaration of war or not, where the Vessel, cargo or crew might reasonably be expected to be subject to capture, seizure or arrest, or to a hostile act by a belligerent power (the term "power" meaning any de jure or de facto authority or any purported governmental organization maintaining naval, military or air forces). 372  
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(ii) If such consent is given by the Owners, the Charterers will pay the provable additional cost of insuring the Vessel against hull war risks in an amount equal to the value under her ordinary hull policy but not exceeding a valuation of \_\_\_\_\_. In addition, the Owners may purchase and the Charterers will pay for war risk insurance on ancillary risks such as loss of hire, freight disbursements, total loss, blocking and trapping, etc. If such insurance is not obtainable commercially or through a government program, the Vessel shall not be required to enter or remain at any such port or zone. 378  
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(iii) In the event of the existence of the conditions described in (i) subsequent to the date of this Charter, or while the Vessel is on hire under this Charter, the Charterers shall, in respect of voyages to any such port or zone assume the provable additional cost of wages and insurance properly incurred in connection with master, officers and crew as a consequence of such war, warlike operations or hostilities. 384  
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(iv) Any war bonus to officers and crew due to the Vessel's trading or cargo carried shall be for the Charterers' account." 388  
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**32. War Cancellation** 390

In the event of the outbreak of war (whether there be a declaration of war or not) between any two or more of the following countries: \_\_\_\_\_ 391  
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either the Owners or the Charterers may cancel this Charter Party. Whereupon, the Charterers shall redeliver the Vessel to the Owners in accordance with Clause 10; if she has cargo on board, after discharge thereof at destination, or, if debarred under this Clause from reaching or entering it, at a near open and safe port as directed by the Owners; or, if she has no cargo on board, at the port at which she then is; or, if at sea, at a near open and safe port as directed by the Owners. In all cases hire shall continue to be paid in accordance with [Clause 11](#) and except as aforesaid all other provisions of this Charter Party shall apply until redelivery. \_\_\_\_\_

### 33. BIMCO Ice Clause for Time Charter Parties

(a) The Vessel shall not be obliged to force ice but, subject to the Owners' prior approval having due regard to its size, construction and class, may follow ice-breakers.

(b) The Vessel shall not be required to enter or remain in any icebound port or area, nor any port or area where lights, lightships, markers or buoys have been or are about to be withdrawn by reason of ice, nor where on account of ice there is, in the Master's sole discretion, a risk that, in the ordinary course of events, the Vessel will not be able safely to enter and remain at the port or area or to depart after completion of loading or discharging. If, on account of ice, the Master in his sole discretion considers it unsafe to proceed to, enter or remain at the place of loading or discharging for fear of the Vessel being frozen in and/or damaged, he shall be at liberty to sail to the nearest ice-free and safe place and there await the Charterers' instructions.

(c) Any delay or deviation caused by or resulting from ice shall be for the Charterers' account and the Vessel shall remain on-hire.

(d) Any additional premiums and/or calls required by the Vessel's underwriters due to the Vessel entering or remaining in any icebound port or area, shall be for the Charterers' account.

#### Ice

~~The Vessel shall not be required to enter or remain in any icebound port or area, nor any port or area where lights or lightships have been or are about to be withdrawn by reason of ice, nor where there is risk that in the ordinary course of things the Vessel will not be able on account of ice to safely enter and remain in the port or area or to get out after having completed loading or discharging. Subject to the Owners' prior approval the Vessel is to follow ice-breakers when reasonably required with regard to her size, construction and ice class.~~

### 34. Requisition

Should the Vessel be requisitioned by the government of the Vessel's flag during the period of this Charter Party, the Vessel shall be deemed to be off hire during the period of such requisition, and any hire paid by the said government in respect of such requisition period shall be retained by the Owners. The period during which the Vessel is on requisition to the said government shall count as part of the period provided for in this Charter Party.

If the period of requisition exceeds \_\_\_\_\_ months, either party shall have the option of cancelling this Charter Party and no consequential claim may be made by either party.

### 35. Stevedore Damage

Notwithstanding anything contained herein to the contrary, the Charterers shall pay for any and all damage to the Vessel caused by stevedores provided the Master has notified the Charterers and/or their agents in writing as soon as practical but not later than 48 hours after any damage is discovered. Such notice to specify the damage in detail and to invite Charterers to appoint a surveyor to assess the extent of such damage.

(a) In case of any and all damage(s) affecting the Vessel's seaworthiness and/or the safety of the crew and/or affecting the trading capabilities of the Vessel, the Charterers shall immediately arrange for repairs of such damage(s) at their expense and the Vessel is to remain on hire until such repairs are completed and if required passed by the Vessel's classification society.

(b) Any and all damage(s) not described under point (a) above shall be repaired at the Charterers' option,

before or after redelivery concurrently with the Owners' work. In such case no hire and/or expenses will be paid to the Owners except and insofar as the time and/or the expenses required for the repairs for which the Charterers are responsible, exceed the time and/or expenses necessary to carry out the Owners' work.	429 430 431 432
<b>36. <u>Cleaning of Holds</u></b>	433
The Charterers shall provide and pay extra for sweeping and/or washing and/or cleaning of holds between Voyages and/or between cargoes provided such work can be undertaken by the crew and is permitted by local regulations, at the rate of _____ per hold.	434 435 436
In connection with any such operation, the Owners shall not be responsible if the Vessel's holds are not accepted or passed by the port or any other authority. The Charterers shall have the option to re-deliver the Vessel with unclean/unswept holds against a lumpsum payment of _____ in lieu of cleaning.	437 438 439
<b>37. <u>Taxes</u></b>	440
Charterers to pay all local, State, National taxes and/or dues assessed on the Vessel or the Owners resulting from the Charterers' orders herein, whether assessed during or after the currency of this Charter Party including any taxes and/or dues on cargo and/or freights and/or sub-freights and/or hire (excluding taxes levied by the country of the flag of the Vessel or the Owners).	441 442 443 444
<b>38. <u>Charterers' Colors</u></b>	445
The Charterers shall have the privilege of flying their own house flag and painting the Vessel with their own markings. The Vessel shall be repainted in the Owners' colors before termination of the Charter Party. Cost and time of painting, maintaining and repainting those changes effected by the Charterers shall be for the Charterers' account.	446 447 448 449
<b>39. <u>Laid Up Returns</u></b>	450
The Charterers shall have the benefit of any return insurance premium receivable by the Owners from their underwriters as and when received from underwriters by reason of the Vessel being in port for a minimum period of 30 days if on full hire for this period or pro rata for the time actually on hire.	451 452 453
<b>40. <u>Documentation</u></b>	454
The Owners shall provide any documentation relating to the Vessel that may be required to permit the Vessel to trade within the agreed trade limits, including, but not limited to certificates of financial responsibility for oil pollution, provided such oil pollution certificates are obtainable from the Owners' P & I club, valid international tonnage certificate, Suez and Panama tonnage certificates, valid certificate of registry and certificates relating to the strength and/or serviceability of the Vessel's gear.	455 456 457 458 459
<b>41. <u>Stowaways</u></b>	460
(a) (i) The Charterers warrant to exercise due care and diligence in preventing stowaways in gaining Access to the Vessel by means of secreting away in the goods and/or containers shipped by the Charterers.	461 462 463
(ii) If, despite the exercise of due care and diligence by the Charterers, stowaways have gained Access to the Vessel by means of secreting away in the goods and/or containers shipped by the Charterers, this shall amount to breach of charter for the consequences of which the Charterers shall be liable and shall hold the Owners harmless and shall keep them indemnified against all claims whatsoever which may arise and be made against them. Furthermore, all time lost and all expenses whatsoever and howsoever incurred, including fines, shall be for the Charterers' account and the Vessel shall remain on hire.	464 465 466 467 468 469 470
(iii) Should the Vessel be arrested as a result of the Charterers' breach of charter according to	471

sub-clause (a)(ii) above, the Charterers shall take all reasonable steps to secure that, within a reasonable time, the Vessel is released and at their expense put up bail to secure release of the Vessel. 472  
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(b) (i) If, despite the exercise of due care and diligence by the Owners, stowaways have gained access to the Vessel by means other than secreting away in the goods and/or containers shipped by the Charterers, all time lost and all expenses whatsoever and howsoever incurred, including fines, shall be for the Owners' account and the Vessel shall be off hire. 475  
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(ii) Should the Vessel be arrested as a result of stowaways having gained access to the Vessel by means other than secreting away in the goods and/or containers shipped by the Charterers, the Owners shall take all reasonable steps to secure that, within a reasonable time, the Vessel is released and at their expense put up bail to secure release of the Vessel. 479  
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**42. Smuggling** 483

In the event of smuggling by the Master, Officers and/or crew, the Owners shall bear the cost of any fines, taxes, or imposts levied and the Vessel shall be off hire for any time lost as a result thereof. 484  
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**43. Commissions** 486

A commission of \_\_\_\_\_ percent is payable by the Vessel and the Owners to \_\_\_\_\_ 487

on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter. 488  
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**44. Address Commission** 492

An address commission of \_\_\_\_\_ percent is payable to \_\_\_\_\_ 493

on hire earned and paid under this Charter. 494  
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**45. BIMCO Standard Dispute Resolution Clause** 497

(a) This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

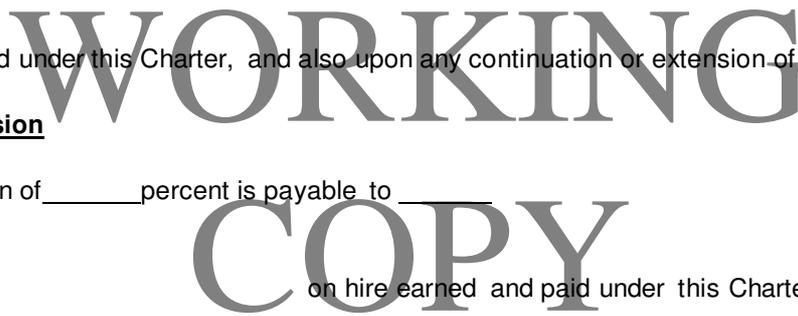
The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

In cases where the claim or any counterclaim exceeds the sum agreed for the LMAA Small Claims Procedure



and neither the claim nor any counterclaim exceeds the sum of US\$400,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure current at the time when the arbitration proceedings are commenced.

(b) This Contract shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Contract shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.

(c) This Contract shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Contract shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.

(d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract.

In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:-

(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.

(ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.

(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.

(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.

(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.

(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)

(e) If this Clause has been incorporated in to the Contract without an express choice of law and arbitration forum chosen from sub-clauses (a), (b) and (c), then sub-clause (a) of this Clause shall apply. Sub-clause (d) shall apply in all cases.

#### Arbitration

(a) ~~NEW YORK~~

~~All disputes arising out of this contract shall be arbitrated at New York in the following manner, and subject to U.S. Law:~~

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~~One Arbitrator is to be appointed by each of the parties hereto and a third by the two so chosen. Their decision or that of any two of them shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the court. The Arbitrators shall be commercial men, conversant with shipping matters. Such Arbitration is to be conducted in accordance with the rules of the Society of Maritime Arbitrators Inc.~~

~~For disputes where the total amount claimed by either party does not exceed US \$ \*\* the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators Inc.~~

~~(b) LONDON  
All disputes arising out of this contract shall be arbitrated at London and, unless the parties agree forthwith on a single Arbitrator, be referred to the final arbitrament of two Arbitrators carrying on business in London who shall be members of the Baltic Mercantile & Shipping Exchange and engaged in Shipping, One to be appointed by each of the parties, with power to such Arbitrators to appoint an Umpire. No award shall be questioned or invalidated on the ground that any of the Arbitrators is not qualified as above, unless objection to his action be taken before the award is made. Any dispute arising hereunder shall be governed by English Law.~~

~~For disputes where the total amount claimed by either party does not exceed US \$ \*\* the arbitration shall be conducted in accordance with the Small Claims Procedure of the London Maritime Arbitrators Association.~~

~~\*Delete para (a) or (b) as appropriate~~

~~\*\* Where no figure is supplied in the blank space this provision only shall be void but the other provisions of this clause shall have full force and remain in effect.~~

If mutually agreed, clauses \_\_\_\_\_ to \_\_\_\_\_, both inclusive, as attached hereto are fully incorporated in this Charter Party.

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**APPENDIX "A"**

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To Charter Party dated \_\_\_\_\_

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Between \_\_\_\_\_ Owners

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And \_\_\_\_\_ Charterers

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**Further details of the Vessel:** \_\_\_\_\_

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## LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT

(Approved and Published by the Council of Lloyd's)

### NO CURE – NO PAY

<p>1. Name of the salvage Contractors:</p>   <p>(referred to in this agreement as "the Contractors")</p>	<p>2. Property to be salvaged.</p> <p>The vessel:</p> <p>her cargo freight bunkers stores and any other property thereon but excluding the personal effects or baggage of passengers master or crew</p> <p>(referred to in this agreement as "the property")</p>
<p>3. Agreed place of safety:</p>	<p>4. Agreed currency of any arbitral award and security (if other than United States dollars)</p>
<p>5. Date of this agreement:</p>	<p>6. Place of agreement:</p>
<p>7. Is the Scopic Clause incorporated into this agreement? State alternative: Yes/No</p>	
<p>8. Person signing for and on behalf of the Contractors</p>   <p>Signature:</p>	<p>9. Captain</p> <p>or other person signing for and on behalf of the property</p>   <p>Signature:</p>

**A Contractors' basic obligation:** The Contractors identified in [Box 1](#) hereby agree to use their best endeavours to save the property specified in [Box 2](#) and to take the property to the place stated in [Box 3](#) or to such other place as may hereafter be agreed. If no place is inserted in [Box 3](#) and in the absence of any subsequent agreement as to the place where the property is to be taken the Contractors shall take the property to a place of safety.

**B Environmental protection:** While performing the salvage services the Contractors shall also use their best endeavours to prevent or minimise damage to the environment.

**C Scopic Clause:** Unless the word "No" in [Box 7](#) has been deleted this agreement shall be deemed to have been made on the basis that the Scopic Clause is not incorporated and forms no part of this agreement. If the word "No" is deleted in [Box 7](#) this shall not of itself be construed as a notice invoking the Scopic Clause within the meaning of sub-clause 2 thereof.

**D Effect of other remedies:** Subject to the provisions of the International Convention on Salvage 1989 as incorporated into English law ("the Convention") relating to special compensation and to the Scopic Clause if incorporated the Contractors' services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay" and any salvage remuneration to which the Contractors become entitled shall not be diminished by reason of the exception to the principle of "no cure - no pay" in the form of special compensation or remuneration payable to the Contractors under a Scopic Clause.

**E Prior services:** Any salvage services rendered by the Contractors to the property before and up to the date of this agreement shall be deemed to be covered by this agreement.

**F Duties of property owners:** Each of the owners of the property shall cooperate fully with the Contractors. In particular:

- (i) the Contractors may make reasonable use of the vessel's machinery gear and equipment free of expense provided that the Contractors shall not unnecessarily damage abandon or sacrifice any property on board;
- (ii) the Contractors shall be entitled to all such information as they may reasonably require relating to the vessel or the remainder of the property provided such information is relevant to the performance of the services and is capable of being provided without undue difficulty or delay;
- (iii) the owners of the property shall co-operate fully with the Contractors in obtaining entry to the place of safety stated in [Box 3](#) or agreed or determined in accordance with Clause A.

**G Rights of termination:** When there is no longer any reasonable prospect of a useful result leading to a salvage reward in accordance with Convention Articles 12 and/or 13 either the owners of the vessel or the Contractors shall be entitled to terminate the services hereunder by giving reasonable prior written notice to the other.

**H Deemed performance:** The Contractors' services shall be deemed to have been performed when the property is in a safe condition in the place of safety stated in [Box 3](#) or agreed or determined in accordance with Clause A. For the purpose of this provision the property shall be regarded as being in safe condition notwithstanding that the property (or part thereof) is damaged or in need of maintenance if (i) the Contractors are not obliged to remain in attendance to satisfy the requirements of any port or harbour authority, governmental agency or similar authority and (ii) the continuation of skilled salvage services from the Contractors or other salvors is no longer necessary to avoid the property becoming lost or significantly further damaged or delayed.

**I Arbitration and the LSSA Clauses:** The Contractors' remuneration and/or special compensation shall be determined by arbitration in London in the manner prescribed by Lloyd's Standard Salvage and Arbitration Clauses ("the LSSA Clauses") and Lloyd's Procedural Rules in force at the date of this agreement. The provisions of the said LSSA Clauses and Lloyd's Procedural Rules are deemed to be incorporated in this agreement and form an integral part hereof. Any other difference arising out of this agreement or the operations hereunder shall be referred to arbitration in the same way.

**J Governing law:** This agreement and any arbitration hereunder shall be governed by English law.

**K Scope of authority:** The Master or other person signing this agreement on behalf of the property identified in [Box 2](#) enters into this agreement as agent for the respective owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.

**L Inducements prohibited:** No person signing this agreement or any party on whose behalf it is signed shall at any time or in any manner whatsoever offer provide make give or promise to provide or demand or take any form of inducement for entering into this agreement.

#### IMPORTANT NOTICES:

- 1 Salvage security.** As soon as possible the owners of the vessel should notify the owners of other property on board that this agreement has been made. If the Contractors are successful the owners of such property should note that it will become necessary to provide the Contractors with salvage security promptly in accordance with Clause 4 of the LSSA Clauses referred to in Clause I. The provision of General Average security does not relieve the salvaged interests of their separate obligation to provide salvage security to the Contractors.
- 2 Incorporated provisions.** Copies of the Scopic Clause, the LSSA Clauses and Lloyd's Procedural Rules in force at the date of this agreement may be obtained from (i) the Contractors or (ii) the Salvage Arbitration Branch at Lloyd's, One Lime Street, London EC3M 7HA.
- 3 Awards.** The Council of Lloyd's is entitled to make available the Award, Appeal Award and Reasons on [www.lloydsagency.com](http://www.lloydsagency.com) (the website) subject to the conditions set out in Clause 12 of the LSSA Clauses.
- 4 Notification to Lloyd's.** The Contractors shall within 14 days of their engagement to render services under this agreement notify the Council of Lloyd's of their engagement and forward the signed agreement or a true copy thereof to the Council as soon as possible. The Council will not charge for such notification.

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Fax No. +44(0)20 7327 6827

E-mail: [lloyds-salvage@lloyds.com](mailto:lloyds-salvage@lloyds.com).

[www.lloydsagency.com](http://www.lloydsagency.com)

15.1.08 3.12.24 13.10.26 12.4.50 10.6.53 20.12.67

23.2.72 21.5.80 5.9.90 1.1.95 1.9.2000 9.5.2011

# MEMORANDUM OF AGREEMENT

Norwegian Shipbrokers' Association's  
Memorandum of Agreement for sale and  
purchase of ships. Adopted by BIMCO in 1956.  
Code-name  
**SALEFORM 2012**  
Revised 1966, 1983 and 1986/87, 1993 and 2012

Explanatory Notes for SALEFORM 2012 are available from BIMCO at www.bimco.org

Printed by BIMCO's idea

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Published by Norwegian Shipbrokers' Association, Oslo and BIMCO, Copenhagen

Dated: _____	1
_____ (Name of sellers), hereinafter called the "Sellers", have agreed to sell, and	2
_____ (Name of buyers), hereinafter called the "Buyers", have agreed to buy:	3
Name of vessel: _____	4
IMO Number: _____	5
Classification Society: _____	6
Class Notation: _____	7
Year of Build: _____ Builder/Yard: _____	8
Flag: _____ Place of Registration: _____ GT/NT: _____/_____	9
hereinafter called the "Vessel", on the following terms and conditions:	10
<b>Definitions</b>	11
"Banking Days" are days on which banks are open both in the country of the currency stipulated for the Purchase Price in <a href="#">Clause 1</a> (Purchase Price) and in the place of closing stipulated in <a href="#">Clause 8</a> (Documentation) and _____ (add additional jurisdictions as appropriate).	12 13 14
"Buyers' Nominated Flag State" means _____ (state flag state).	15
"Class" means the class notation referred to above.	16
"Classification Society" means the Society referred to above.	17
"Deposit" shall have the meaning given in <a href="#">Clause 2</a> (Deposit)	18
"Deposit Holder" means _____ (state name and location of Deposit Holder) or, if left blank, the Sellers' Bank, which shall hold and release the Deposit in accordance with this Agreement.	19 20
"In writing" or "written" means a letter handed over from the Sellers to the Buyers or vice versa, a registered letter, e-mail or telefax.	21 22
"Parties" means the Sellers and the Buyers.	23
"Purchase Price" means the price for the Vessel as stated in <a href="#">Clause 1</a> (Purchase Price).	24
"Sellers' Account" means _____ (state details of bank account) at the Sellers' Bank.	25
"Sellers' Bank" means _____ (state name of bank, branch and details) or, if left blank, the bank notified by the Sellers to the Buyers for receipt of the balance of the Purchase Price.	26 27
<b>1. Purchase Price</b>	28
The Purchase Price is _____ (state currency and amount both in words and figures).	29
<b>2. Deposit</b>	30
As security for the correct fulfilment of this Agreement the Buyers shall lodge a deposit of _____% (_____per cent) or, if left blank, 10% (ten per cent), of the Purchase Price (the "Deposit") in an interest bearing account for the Parties with the Deposit Holder within three (3) Banking Days after the date that:	31 32 33 34
(i) this Agreement has been signed by the Parties and exchanged in original or by e-mail or telefax; and	35 36
(ii) the Deposit Holder has confirmed in writing to the Parties that the account has been opened.	37 38
The Deposit shall be released in accordance with joint written instructions of the Parties.	39
Interest, if any, shall be credited to the Buyers. Any fee charged for holding and releasing the Deposit shall be borne equally by the Parties. The Parties shall provide to the Deposit Holder all necessary documentation to open and maintain the account without delay.	40 41 42

<b>3. Payment</b>	43
On delivery of the Vessel, but not later than three (3) Banking Days after the date that Notice of Readiness has been given in accordance with <a href="#">Clause 5</a> (Time and place of delivery and notices):	44
	45
	46
(i) the Deposit shall be released to the Sellers; and	47
(ii) the balance of the Purchase Price and all other sums payable on delivery by the Buyers to the Sellers under this Agreement shall be paid in full free of bank charges to the Sellers' Account.	48
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<b>4. Inspection</b>	51
(a)* The Buyers have inspected and accepted the Vessel's classification records. The Buyers have also inspected the Vessel at/in _____ (state place) on _____ (state date) and have accepted the Vessel following this inspection and the sale is outright and definite, subject only to the terms and conditions of this Agreement.	52
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(b)* The Buyers shall have the right to inspect the Vessel's classification records and declare whether same are accepted or not within _____ (state date/period).	56
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The Sellers shall make the Vessel available for inspection at/in _____ (state place/range) within _____ (state date/period).	58
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The Buyers shall undertake the inspection without undue delay to the Vessel. Should the Buyers cause undue delay they shall compensate the Sellers for the losses thereby incurred.	60
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The Buyers shall inspect the Vessel without opening up and without cost to the Sellers.	62
During the inspection, the Vessel's deck and engine log books shall be made available for examination by the Buyers.	63
	64
The sale shall become outright and definite, subject only to the terms and conditions of this Agreement, provided that the Sellers receive written notice of acceptance of the Vessel from the Buyers within seventy-two (72) hours after completion of such inspection or after the date/last day of the period stated in <a href="#">Line 59</a> , whichever is earlier.	65
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Should the Buyers fail to undertake the inspection as scheduled and/or notice of acceptance of the Vessel's classification records and/or of the Vessel not be received by the Sellers as aforesaid, the Deposit together with interest earned, if any, shall be released immediately to the Buyers, whereafter this Agreement shall be null and void.	69
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<i>*4(a) and 4(b) are alternatives; delete whichever is not applicable. In the absence of deletions, alternative 4(a) shall apply.</i>	73
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<b>5. Time and place of delivery and notices</b>	75
(a) The Vessel shall be delivered and taken over safely afloat at a safe and accessible berth or anchorage at/in _____ (state place/range) in the Sellers' option.	76
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Notice of Readiness shall not be tendered before: _____ (date)	78
Cancelling Date (see <a href="#">Clauses 5(c), 6 (a)(i), 6 (a) (iii) and 14</a> ): _____	79
(b) The Sellers shall keep the Buyers well informed of the Vessel's itinerary and shall provide the Buyers with twenty (20), ten (10), five (5) and three (3) days' notice of the date the Sellers intend to tender Notice of Readiness and of the intended place of delivery.	80
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When the Vessel is at the place of delivery and physically ready for delivery in accordance with this Agreement, the Sellers shall give the Buyers a written Notice of Readiness for delivery.	83
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(c) If the Sellers anticipate that, notwithstanding the exercise of due diligence by them, the Vessel will not be ready for delivery by the Cancelling Date they may notify the Buyers in writing stating the date when they anticipate that the Vessel will be ready for delivery and proposing a new Cancelling Date. Upon receipt of such notification the Buyers shall have the option of either cancelling this Agreement in accordance with <a href="#">Clause 14</a> (Sellers' Default) within three (3) Banking Days of receipt of the notice or of accepting the new date as the new Cancelling Date. If the Buyers have not declared their option within three (3) Banking Days of receipt of the Sellers' notification or if the Buyers accept the new date, the date proposed in the Sellers' notification shall be deemed to be the new Cancelling Date and shall be substituted for the Cancelling Date stipulated in <a href="#">line 79</a> .	85
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If this Agreement is maintained with the new Cancelling Date all other terms and conditions hereof including those contained in <a href="#">Clauses 5(b) and 5(d)</a> shall remain unaltered and in full	95
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force and effect.	97
(d) Cancellation, failure to cancel or acceptance of the new Cancelling Date shall be entirely without prejudice to any claim for damages the Buyers may have under <a href="#">Clause 14</a> (Sellers' Default) for the Vessel not being ready by the original Cancelling Date.	98 99 100
(e) Should the Vessel become an actual, constructive or compromised total loss before delivery the Deposit together with interest earned, if any, shall be released immediately to the Buyers whereafter this Agreement shall be null and void.	101 102 103
<b>6. Divers Inspection / Drydocking</b>	104
(a)*	105
(i) The Buyers shall have the option at their cost and expense to arrange for an underwater inspection by a diver approved by the Classification Society prior to the delivery of the Vessel. Such option shall be declared latest nine (9) days prior to the Vessel's intended date of readiness for delivery as notified by the Sellers pursuant to <a href="#">Clause 5(b)</a> of this Agreement. The Sellers shall at their cost and expense make the Vessel available for such inspection. This inspection shall be carried out without undue delay and in the presence of a Classification Society surveyor arranged for by the Sellers and paid for by the Buyers. The Buyers' representative(s) shall have the right to be present at the diver's inspection as observer(s) only without interfering with the work or decisions of the Classification Society surveyor. The extent of the inspection and the conditions under which it is performed shall be to the satisfaction of the Classification Society. If the conditions at the place of delivery are unsuitable for such inspection, the Sellers shall at their cost and expense make the Vessel available at a suitable alternative place near to the delivery port, in which event the Cancelling Date shall be extended by the additional time required for such positioning and the subsequent re-positioning. The Sellers may not tender Notice of Readiness prior to completion of the underwater inspection.	106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121
(ii) If the rudder, propeller, bottom or other underwater parts below the deepest load line are found broken, damaged or defective so as to affect the Vessel's class, then (1) unless repairs can be carried out afloat to the satisfaction of the Classification Society, the Sellers shall arrange for the Vessel to be drydocked at their expense for inspection by the Classification Society of the Vessel's underwater parts below the deepest load line, the extent of the inspection being in accordance with the Classification Society's rules (2) such defects shall be made good by the Sellers at their cost and expense to the satisfaction of the Classification Society without condition/recommendation** and (3) the Sellers shall pay for the underwater inspection and the Classification Society's attendance.	122 123 124 125 126 127 128 129 130 131
Notwithstanding anything to the contrary in this Agreement, if the Classification Society do not require the aforementioned defects to be rectified before the next class drydocking survey, the Sellers shall be entitled to deliver the Vessel with these defects against a deduction from the Purchase Price of the estimated direct cost (of labour and materials) of carrying out the repairs to the satisfaction of the Classification Society, whereafter the Buyers shall have no further rights whatsoever in respect of the defects and/or repairs. The estimated direct cost of the repairs shall be the average of quotes for the repair work obtained from two reputable independent shipyards at or in the vicinity of the port of delivery, one to be obtained by each of the Parties within two (2) Banking Days from the date of the imposition of the condition/recommendation, unless the Parties agree otherwise. Should either of the Parties fail to obtain such a quote within the stipulated time then the quote duly obtained by the other Party shall be the sole basis for the estimate of the direct repair costs. The Sellers may not tender Notice of Readiness prior to such estimate having been established.	132 133 134 135 136 137 138 139 140 141 142 143 144 145
(iii) If the Vessel is to be drydocked pursuant to <a href="#">Clause 6(a)(ii)</a> and no suitable dry-docking facilities are available at the port of delivery, the Sellers shall take the Vessel to a port where suitable drydocking facilities are available, whether within or outside the delivery range as per <a href="#">Clause 5(a)</a> . Once drydocking has taken place the Sellers shall deliver the Vessel at a port within the delivery range as per <a href="#">Clause 5(a)</a> which shall, for the purpose of this Clause, become the new port of delivery. In such event the Cancelling Date shall be extended by the additional time required for the drydocking and extra steaming, but limited to a maximum of fourteen (14) days.	146 147 148 149 150 151 152 153
(b)* The Sellers shall place the Vessel in drydock at the port of delivery for inspection by the Classification Society of the Vessel's underwater parts below the deepest load line, the extent of the inspection being in accordance with the Classification Society's rules. If the rudder, propeller, bottom or other underwater parts below the deepest load line are found broken, damaged or defective so as to affect the Vessel's class, such defects shall be made good at the	154 155 156 157 158

Sellers' cost and expense to the satisfaction of the Classification Society without condition/recommendation\*\*. In such event the Sellers are also to pay for the costs and expenses in connection with putting the Vessel in and taking her out of drydock, including the drydock dues and the Classification Society's fees. The Sellers shall also pay for these costs and expenses if parts of the tailshaft system are condemned or found defective or broken so as to affect the Vessel's class. In all other cases, the Buyers shall pay the aforesaid costs and expenses, dues and fees.

(c) If the Vessel is drydocked pursuant to Clause [6 \(a\)\(ii\)](#) or [6 \(b\)](#) above:

(i) The Classification Society may require survey of the tailshaft system, the extent of the survey being to the satisfaction of the Classification surveyor. If such survey is not required by the Classification Society, the Buyers shall have the option to require the tailshaft to be drawn and surveyed by the Classification Society, the extent of the survey being in accordance with the Classification Society's rules for tailshaft survey and consistent with the current stage of the Vessel's survey cycle. The Buyers shall declare whether they require the tailshaft to be drawn and surveyed not later than by the completion of the inspection by the Classification Society. The drawing and refitting of the tailshaft shall be arranged by the Sellers. Should any parts of the tailshaft system be condemned or found defective so as to affect the Vessel's class, those parts shall be renewed or made good at the Sellers' cost and expense to the satisfaction of Classification Society without condition/recommendation\*\*.

(ii) The costs and expenses relating to the survey of the tailshaft system shall be borne by the Buyers unless the Classification Society requires such survey to be carried out or if parts of the system are condemned or found defective or broken so as to affect the Vessel's class, in which case the Sellers shall pay these costs and expenses.

(iii) The Buyers' representative(s) shall have the right to be present in the drydock, as observer(s) only without interfering with the work or decisions of the Classification Society surveyor.

(iv) The Buyers shall have the right to have the underwater parts of the Vessel cleaned and painted at their risk, cost and expense without interfering with the Sellers' or the Classification Society surveyor's work, if any, and without affecting the Vessel's timely delivery. If, however, the Buyers' work in drydock is still in progress when the Sellers have completed the work which the Sellers are required to do, the additional docking time needed to complete the Buyers' work shall be for the Buyers' risk, cost and expense. In the event that the Buyers' work requires such additional time, the Sellers may upon completion of the Sellers' work tender Notice of Readiness for delivery whilst the Vessel is still in drydock and, notwithstanding [Clause 5\(a\)](#), the Buyers shall be obliged to take delivery in accordance with [Clause 3](#) (Payment), whether the Vessel is in drydock or not.

*\*6 (a) and 6 (b) are alternatives; delete whichever is not applicable. In the absence of deletions, alternative 6 (a) shall apply.*

*\*\*Notes or memoranda, if any, in the surveyor's report which are accepted by the Classification Society without condition/recommendation are not to be taken into account.*

## 7. Spares, bunkers and other items

The Sellers shall deliver the Vessel to the Buyers with everything belonging to her on board and on shore. All spare parts and spare equipment including spare tail-end shaft(s) and/or spare propeller(s)/propeller blade(s), if any, belonging to the Vessel at the time of inspection used or unused, whether on board or not shall become the Buyers' property, but spares on order are excluded. Forwarding charges, if any, shall be for the Buyers' account. The Sellers are not required to replace spare parts including spare tail-end shaft(s) and spare propeller(s)/propeller blade(s) which are taken out of spare and used as replacement prior to delivery, but the replaced items shall be the property of the Buyers. Unused stores and provisions shall be included in the sale and be taken over by the Buyers without extra payment.

Library and forms exclusively for use in the Sellers' vessel(s) and captain's, officers' and crew's personal belongings including the slop chest are excluded from the sale without compensation, as well as the following additional items: \_\_\_\_\_ (include list)

Items on board which are on hire or owned by third parties, listed as follows, are excluded from the sale without compensation: \_\_\_\_\_ (include list)

Items on board at the time of inspection which are on hire or owned by third parties, not listed above, shall be replaced or procured by the Sellers prior to delivery at their cost and expense.

The Buyers shall take over remaining bunkers and unused lubricating and hydraulic oils and greases in storage tanks and unopened drums and pay either:	218 219
(a) *the actual net price (excluding barging expenses) as evidenced by invoices or vouchers; or	220
(b) *the current net market price (excluding barging expenses) at the port and date of delivery of the Vessel or, if unavailable, at the nearest bunkering port,	221 222
for the quantities taken over.	223
Payment under this Clause shall be made at the same time and place and in the same currency as the Purchase Price.	224 225
"inspection" in this <a href="#">Clause 7</a> , shall mean the Buyers' inspection according to <a href="#">Clause 4(a)</a> or <a href="#">4(b)</a> (Inspection), if applicable. If the Vessel is taken over without inspection, the date of this Agreement shall be the relevant date.	226 227 228
<i>*(a) and (b) are alternatives, delete whichever is not applicable. In the absence of deletions alternative (a) shall apply.</i>	229 230
<b>8. Documentation</b>	231
The place of closing: _____	232
(a) In exchange for payment of the Purchase Price the Sellers shall provide the Buyers with the following delivery documents:	233 234
(i) Legal Bill(s) of Sale in a form recordable in the Buyers' Nominated Flag State, transferring title of the Vessel and stating that the Vessel is free from all mortgages, encumbrances and maritime liens or any other debts whatsoever, duly notarially attested and legalised or apostilled, as required by the Buyers' Nominated Flag State;	235 236 237 238
(ii) Evidence that all necessary corporate, shareholder and other action has been taken by the Sellers to authorise the execution, delivery and performance of this Agreement;	239 240
(iii) Power of Attorney of the Sellers appointing one or more representatives to act on behalf of the Sellers in the performance of this Agreement, duly notarially attested and legalised or apostilled (as appropriate);	241 242 243
(iv) Certificate or Transcript of Registry issued by the competent authorities of the flag state on the date of delivery evidencing the Sellers' ownership of the Vessel and that the Vessel is free from registered encumbrances and mortgages, to be faxed or e-mailed by such authority to the closing meeting with the original to be sent to the Buyers as soon as possible after delivery of the Vessel;	244 245 246 247 248
(v) Declaration of Class or (depending on the Classification Society) a Class Maintenance Certificate issued within three (3) Banking Days prior to delivery confirming that the Vessel is in Class free of condition/recommendation;	249 250 251
(vi) Certificate of Deletion of the Vessel from the Vessel's registry or other official evidence of deletion appropriate to the Vessel's registry at the time of delivery, or, in the event that the registry does not as a matter of practice issue such documentation immediately, a written undertaking by the Sellers to effect deletion from the Vessel's registry forthwith and provide a certificate or other official evidence of deletion to the Buyers promptly and latest within four (4) weeks after the Purchase Price has been paid and the Vessel has been delivered;	252 253 254 255 256 257 258
(vii) A copy of the Vessel's Continuous Synopsis Record certifying the date on which the Vessel ceased to be registered with the Vessel's registry, or, in the event that the registry does not as a matter of practice issue such certificate immediately, a written undertaking from the Sellers to provide the copy of this certificate promptly upon it being issued together with evidence of submission by the Sellers of a duly executed Form 2 stating the date on which the Vessel shall cease to be registered with the Vessel's registry;	259 260 261 262 263 264
(viii) Commercial Invoice for the Vessel;	265
(ix) Commercial Invoice(s) for bunkers, lubricating and hydraulic oils and greases;	266
(x) A copy of the Sellers' letter to their satellite communication provider cancelling the Vessel's communications contract which is to be sent immediately after delivery of the Vessel;	267 268 269
(xi) Any additional documents as may reasonably be required by the competent authorities of the Buyers' Nominated Flag State for the purpose of registering the Vessel, provided the Buyers notify the Sellers of any such documents as soon as possible after the date of	270 271 272

this Agreement; and	273
(xii) The Sellers' letter of confirmation that to the best of their knowledge, the Vessel is not black listed by any nation or international organisation.	274 275
(b) At the time of delivery the Buyers shall provide the Sellers with:	276
(i) Evidence that all necessary corporate, shareholder and other action has been taken by the Buyers to authorise the execution, delivery and performance of this Agreement; and	277 278
(ii) Power of Attorney of the Buyers appointing one or more representatives to act on behalf of the Buyers in the performance of this Agreement, duly notarially attested and legalised or apostilled (as appropriate).	279 280 281
(c) If any of the documents listed in Sub-clauses (a) and (b) above are not in the English language they shall be accompanied by an English translation by an authorised translator or certified by a lawyer qualified to practice in the country of the translated language.	282 283 284
(d) The Parties shall to the extent possible exchange copies, drafts or samples of the documents listed in Sub-clause (a) and Sub-clause (b) above for review and comment by the other party not later than _____ (state number of days), or if left blank, nine (9) days prior to the Vessel's intended date of readiness for delivery as notified by the Sellers pursuant to <a href="#">Clause 5(b)</a> of this Agreement.	285 286 287 288 289
(e) Concurrent with the exchange of documents in Sub-clause (a) and Sub-clause (b) above, the Sellers shall also hand to the Buyers the classification certificate(s) as well as all plans, drawings and manuals, (excluding ISM/ISPS manuals), which are on board the Vessel. Other certificates which are on board the Vessel shall also be handed over to the Buyers unless the Sellers are required to retain same, in which case the Buyers have the right to take copies.	290 291 292 293 294
(f) Other technical documentation which may be in the Sellers' possession shall promptly after delivery be forwarded to the Buyers at their expense, if they so request. The Sellers may keep the Vessel's log books but the Buyers have the right to take copies of same.	295 296 297
(g) The Parties shall sign and deliver to each other a Protocol of Delivery and Acceptance confirming the date and time of delivery of the Vessel from the Sellers to the Buyers.	298 299
<b>9. Encumbrances</b>	300
The Sellers warrant that the Vessel, at the time of delivery, is free from all charters, encumbrances, mortgages and maritime liens or any other debts whatsoever, and is not subject to Port State or other administrative detentions. The Sellers hereby undertake to indemnify the Buyers against all consequences of claims made against the Vessel which have been incurred prior to the time of delivery.	301 302 303 304 305
<b>10. Taxes, fees and expenses</b>	306
Any taxes, fees and expenses in connection with the purchase and registration in the Buyers' Nominated Flag State shall be for the Buyers' account, whereas similar charges in connection with the closing of the Sellers' register shall be for the Sellers' account.	307 308 309
<b>11. Condition on delivery</b>	310
The Vessel with everything belonging to her shall be at the Sellers' risk and expense until she is delivered to the Buyers, but subject to the terms and conditions of this Agreement she shall be delivered and taken over as she was at the time of inspection, fair wear and tear excepted.	311 312 313
However, the Vessel shall be delivered free of cargo and free of stowaways with her Class maintained without condition/recommendation*, free of average damage affecting the Vessel's class, and with her classification certificates and national certificates, as well as all other certificates the Vessel had at the time of inspection, valid and unextended without condition/recommendation* by the Classification Society or the relevant authorities at the time of delivery.	314 315 316 317 318 319
"inspection" in this <a href="#">Clause 11</a> , shall mean the Buyers' inspection according to <a href="#">Clause 4(a)</a> or <a href="#">4(b)</a> (Inspections), if applicable. If the Vessel is taken over without inspection, the date of this Agreement shall be the relevant date.	320 321 322
<i>*Notes and memoranda, if any, in the surveyor's report which are accepted by the Classification Society without condition/recommendation are not to be taken into account.</i>	323 324
<b>12. Name/markings</b>	325
Upon delivery the Buyers undertake to change the name of the Vessel and alter funnel markings.	326 327
<b>13. Buyers' default</b>	328

Should the Deposit not be lodged in accordance with <a href="#">Clause 2</a> (Deposit), the Sellers have the right to cancel this Agreement, and they shall be entitled to claim compensation for their losses and for all expenses incurred together with interest.	329 330 331
Should the Purchase Price not be paid in accordance with <a href="#">Clause 3</a> (Payment), the Sellers have the right to cancel this Agreement, in which case the Deposit together with interest earned, if any, shall be released to the Sellers. If the Deposit does not cover their loss, the Sellers shall be entitled to claim further compensation for their losses and for all expenses incurred together with interest.	332 333 334 335 336
<b>14. Sellers' default</b>	337
Should the Sellers fail to give Notice of Readiness in accordance with <a href="#">Clause 5(b)</a> or fail to be ready to validly complete a legal transfer by the Cancelling Date the Buyers shall have the option of cancelling this Agreement. If after Notice of Readiness has been given but before the Buyers have taken delivery, the Vessel ceases to be physically ready for delivery and is not made physically ready again by the Cancelling Date and new Notice of Readiness given, the Buyers shall retain their option to cancel. In the event that the Buyers elect to cancel this Agreement, the Deposit together with interest earned, if any, shall be released to them immediately.	338 339 340 341 342 343 344 345
Should the Sellers fail to give Notice of Readiness by the Cancelling Date or fail to be ready to validly complete a legal transfer as aforesaid they shall make due compensation to the Buyers for their loss and for all expenses together with interest if their failure is due to proven negligence and whether or not the Buyers cancel this Agreement.	346 347 348 349
<b>15. Buyers' representatives</b>	350
After this Agreement has been signed by the Parties and the Deposit has been lodged, the Buyers have the right to place two (2) representatives on board the Vessel at their sole risk and expense.	351 352 353
These representatives are on board for the purpose of familiarisation and in the capacity of observers only, and they shall not interfere in any respect with the operation of the Vessel. The Buyers and the Buyers' representatives shall sign the Sellers' P&I Club's standard letter of indemnity prior to their embarkation.	354 355 356 357
<b>16. Law and Arbitration</b>	358
<b>(a)</b> *This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.	359 360 361 362
The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.	363 364 365
The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both Parties as if the sole arbitrator had been appointed by agreement.	366 367 368 369 370 371 372 373 374 375
In cases where neither the claim nor any counterclaim exceeds the sum of US\$100,000 the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.	376 377 378
<b>(b)</b> *This Agreement shall be governed by and construed in accordance with Title 9 of the United States Code and the substantive law (not including the choice of law rules) of the State of New York and any dispute arising out of or in connection with this Agreement shall be referred to three (3) persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.	379 380 381 382 383 384 385 386
In cases where neither the claim nor any counterclaim exceeds the sum of US\$ 100,000 the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the	387 388

Society of Maritime Arbitrators, Inc.	389
(c) This Agreement shall be governed by and construed in accordance with the laws of _____ (state place) and any dispute arising out of or in connection with this Agreement shall be referred to arbitration at _____ (state place), subject to the procedures applicable there.	390 391 392
<i>*16(a), 16(b) and 16(c) are alternatives; delete whichever is not applicable. In the absence of deletions, alternative 16(a) shall apply.</i>	393 394
<b>17. Notices</b>	395
All notices to be provided under this Agreement shall be in writing.	396
Contact details for recipients of notices are as follows:	397
For the Buyers: _____	398
For the Sellers: _____	399
<b>18. Entire Agreement</b>	400
The written terms of this Agreement comprise the entire agreement between the Buyers and the Sellers in relation to the sale and purchase of the Vessel and supersede all previous agreements whether oral or written between the Parties in relation thereto.	401 402 403
Each of the Parties acknowledges that in entering into this Agreement it has not relied on and shall have no right or remedy in respect of any statement, representation, assurance or warranty (whether or not made negligently) other than as is expressly set out in this Agreement.	404 405 406
Any terms implied into this Agreement by any applicable statute or law are hereby excluded to the extent that such exclusion can legally be made. Nothing in this Clause shall limit or exclude any liability for fraud.	407 408 409

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COPY

For and on behalf of the Sellers

For and on behalf of the Buyers

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



**BIMCO**

**NEWBUILDCON**

STANDARD NEWBUILDING CONTRACT

**PART I**

Version 1.3

Printed by BIMCO's Idea

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1. <b>Place and date of Contract</b> (Cl.3, Cl.44(b), Cl.47)		
2. <b>Builder's name, full style address and contact details</b> (Definitions)	3. <b>Buyer's name, full style address and contact details</b> (Definitions)	
Name: Address:  Country: Phone/Fax: E-mail:  Company registration No.  <b>Additional names, addresses and contact numbers:</b>  Name: Address:  Country: Phone/Fax: E-mail:  Company registration No.	Name: Address:  Country: Phone/Fax: E-mail:  Company registration No.  <b>Additional names, addresses and contact numbers:</b>  Name: Address:  Country: Phone/Fax: E-mail:  Company registration No.	
4. <b>Vessel description/type</b> (Definitions, Cl.2(b))	<b>State vessel type:</b> (i) Dry bulk carrier: (ii) Tanker: (iii) Container vessel: (iv) Other (state type):	
<b>A. Main dimensions</b> (Cl.2(b)):  (i) LOA (m): (ii) Length between perpendiculars (m): (iii) Deadweight capacity DWT (mts): (iv) Mean draft in salt water (m):	<b>B1. Cargo capacity</b> (Cl.2(b)(v) and Cl.11):  (i) Cubic capacity: (ii) Bale capacity: (iii) Grain capacity:	<b>B2. TEU carrying capacity</b> (only if applicable) (state number of containers): (i) Total on deck a. 20'/40'/45" TEU: b. No. of reefers: (ii) Total under deck a. 20'/40'/45" TEU: b. No. of reefers: (iii) No. of TEU homogenous loaded at 14 mts.
<b>C. Main engine(s):</b> (Cl.2(b)(ii), Cl.2(b)(iv) and Cl.9)  (i) Maker/Type: (ii) Max. Continuous Rating (MCR) (kilowatts at MCR): (iii) RPM at MCR: (iv) Specific Fuel Oil Consumption at MCR: (v) Normal Continuous Rating (NCR): (vi) RPM at NCR: (vii) Type of fuel and specification (including Calorific Value (kcal/kg)):		
<b>D. Average speed</b> (Cl.2(b)(i) and Cl.8)  (i) Service speed at design draft (m): (ii) Min. number of knots: (iii) Engine output (kilowatts at MCR): (iv) Percentage of engine's max. continuous power/sea margin: (v) RPM:	<b>E. Other matters</b> (optional) (state any other technical requirements for the particular vessel type) (Cl.2(b)(vi) and Cl.12)	

<p>5. <b>Shipyard(s)</b> (if different from <a href="#">Box 2</a>) (Full style address and contact details) (Definitions)</p> <p>Name: _____ Name: _____                  Address: _____ Address: _____</p> <p>Country: _____ Country: _____                  Phone/Fax: _____ Phone/Fax: _____                  E-mail: _____ E-mail: _____</p> <p><b>Additional names, addresses and contact numbers:</b></p> <p>Name: _____ Name: _____                  Address: _____ Address: _____</p> <p>Country: _____ Country: _____                  Phone/Fax: _____ Phone/Fax: _____                  E-mail: _____ E-mail: _____</p>	
6. <b>Builder's Hull Number</b> (Definitions, <a href="#">Cl. 2(a)</a> )	7. <b>Flag State</b> (Definitions)
8. <b>Classification Society/Class Notation</b> (Definitions, <a href="#">Cl. 3</a> )	9. <b>Contract Price and Currency</b> (Definitions, <a href="#">Cl. 7</a> ) (a) Price (b) Currency
10. <b>Contractual Date of Delivery</b> (Definitions, <a href="#">Cl. 14(c)(iii)(1)</a> )	11. <b>Payment Amounts and Time Due</b> (Definitions, <a href="#">Cl. 7</a> , <a href="#">Cl. 15</a> , <a href="#">Cl. 39(c)</a> ) 1st Instalment (see <a href="#">Cl. 15(a)(i)</a> ) 2nd Instalment and time due 3rd Instalment and time due 4th Instalment and time due Final Instalment (see <a href="#">Cl. 15(a)(iv)</a> )
12. <b>Builder's Bank Account Details</b> ( <a href="#">Cl. 15(d)</a> ) Name: _____ Address: _____  Country: _____ Phone/Fax: _____ E-mail: _____ Sort code: _____ Account number: _____ Account name: _____	
13. <b>Speed Deficiency</b> ( <a href="#">Cl. 8</a> , <a href="#">Cl. 39(a)(iv)</a> ) (i) Contract Price reduction amount: (ii) Maximum amount: (state monetary limit):	
14. <b>Excessive Fuel Consumption</b> ( <a href="#">Cl. 9</a> , <a href="#">Cl. 39(a)(v)</a> ) (i) Contract Price reduction amount: (ii) Maximum amount: (state monetary limit):	15. <b>Deadweight Deficiency</b> ( <a href="#">Cl. 10</a> , <a href="#">Cl. 39(a)(vi)</a> ) (i) Deadweight tolerance: (ii) Contract Price reduction amount: (iii) Maximum amount: (state monetary limit):
16. <b>Cubic Deficiency</b> ( <a href="#">Cl. 11</a> , <a href="#">Cl. 39(a)(vii)</a> ) (i) Cubic capacity tolerance: (ii) Contract Price reduction amount: (iii) Maximum amount: (state monetary limit):	17. <b>Other Deficiencies</b> (Optional) ( <a href="#">Cl. 12</a> , <a href="#">Cl. 39(a)(viii)</a> )

<b>18. Late Delivery Compensation</b> ( <a href="#">Cl.13</a> ) (i) Amount per day: (ii) Maximum amount: (state monetary limit):		<b>19. Guarantees</b> ( <a href="#">Cl.14(a)</a> and <a href="#">(b)</a> ) (a) Buyer's guarantees (i) Number of days after signing Contract: (ii) Buyer's Instalment/Performance Guarantee: (b) Builder's guarantees (i) Number of days after signing Contract:
<b>20. Guarantee Period</b> (state number of months. If left blank 12 months shall apply) ( <a href="#">Cl.35(a)(i)</a> )	<b>21. Additional Guarantee Period</b> (state number of months) ( <a href="#">Cl.35(e)</a> )	<b>22. Suspension and Termination</b> ( <a href="#">Cl.39</a> ) (i) Running period (state number of days): (ii) Notice period (state number of days):
<b>23. Governing law and Dispute Resolution</b> ( <a href="#">Cl.41</a> and <a href="#">Cl.42</a> ) (a) Governing law <b>London</b> (b) Place of dispute resolution		<b>24. Guarantee Engineer</b> (state monthly lump sum) ( <a href="#">Cl.36(b)</a> )
<b>25. Effective Date of Contract</b> (state conditions to be fulfilled) ( <a href="#">Cl.44(a)</a> )		<b>26. State number of days within which conditions have to be satisfied</b> ( <a href="#">Cl.44(b)</a> )
<b>27. Optional additional vessels</b> (state number) ( <a href="#">Cl.46</a> )		<b>28. Optional additional vessels contract price and delivery dates</b> ( <a href="#">Cl.46</a> )
<b>29. Declaration of Options</b> (state number of months after Effective date) ( <a href="#">Cl.46</a> )		<b>30. Interest</b> (state rate of interest) ( <a href="#">Cl.18</a> , <a href="#">Cl.38(b)(ii)(2)(i)</a> , <a href="#">Cl.39(e)</a> and <a href="#">39(f)(iv)</a> )
<b>31. Buyer's Guarantor</b> (state name of bank or party as appropriate, full style address and contact details) ( <a href="#">Cl.14(a)</a> )  Name: Address:  Country: Phone/Fax: E-mail:		<b>32. Builder's Guarantor</b> (state name of bank or party as appropriate, full style address and contact details) ( <a href="#">Cl.14(b)</a> , <a href="#">Cl.27(d)(iv)(3)</a> )  Name: Address:  Country: Phone/Fax: E-mail:
<b>33. Additional Annexes</b>		<b>34. Numbers of Additional Clauses</b>

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This Contract consists of PART I including additional clauses, if any agreed and stated in [Box 34](#), and PART II as well as any Annexes agreed and attached hereto and shall be performed subject to the conditions contained herein. In the event of a conflict of conditions the provisions of PART I shall prevail over those of PART II to the extent of such conflict, but no further.

The Specification, Maker's List, Plans, and/or Drawings hereafter approved by the Buyer shall form part of this Contract, but in the event of conflict between the provisions of this Contract and the Specification, Maker's List, Plans and/or drawings, the provisions of this Contract shall prevail. In the event of inconsistency between the Specification and Maker's List, on the one hand and the Plans and/or Drawings on the other, the Specifications/Maker's List shall prevail. In the case of inconsistency between any of the Plans and/or Drawings, the later in date shall prevail.

<b>Signature</b> (Builder)	<b>Signature</b> (Buyer)
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# NEWBUILDCON - Standard Newbuilding Contract - PART II

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## NEWBUILDCON - Standard Newbuilding Contract - PART II

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### DEFINITIONS

In this Contract:

“Banking Day” means a day on which banks are open in the places stated in [Box 2](#) and [Box 3](#) and, where a remittance is in US dollars, in New York.

“Builder” means the company or companies stated in [Box 2](#), organised and existing under the laws of the country or countries stated in [Box 2](#) having their principal office at the address stated in [Box 2](#) and including their personnel. If more than one company is stated in [Box 2](#) then they shall be jointly and severally liable.

“Buyer” means the company or companies stated in [Box 3](#), organised and existing under the laws of the country or countries stated in [Box 3](#) having their principal office at the address stated in [Box 3](#) and including their personnel.

“Buyer’s Representative” means the named representative of the Buyer who may be present at the Shipyard throughout the construction of the Vessel.

“Buyer’s Supplies” means all of the items to be provided by the Buyer in accordance with the Specification at its own risk, cost and expense.

“Classification Society” means the classification society stated in [Box 8](#).

“Contract Price” means the amount stated in [Box 9](#) as may be adjusted in accordance with the terms of this Contract.

“Contract” means this BIMCO Standard Newbuilding Contract consisting of Part I including additional Clauses, if any agreed, and Part II as well as any Annexes (including the Specification and Maker’s List) and Plans and Drawings attached hereto.

“Contractual Date of Delivery” means the contractual date of delivery stated in [Box 10](#).

“Defects” means any deficiencies or defects in the design, construction, material and/or workmanship on the part of the Builder or its Sub-contractors.

“Delivery Date” means the Contractual Date of Delivery as may be adjusted in accordance with the terms of this Contract.

“Final Instalment” means the last instalment payable at delivery calculated in accordance with [Clause 15](#) (Payments).

“Flag State” means the State of the flag which the Vessel will fly when registered, as stated in [Box 7](#).

“Instalments” means the amounts payable in accordance with [Box 11](#).

“In writing” means any method of legible communication.

“Maker’s List” means the list of suppliers for equipment, machinery and services approved by the Parties and stated in Annex C.

“Parties” means the Builder and the Buyer.

“Party” means the Builder or the Buyer, as the case may be.

“Permissible Delays” means delays to the construction and/or delivery of the Vessel and which

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**NEWBUILDCON - Standard Newbuilding Contract - PART II**

v1.31	entitle the Builder to extend the Delivery Date in accordance with <a href="#">Clause 34</a> (Permissible Delays).	38 39
	“Personnel” means the employees, agents, servants, suppliers and independent contractors engaged by either Party in order to perform work or duties under this Contract for which that Party is responsible.	40 41 42
	“Plans and Drawings” means the plans and drawings attached hereto or listed and/or described in the Specification.	43 44
	“Regulatory Authorities” means the regulatory authorities whose rules and regulations must be complied with in the construction and delivery of the Vessel. Such bodies shall include the Flag State together with the other bodies listed in the Specification.	45 46 47
	“Shipyard” means the place or places stated in <a href="#">Box 5</a> where the Vessel will be assembled and/or constructed.	48 49
	“Specification” means the technical details contained in Annex B.	50
	“Sub-contractor” means any person (not being a servant or employee of the Builder) or company with whom the Builder has entered into a contract for the design, construction, manufacture or supply of any item, equipment, work or service for the Vessel.	51 52 53
	“Vessel” means the vessel described in <a href="#">Box 4</a> (including its machinery, equipment and appurtenances described in the Specification) with hull number as per <a href="#">Box 6</a> , built in accordance with this Contract.	54 55 56
	<b>INTERPRETATION</b>	57
	<b>Singular/Plural</b>	58
	In this Contract the singular includes the plural and vice versa as the context admits or requires.	59 60
	<b>Headings</b>	61
	The index and headings to the Clauses and Annexes to this Contract are for convenience only and will not affect its construction or interpretation.	62 63
	<b>Jointly and severally</b>	64
	All covenants, agreements, undertakings, indemnities, representations and warranties by more than one person are entered into, given or made by such persons jointly and severally.	65 66

**SECTION 1 – VESSEL**

<b>1. Builder’s and Buyer’s obligations</b>	67
It is mutually agreed between the Builder and the Buyer that:	68
(a) the Builder shall design, construct, test and survey, launch, equip, complete, sell and deliver the Vessel to the Buyer all in accordance with good international shipbuilding and marine engineering practice; and	69 70 71
(b) the Buyer shall purchase, take delivery of and pay for the Vessel.	72
<b>2. Description</b>	73
(a) The Vessel shall be constructed at the Shipyard and shall have the Builder’s Hull Number stated in <a href="#">Box 6</a> .	74 75
(b) The Vessel shall have the dimensions and characteristics as stated in <a href="#">Box 4</a> and the Specification. These shall be defined, measured and calculated in accordance with the Specification or, if omitted from the Specification, in accordance with the following:	76 77 78
(i) Speed – The Vessel’s average speed on a sea trial undertaken in both directions over a measured distance of one (1) nautical mile, with clean hull, in weather with wind speed and sea state not exceeding Beaufort Wind Force Scale 3 and Douglas Sea State Scale 2 respectively on a draft as stated in <a href="#">Box 4D(i)</a> , shall be at least the number of knots stated in <a href="#">Box 4D(ii)</a> . During such a sea trial the engine’s output in	79 80 81 82 83
kilowatts shall be as stated in <a href="#">Box 4D(iii)</a> corresponding to the percentage of the engine’s maximum continuous power output stated in <a href="#">Box 4D(iv)</a> at the approximate revolutions per minute stated in <a href="#">Box 4D(v)</a> .	84 85 86
(ii) Fuel Consumption - The fuel consumption of the main engine on the test bed using fuel of the type and specification stated in <a href="#">Box 4C(vii)</a> shall not exceed the number of grams per kilowatt/hour stated in <a href="#">Box 4C(iv)</a> when the engine develops the number of kilowatts with an effective calorific value of the number of kilocalories per kilogram stated in <a href="#">Box 4C(ii)</a> and <a href="#">Box 4C(vii)</a> respectively.	87 88 89 90 91
(iii) Deadweight - The Vessel’s deadweight shall be the number of metric tons stated in <a href="#">Box 4A(iii)</a> on international summer freeboard, corresponding to a mean draft in saltwater (specific gravity 1.025) as stated in <a href="#">Box 4A(iv)</a> . The specified deadweight shall include fuel, provisions, stores, freshwater, crew and passengers in addition to spare parts not less than the requirements of the Classification Society.	92 93 94 95 96
(iv) Propulsion - The Vessel’s propulsion machinery shall be of the type and with maximum continuous power in kilowatts at the number of revolutions per minute as stated in <a href="#">Box 4C(i)</a> , <a href="#">4C(ii)</a> and <a href="#">4C(iii)</a> .	97 98 99
(v) Cargo Capacity – The Vessel’s cargo capacity shall be the capacities stated in <a href="#">Box 4B1</a> and <a href="#">4B2</a> .	100 101
(vi) Other matters – The Vessel shall meet the technical requirements stated in <a href="#">Box 4E</a> .	102 103
<b>3. Classification, Rules and Regulations</b>	104
(a) The Vessel shall be designed, constructed, surveyed, tested and delivered in compliance with the applicable laws, rules, regulations and requirements of the	105 106

## NEWBUILDCON - Standard Newbuilding Contract - PART II

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Classification Society stated in <a href="#">Box 8</a> , and the Regulatory Authorities:	107
(i) in force as of the date of this Contract stated in <a href="#">Box 1</a> , or	108
(ii) if not in force as of the date of this Contract, which are ratified and promulgated on or before the date of this Contract and which will be compulsory for the Vessel on or before the delivery of the Vessel in accordance with <a href="#">Clause 28</a> (Delivery).	109 110 111
All such laws, rules, regulations and requirements of the Classification Society and the Regulatory Authorities shall be complied with without qualification (see <a href="#">Clause 26</a> (Changes in Rules and Regulations)).	112 113 114
(b) The final decisions of the Classification Society or Regulatory Authorities shall be binding on the Parties as to the Vessel's compliance with their respective applicable laws, rules, regulations and requirements.	115 116 117
(c) All costs, fees and charges incidental to and in respect of compliance with the applicable laws, rules, regulations and requirements of the Classification Society or Regulatory Authorities referred to above shall be for the Builder's cost and expense.	118 119 120
<b>4. IMO Hazardous Materials Inventory</b>	121
The Builder shall, in accordance with the IMO Guidelines on Ship Recycling, Resolution A.962 (23), with amendments in force as of the date of this Contract:	122 123
(a) Endeavour to take due account of the Vessel's ultimate disposal when designing and constructing the Vessel by:	124 125
(i) using materials which can be recycled safely and in an environmentally sound manner; and	126 127
(ii) by minimising the use of materials known to be potentially hazardous to health and the environment.	128 129
(b) Inconsultation with equipment manufacturers provide the Buyer with a Green Passport Statement of Compliance issued by the Classification Society containing information including the Vessel's hull number and main particulars and listing any and all materials known to be potentially hazardous utilised in the construction of the Vessel, its equipment and systems.	130 131 132 133 134
The list of the materials known to be potentially hazardous shall contain the location and the approximate quantity/volume of each identified material on board the Vessel.	135 136
<b>5. Protective Coatings</b>	137
The Vessel's double-side skin spaces and dedicated seawater ballast tanks shall be coated in accordance with the Specification. In any event the minimum coating standard shall be in accordance with the requirements of the IMO Performance Standard for Protective Coatings for dedicated seawater ballast tanks in all types of ships and double-side skin spaces of bulk carriers (IMO PSPC, Resolution MSC. 215(82)) and, where applicable, in accordance with the IACS Common Structural Rules for Bulk Carriers and for Oil Tankers or subsequent modifications or replacement applicable in accordance with <a href="#">Clause 3(a)</a> (Classification, Rules and Regulations).	138 139 140 141 142 143 144 145
<b>6. Source of Origin</b>	146
If so requested by the Buyer, the Builder shall identify the country of origin of all the main	147

components listed in the Maker's List and Specification.

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**SECTION 2 – FINANCIAL**

<b>7. Contract Price</b>	149
The Contract Price shall be the amount stated in <a href="#">Box 9(a)</a> as may be adjusted in accordance with the terms of this Contract.	150 151
The Contract Price and any other payments to be made to the Builder pursuant to this Contract shall be paid in the currency stated in <a href="#">Box 9(b)</a> and in accordance with the payment terms stated in <a href="#">Box 11</a> and <a href="#">Clause 15</a> (Payments).	152 153 154
<b>8. Speed Deficiency</b>	155
If the speed of the Vessel as stated in <a href="#">Box 4D(ii)</a> is not achieved in the manner stated in the Specification or <a href="#">Clause 2(b)(i)</a> the following shall apply:	156 157
<b>(a)</b> There shall be no adjustment of the Contract Price except to the extent provided in Sub-clause 8(b).	158 159
<b>(b)</b> If the reduction in speed is greater than 2/10ths of a knot, the Contract Price shall be reduced by the amount stated in <a href="#">Box 13(i)</a> for each whole 1/10th of a knot reduction in speed in excess of 2/10ths of a knot as liquidated damages up to the maximum amount stated in <a href="#">Box 13(ii)</a> .	160 161 162 163
<b>(c)</b> If the reduction in speed would entitle the Buyer to a reduction in the Contract Price greater than the maximum amount stated in <a href="#">Box 13(ii)</a> , the Buyer shall have the option to terminate this Contract in accordance with <a href="#">Clause 39(a)(iv)</a> (Suspension and Termination).	164 165 166 167
<b>9. Excessive Fuel Consumption</b>	168
If the fuel consumption of the Vessel's main engine on the test bed using the fuel specified in <a href="#">Box 4C(vii)</a> exceeds the figure stated in <a href="#">Box 4C(iv)</a> the following shall apply:	169 170
<b>(a)</b> There shall be no adjustment of the Contract Price except to the extent provided in Sub-clause 9(b).	171 172
<b>(b)</b> If the excess fuel consumption is greater than 2% (two percent) of the specified fuel consumption the Contract Price shall be reduced by the amount stated in <a href="#">Box 14(i)</a> for each whole percentage in excess of 2% as liquidated damages up to a maximum amount as stated in <a href="#">Box 14(ii)</a> .	173 174 175 176
<b>(c)</b> If the excess fuel consumption would entitle the Buyer to a reduction in the Contract Price greater than the maximum amount stated in <a href="#">Box 14(ii)</a> , the Buyer shall have the option to:	177 178 179
(i) accept the main engine at a reduction in the Contract Price corresponding to the maximum amount stated in <a href="#">Box 14(ii)</a> or	180 181
(ii) reject the main engine and either	182
(1) require the Builder to rectify the deficiency and repeat the trial or replace the main engine with one that conforms to the requirements of the Contract. (The time taken to rectify the deficiency and repeat the trial or replace the main engine in accordance with this Sub-Clause shall not be a Permissible Delay) or	183 184 185 186
(2) terminate this Contract forthwith in accordance with <a href="#">Clause 39(a)(v)</a> (Suspension	187

and Termination).	188
<b>10. Deadweight Deficiency</b>	189
If the actual deadweight of the Vessel determined in accordance with the Specification is less than the deadweight stated in <a href="#">Box 4A(iii)</a> the following shall apply:	190 191
(a) There shall be no adjustment of the Contract Price except to the extent provided in Sub-clause 10(b)	192 193
(b) If the reduction in deadweight is greater than the number of metric tonnes stated in <a href="#">Box 15(i)</a> then for each whole metric tonne in excess of the figure in <a href="#">Box 15(i)</a> below the deadweight stated in <a href="#">Box 4A(iii)</a> the Contract Price shall be reduced by the amount stated in <a href="#">Box 15(ii)</a> as liquidated damages up to a maximum amount as stated in <a href="#">Box 15(iii)</a> .	194 195 196 197
(c) If the reduction in deadweight would entitle the Buyer to a reduction in the Contract Price greater than the maximum amount stated in <a href="#">Box 15(iii)</a> the Buyer shall have the option to terminate this Contract in accordance with <a href="#">Clause 39(a)(vi)</a> (Suspension and Termination).	198 199 200 201
<b>11. Cubic Capacity Deficiency</b>	202
If the actual cubic capacity of the Vessel determined in accordance with the Specification is less than the cubic capacity specified in <a href="#">Box 4B1(i)</a> the following shall apply:	203 204
(a) There shall be no adjustment of the Contract Price except to the extent provided in Sub-clause 11(b)	205 206
(b) If the reduction in cubic capacity is greater than the number of cubic metres stated in <a href="#">Box 16(i)</a> then for each full cubic metre in excess of the figure in <a href="#">Box 16(i)</a> below the cubic capacity stated in <a href="#">Box 4B1(i)</a> the Contract Price shall be reduced by the amount stated in <a href="#">Box 16(ii)</a> as liquidated damages up to a maximum amount as stated in <a href="#">Box 16(iii)</a> .	207 208 209 210
(c) If the reduction in cubic capacity would entitle the Buyer to a reduction in the Contract Price greater than the maximum amount stated in <a href="#">Box 16(iii)</a> the Buyer shall have the option to terminate this Contract in accordance with <a href="#">Clause 39(a)(vii)</a> (Suspension and Termination).	211 212 213 214
<b>12. Other Deficiencies (optional Clause)</b>	215
<i>NOTE: This Clause has been left blank intentionally to allow the parties to insert, where appropriate, a liquidated damages provision covering deficiencies in any special technical requirements for a particular vessel type and specified by the parties in <a href="#">Box 4E</a> and <a href="#">Box 17</a>. (See also <a href="#">Clause 39(a)(viii)</a>).</i>	216 217 218 219
<b>13. Late Delivery for non-permissible delays</b>	220
If delivery takes place more than 30 days after the Delivery Date then for each day thereafter the Contract Price shall be reduced by the amount stated in <a href="#">Box 18</a> per day as liquidated damages up to a maximum delay of 180 days (comprising a 30 day grace period plus 150 days).	221 222 223 224
If the delay exceeds 180 days the Buyer shall have the option to terminate this Contract in accordance with <a href="#">Clause 39(a)(iii)</a> (Suspension and Termination).	225 226
<b>14. Guarantees</b>	227
(a) Buyer's Instalment/Performance Guarantee	228
To secure the Buyer's obligation to pay the instalments of the Contract Price prior to delivery the Buyer shall, within the number of days stated in <a href="#">Box 19(a)(i)</a> after the signing	229 230

**NEWBUILDCON - Standard Newbuilding Contract - PART II**

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of this Contract, deliver to the Builder an irrevocable and unconditional guarantee issued	231
by the bank or party stated in <a href="#">Box 31</a> substantially in the form and substance set out in Annexes A(i) (Instalments) or A(ii) (Performance) as stated in <a href="#">Box 19(a)(ii)</a> , failing which the Builder shall have the option to terminate this Contract in accordance with <a href="#">Clause 39(b)(iv)</a> (Suspension and Termination).	232 233 234 235
<b>(b) Builder's Refund Guarantee</b>	236
To secure the Builder's obligation to refund the Buyer's pre-delivery instalments pursuant to this Contract the Builder shall, within the number of days stated in <a href="#">Box 19(b)(i)</a> after the signing of this Contract and before the date for payment of the first instalment in accordance with <a href="#">Clause 15(a)(i)</a> (Payments – Instalments), provide the Buyer with a Refund Guarantee issued by the bank or party named in <a href="#">Box 32</a> substantially in the form and substance set out in ANNEX A(iii)(Refund Guarantee), failing which the Buyer shall have the option to terminate this Contract in accordance with <a href="#">Clause 39(a)(ix)</a> (Suspension and Termination).	237 238 239 240 241 242 243 244
<b>(c) Guarantee Compliance and Expiry</b>	245
The Parties shall ensure that any guarantee issued on their behalf shall:	246
(i) comply with the laws, regulations, constitution and procedures of the guarantor and its country of issue, including but not limited to, its registration with any necessary authorities; and	247 248 249
(ii) on expiry be returned to the guarantor; and	250
(iii) in the case of the Refund Guarantee ( <a href="#">sub-Clause 14(b)</a> ), remain in force until either	251
(1) a date at least 300 days after the Contractual Date of Delivery stated in <a href="#">Box 10</a> or 30 days after the final resolution of any dispute under <a href="#">Clause 42</a> (Dispute Resolution), whichever is the later; or	252 253 254
(2) delivery of the Vessel to, and acceptance of the Vessel by, the Buyer whichever is the sooner.	255 256
<b>15. Payments</b>	257
<b>(a) Instalments</b>	258
The Contract Price shall be paid by the Buyer to the Builder by Instalments, when due and payable in accordance with <a href="#">Box 11</a> and this Clause, the pre-delivery Instalments being paid as advances and not deposits as follows:	259 260 261
(i) Unless otherwise stated in <a href="#">Box 11</a> the first Instalment shall be due and payable by the Buyer five (5) Banking Days after the Refund Guarantee has been provided in accordance with <a href="#">Clause 14(b)</a> (Builder's Refund Guarantee).	262 263 264
(ii) The Builder shall give the Buyer invoices for each Instalment under this Contract. With the exception of the first and Final Instalment the Builder shall give the Buyer an invoice to cover the sum due to it not less than ten (10) Banking Days prior to the due date of each Instalment.	265 266 267 268
(iii) All Instalments other than the first and Final Instalment shall be payable within four (4) Banking Days of the due date thereof.	269 270
(iv) The Final Instalment shall be due and payable upon delivery of the Vessel in	271

**NEWBUILDCON - Standard Newbuilding Contract - PART II**

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accordance with <a href="#">Box 11</a> and <a href="#">Clause 28</a> (Delivery).	272
<b>(b) Payment for Modifications and other items</b>	273
(i) The sums due or refundable as a result of modifications and changes, and changes in Rules and Regulations under <a href="#">Clause 24</a> (Modifications and Changes) and <a href="#">Clause 26</a> (Changes in Rules and Regulations) shall be added to or deducted from the Final Instalment.	274 275 276 277
(ii) All expenses payable in accordance with <a href="#">Clause 27(c)(iii)</a> (Conduct of the Sea Trial) and <a href="#">Clause 22(b)</a> shall be paid together with the Final Instalment.	278 279
(iii) Sums due for other items shall be paid within fifteen (15) Banking Days after receipt by the Buyer of the Builder's invoice.	280 281
<b>(c) Payment of Liquidated Damages</b>	282
Any amounts for liquidated damages under <a href="#">Clause 8</a> (Speed Deficiency), <a href="#">Clause 9</a> (Excessive Fuel Consumption), <a href="#">Clause 10</a> (Deadweight Deficiency), <a href="#">Clause 11</a> (Cubic Capacity Deficiency), <a href="#">Clause 12</a> (Other Deficiencies) and <a href="#">Clause 13</a> (Late Delivery for non-permissible delays) shall be calculated and determined before delivery and may be deducted from the Final Instalment.	283 284 285 286 287
<b>(d) Payment Procedures</b>	288
(i) If the date on which any payment is due in accordance with the provisions of this Contract does not fall on a Banking Day, payment shall be made on the next Banking Day.	289 290 291
(ii) Payment of sums due in accordance with the provisions of this Contract shall be made, in the case of payments to the Builder, by electronic transfer to the Builder's account stipulated in <a href="#">Box 12</a> and, in the case of payments to the Buyer by electronic transfer to such bank as the Buyer by notice to the Builder nominates to receive payments on its behalf.	292 293 294 295 296
(iii) The cost of remitting payments shall be for the account of the payer.	297
(iv) Payments by either Party to the other under this Contract, and their receipt, shall not be deemed a waiver of any right or claim either Party may have against the other.	298 299
(v) In the event of late payment of Instalments by the Buyer, the Builder shall have the right to suspend work under this Contract in accordance with <a href="#">Clause 39(c)</a> (Suspension of Work).	300 301 302
<b>16. Taxes, duties, stamps, dues and fees</b>	303
<b>(a)</b> The Builder shall bear and pay all taxes, duties, stamps, dues and fees imposed in the place stated in <a href="#">Box 2</a> in connection with the execution and/or performance of this Contract, excluding any taxes, duties, stamps, dues and fees imposed in the place stated in <a href="#">Box 2</a> upon the Buyer's Supplies which shall be for the Buyer's cost and expense.	304 305 306 307
<b>(b)</b> The Buyer shall bear and pay all taxes, duties, stamps, dues and fees imposed outside the place stated in <a href="#">Box 2</a> in connection with the execution and/or performance of this Contract, except for taxes, duties, stamps, dues and fees imposed upon those items and services procured by the Builder for construction of the Vessel.	308 309 310 311
<b>(c)</b> If either Party pays any taxes, duties, stamps, dues and fees for which the other Party is responsible under this Clause, the other Party shall reimburse the paying Party within fifteen (15) Banking Days of receipt of notice to that effect, together with evidence of the	312 313 314

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amount paid. 315

**17. Right to set-off** 316

The Buyer shall not have the right to retain or set-off any amount against any payment due to the Builder under this Contract except in relation to the Final Instalment as specifically provided in this Contract (see [Clause 15](#) (Payments) and [Clause 30](#) (Final Instalment)). 317  
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**18. Interest** 321

If either Party fails to pay any sum due in accordance with the terms of this Contract, the other Party shall have the right to charge interest from the due date at the rate stated in [Box 30](#) on such outstanding sums (see also [Clause 39](#) (Suspension and Termination)). 322  
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**SECTION 3 – PRODUCTION**

<b>19. Sub-contracting</b>	325
The Builder shall employ the Sub-contractors as set out in the Specification or Maker's list. Except for minor work, the Builder shall not employ other sub-contractors without the Buyer's approval, which shall not be unreasonably withheld.	326 327 328
Notwithstanding any sub-contracting, the Builder shall remain fully responsible for the due performance of such work as if undertaken by the Builder at the Shipyard.	329 330
<b>20.Approvals</b>	331
The times and numbers specified in this Clause shall apply unless otherwise stated in the Specification.	332 333
<b>(a)</b> As soon as possible and not later than sixty (60) running days after the effective date of the Contract (see <a href="#">Clause 44</a> (Effective date of Contract)) the Builder shall provide the Buyer with proposed detailed building and testing schedules. The Buyer shall comment on the schedules as soon as possible and at the latest within fourteen (14) running days after receipt of the proposals. The Builder shall thereafter prepare and issue in writing amended building and testing schedules incorporating the Buyer's comments within fourteen (14) running days thereafter.	334 335 336 337 338 339 340
<b>(b)</b> The Builder shall despatch to the Buyer a total of three (3) full sets of the Plans and Drawings for the Buyer's approval and shall also submit such other technical information as the Buyer may reasonably require, not less than thirty (30) running days before any construction works commence. The Builder shall give notice to the Buyer advising the date of despatch of the Plans and Drawings and the Buyer shall give notice to the Builder confirming receipt thereof. The Buyer shall within fourteen (14) running days of receipt send to the Builder one (1) set of the Plans and Drawings with the Buyer's approval or approval with comments, amendments or reservations.	341 342 343 344 345 346 347 348
In the event that the Buyer needs additional time to consider the Plans and Drawings submitted pursuant to this Clause, it shall request the same in writing of the Builder whose agreement shall not be unreasonably withheld. In the event that the Buyer's comments, amendments or reservations are unclear, unspecified or illegible, the Builder may give notice requesting clarification. If the Buyer fails to respond to the request to provide clarification within five (5) running days of receipt of the Builder's notice, the Builder shall determine whether and to what extent it can adopt the comments, amendments or reservations.	349 350 351 352 353 354 355 356
If requested by the Buyer in writing, the Plans and Drawings shall also be sent in an agreed electronic format.	357 358
<b>(c)</b> The Builder shall take due note of the Buyer's comments, amendments or reservations (if any) on Plans and Drawings submitted pursuant to this Clause and, if such comments, amendments or reservations are not of such a nature or extent as to constitute a modification or change of the Specification within the meaning of <a href="#">Clause 24</a> (Modifications and Changes), then the Builder shall commence or continue construction of the Vessel in accordance with the corrected or amended Plans and Drawings.	359 360 361 362 363 364
<b>(d)</b> If the Builder considers the comments, amendments or reservations to the Plans and Drawings are of a nature or extent that constitutes a modification or change under <a href="#">Clause 24</a> (Modifications and Changes), the Builder shall notify the Buyer accordingly and proceed in accordance with <a href="#">Clause 24</a> (Modifications and Changes). If the Buyer disagrees the matter shall be resolved in accordance with <a href="#">Clause 24(e)</a> .	365 366 367 368 369

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(e) In the event that the Buyer fails to return any Plans and Drawings to the Builder with approval or approval with comments, amendments or reservations, if any, within the time limit stated above, such Plans and Drawings shall be deemed to have been approved by the Buyer. 370  
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(f) The Buyer's approval or deemed approval of any Plans and Drawings shall not affect the obligations of the Builder to design, construct and deliver, or the obligations of the Buyer to take delivery of, and pay for, the Vessel in accordance with the other provisions of this Contract; nor shall it diminish the Builder's responsibility in respect of its obligations under this Contract nor shall it constitute any acceptance by the Buyer of any responsibility for any defect in the Vessel. 374  
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(g) The Builder shall give the Buyer, as soon as practicable, copies of all relevant correspondence relating to the Vessel to and from the Classification Society and the Regulatory Authorities, together with all plans approved by the Classification Society. 380  
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### 21. Buyer's Supplies 383

(a) Buyer 384

(i) The Buyer shall, at its own risk, cost and expense, supply and deliver to the Builder all of the Buyer's Supplies. Such items shall be delivered at a warehouse or other storage facility at the Shipyard or as otherwise directed by the Builder in a proper condition ready for installation by the Builder or Sub-contractor in or on the Vessel (hereinafter "Installation"), in accordance with the building and testing schedules in [Clause 20\(a\)](#) (Approvals) or as may reasonably be required by the Builder. 385  
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(ii) To assist Installation, the Buyer shall provide the Builder with the necessary documentation including specifications, plans, drawings, instruction books, manuals, test reports and certificates required to comply with all applicable rules and regulations. If so requested by the Builder, the Buyer shall, if reasonably possible and at no cost to the Builder, arrange for the representatives of the manufacturers of the Buyer's Supplies to assist the Builder in Installation and/or to carry out the Installation of the Buyer's Supplies by themselves or to make necessary adjustments at the Shipyard in accordance with the manufacturer's instructions, including commissioning. 391  
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(iii) The Builder may reject any and all of the Buyer's Supplies when and if found on reasonable grounds to be unsuitable or in improper condition for Installation or not in compliance with the Classification Society or Regulatory Authorities' requirements. 399  
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(iv) If delay in delivery of any of the Buyer's Supplies in accordance with [Sub-Clause \(a\) \(i\)](#) exceeds thirty (30) days and will cause actual delay to the delivery of the Vessel, the Builder shall have the right to proceed with the construction of the Vessel without Installation of the delayed items. The Buyer shall accept and take delivery of the Vessel so constructed. 402  
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(b) Builder 407

(i) The Builder shall safely store and handle the Buyer's Supplies after delivery thereof at a warehouse or other storage facility at the Shipyard or elsewhere as determined by the Builder and shall, at its own cost, expense and responsibility, install them in or on the Vessel in accordance with the Specification, provided that the Builder shall not be responsible for the quality, efficiency and/or performance of any of the Buyer's Supplies. 408  
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(ii) The Buyer's Supplies shall be at all times the property of the Buyer but shall be at the Builder's risk from the time of their delivery to the Shipyard until the time of their 414  
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redelivery to the Buyer whether or not as part of the Vessel. 416

**22. Buyer's Representative, Assistants, Officers and Crew 417**

(a) The Buyer may, at its own cost and expense, have one representative present at the Shipyard throughout the construction together with a reasonable number of assistants and, as appropriate, officers and crew. The Buyer shall notify the Builder in advance in writing of: 418  
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(i) the names of the Buyer's Representative, assistants and, as appropriate, officers and crew; and 422  
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(ii) the scope of the Buyer's Representative's authority which, in particular, shall include the extent to which the Buyer's Representative has authority to approve plans, drawings and calculations, agree modifications and invoices and attendance at and approval of tests, trials and inspections relating to the Vessel at the Shipyard and/or premises of Sub-contractors; and 424  
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(iii) any other information reasonably required by the Builder to facilitate access to the Shipyard and/or premises of Sub-contractors. 429  
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(b) The Builder shall, at its own cost and expense, provide the Buyer's Representative and assistants with reasonable office accommodation and facilities (including communication equipment, such as telephone, fax and appropriate internet access, and printers or a connection to the Builder's printers) as the Buyer may reasonably require. The Buyer shall bear the costs of all communication expenses arising from the use by the Buyer's Representative and assistants of the communications equipment provided by the Builder. Such expenses shall be payable by the Buyer on receipt of an invoice from the Builder in accordance with [Clause 15\(b\)](#) (Payments - Payment for Modifications and other items). 431  
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(c) The Builder shall have the right to request the Buyer to replace the Buyer's Representative or any assistants but only if the Builder shows that they are carrying out their duties in an unreasonable manner detrimental to the proper progress of the construction of the Vessel, in which case the Buyer shall make proper replacement as soon as possible. 440  
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(d) The Buyer's Representative shall have the right to communicate directly with the Classification Society, provided such communication does not unreasonably interfere with the Builder's communication with the Classification Society. 445  
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(e) The Builder shall render reasonable assistance to the Buyer in helping to provide suitable accommodation, obtain necessary visas, residence and work permits and any other administrative assistance as the case may be for the Buyer's Representative, assistants and, as appropriate, officers and crew. 448  
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**23. Inspections, Tests and Trials 452**

(a) To enable the Buyer's Representative and assistants to carry out their duties and inspect the work being done, the Buyer's Representative and/or assistants shall have the right to inspect the Vessel throughout the period of the construction of the Vessel and until its delivery and acceptance. 453  
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(b) The Buyer's Representative and/or assistants shall have the right to attend all tests, trials and inspections, including those supervised by the Classification Society and Regulatory Authorities, on any parts of the Vessel whether or not installed. The Builder shall give the Buyer reasonable notice in advance of all such tests, trials and inspections to enable the 457  
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Buyer's Representative and/or assistants to attend. If the Buyer's Representative and/or assistants becomes aware of non-conformity of any aspect of the design, construction, material or workmanship arising out of such tests, trials and inspections he/they shall notify the Builder as soon as possible.

(c) For the purposes of attending such inspections, tests and trials the Builder shall, at any time during working hours or at any other time when work is being performed, provide the Buyer's Representative and/or assistants with unimpeded access to the Shipyard, Vessel, workshops, and anywhere else where work on or storage of items connected with the construction of the Vessel is being performed. The Builder shall use its best efforts to arrange similar access for inspection purposes to Sub-contractor's premises during working hours or at any time when work is being performed.

(d) Neither the Buyer's Representative's and/or assistants' inspection and/or attendance at any inspection, test or trial, nor the Buyer's Representative's and/or assistants' failure to notify the Builder of any non-conformity shall relieve the Builder from its obligations under this Contract or be deemed to be or construed as a waiver of any objection to, or any acceptance of, faulty design, construction, material and/or workmanship, or any admission that any materials or workmanship are of the standard required for due performance of this Contract.

**24. Modifications and Changes**

(a) The Buyer shall have the right at any time to request reasonable modifications or changes in the Specification and/or Plans and Drawings. The Buyer shall request such modifications and/or changes in writing, giving sufficient particulars, documentation and details fully to describe the modifications and/or changes requested.

(b) The Builder shall, as soon as possible after receipt of the written request for modifications or changes, give the Buyer a written proposal of the consequences of implementing such modifications and/or changes. These consequences may include changes in the Contract Price, Delivery Date, capacity, draft, speed, fuel consumption, or any other provisions of this Contract. If in the Builder's reasonable judgement, such modifications and/or changes will adversely affect the Builder's planning or programme in relation to the Builder's other commitments, the Builder shall notify the Buyer that it declines to give such a proposal for the requested modifications and/or changes or part thereof.

(c) The Builder shall use reasonable efforts to minimise the extra costs, delay or other negative impact on the Vessel's capacity, performance or other factors caused by the Buyer's request. The Builder's proposal shall be reasonable for such work.

(d) On the basis of the Builder's proposal the Buyer may elect in writing to agree to the necessary amendments to this Contract, in which case the Builder shall build the Vessel in accordance with this Contract so amended.

(e) If the Buyer does not accept the Builder's notice as provided in [Clause 20\(d\)](#) (Approvals) or if in the Buyer's opinion the Builder's proposal for modifications and/or changes under this Clause is unreasonable, the Buyer may, by giving notice to the Builder, order the Builder to proceed with the requested modifications and/or changes but the consequences of implementing such modifications and/or changes shall be decided in accordance with [Clause 42](#) (Dispute Resolution).

(f) If the Buyer elects not to continue with the request for modifications and/or changes,

the Buyer shall notify the Builder accordingly. 506

(g) If the Buyer does not respond within seven (7) running days after receipt of the Builder's notice in [Sub-Clause \(b\)](#), the Buyer shall be deemed to have withdrawn the request for modifications and/or changes. 507  
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**25. Builder's Modifications and Substitution of Materials** 510

The Builder shall have the right to make minor modifications and/or changes to the Specification and/or plans if so required by virtue of changes to the Builder's local conditions or facilities, the availability of materials and equipment, the introduction of improved methods or for any other reason of a similar nature provided that the Builder shall first obtain the Buyer's written approval, which shall not be unreasonably withheld or delayed. 511  
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Such modifications and/or changes shall satisfy the requirements of the Classification Society and the Regulatory Authorities and shall not relieve the Builder from its obligation to otherwise deliver the Vessel in accordance with this Contract. Any savings obtained shall be credited to the Buyer and the Buyer shall not be obliged to pay any extra for, or suffer any delay in delivery or other adverse consequences of, such modifications and/or changes. 517  
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**26. Changes in Rules and Regulations** 523

If, after the date of Contract, there are any changes in applicable laws, rules, regulations or requirements (or their application) of the Classification Society or Regulatory Authorities, the following shall apply: 524  
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(a) Upon receipt of notice of such changes either Party shall promptly notify the other Party thereof. 527  
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(b) If such changes will be compulsory for the Vessel at the time of delivery, the Builder shall, unless the Buyer at its sole discretion seeks and obtains a waiver from the Classification Society or Regulatory Authorities (as appropriate), incorporate such modifications and/or changes into the construction of the Vessel. The Parties shall endeavour to agree on such adjustments to the Contract Price, Delivery Date or other Contract terms as are a direct consequence of the change in applicable laws, rules, regulations or requirements. If the Parties fail to agree on the adjustments, the Builder shall proceed with the required changes and the matter shall be decided in accordance with [Clause 42](#) (Dispute Resolution). 529  
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(c) If such changes are not compulsory but the Buyer requires the changes to be incorporated, [Clause 24](#) (Modifications and Changes) shall apply. 538  
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**27. Sea Trials** 540

The times and numbers specified in this Clause shall apply unless otherwise stated in the Specification. 541  
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(a) Notice 543  
The Buyer's Representative, together with a suitable number of assistants, officers and crew, shall have the right to be present at sea trials. The Builder shall give the Buyer at least fourteen (14) running days notice of the time and place and expected duration of sea trials and the Buyer shall promptly acknowledge receipt of such notice. 544  
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If neither the Buyer's Representative nor any authorised assistants attend the sea trials for any reason after such notice to the Buyer, such absence shall be deemed to be a 548  
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waiver by the Buyer of its right to be present. The Builder may then conduct the sea trials without the Buyer's Representative being on board, provided that a representative of the Classification Society and Regulatory Authorities is present. In such circumstances, the results and conditions of the sea trials shall be as confirmed in writing by the Classification Society and/or Regulatory Authorities.	550 551 552 553 554
<b>(b) Weather Conditions</b>	555
The sea trials shall be conducted in weather conditions as described in this Contract and/or Specification. If the sea trials are interrupted or prevented by weather conditions in excess of the stated conditions, any resulting delay in delivery of the Vessel shall be deemed a Permissible Delay in accordance with <a href="#">Clause 34</a> (Permissible Delays). In such an event, the sea trials shall be discontinued or postponed until the first favourable day thereafter when weather conditions permit.	556 557 558 559 560 561
<b>(c) Conduct of the Sea Trials</b>	562
(i) The sea trials shall be conducted in the presence of representatives from the Classification Society and Regulatory Authorities and in the manner described in this Contract. The sea trials shall be of sufficient scope and duration to enable the Parties to verify and establish that the Vessel conforms in all respects with the performance requirements of this Contract. The Builder shall have the right to repeat any sea trials, subject to appropriate notice to the Buyer.	563 564 565 566 567 568
(ii) The Builder shall provide sufficient crew necessary for the safe navigation of the Vessel.	569 570
(iii) All expenses in connection with the sea trials, including the provision of bunkers, lubricating oil, grease, fresh water and stores needed to undertake the sea trials shall be for the Builder's cost and expense. Together with the Final Instalment, the Buyer shall reimburse the Builder at cost price for any quantities of bunkers and unbroached lubricating oil, grease, fresh water and stores remaining on board at delivery.	571 572 573 574 575
<b>(d) Method of Acceptance or Rejection</b>	576
(i) Upon completion of the sea trials the Builder shall give the Buyer the results of the sea trials in writing. If the Builder considers that the results thereof demonstrate that the Vessel conforms to the requirements of this Contract, the Builder shall give the Buyer notice of when delivery will take place. Such notice shall state where and when the Vessel will be ready for delivery, which will be at least fifteen (15) running days after the notice is given. Within five (5) running days after receipt of this notice and the trial results, the Buyer shall notify the Builder in writing of its acceptance for delivery or rejection of the Vessel.	577 578 579 580 581 582 583 584
(ii) If the results of the sea trials demonstrate that the Vessel or any part or equipment thereof does not conform to the requirements of this Contract, or if the Buyer rejects the Vessel for other reasons which the Builder accepts as valid, the Builder shall take all necessary steps to rectify such non-conformity. If necessary the Builder shall for its own cost and expense carry out a further sea trial in accordance with this Clause to ascertain that the Vessel complies with the terms of this Contract. Upon demonstration by the Builder that the deficiencies have been corrected, the procedure set out in this <a href="#">Sub-Clause (d)</a> shall apply.	585 586 587 588 589 590 591 592
(iii) If the Buyer gives notice of rejection under (i) above or rejects the Vessel under (ii) above, the Buyer shall state in which respects the Vessel does not conform to the requirements of this Contract (hereinafter "Delivery Defects").	593 594 595
(iv) If the Delivery Defects are of minor importance and do not affect Class or the operation	596

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of the Vessel in its intended trade but the Builder is unable to rectify the matter 597  
within a reasonable time and in any event before the accrual of the Buyer's right to 598  
terminate in accordance with [Clause 39](#) (Suspension and Termination), the Builder 599  
may nevertheless require the Buyer to take delivery of the Vessel, on condition that 600  
the Builder first: 601

(1) undertakes to remedy the Delivery Defects for its own cost and expense as soon 602  
as possible; and 603

(2) agrees in writing to indemnify the Buyer for any loss incurred as a consequence 604  
thereof, including loss of time; and 605

(3) provides the Buyer with a guarantee issued by the party named in [Box 32](#) (or if 606  
[Box 32](#) is not filled in, a bank guarantee from a first class bank) substantially in the 607  
form and substance set out in Annex A(iv) for a sum which the Buyer reasonably 608  
requests to cover (1) and (2) above, failing agreement such sum to be resolved in 609  
accordance with [Clause 42](#) (Dispute Resolution); 610

whereupon the Buyer shall accept delivery of the Vessel. 611

(v) If the Builder disputes the rejection of the Vessel by the Buyer, the dispute shall be 612  
resolved in accordance with [Clause 42](#) (Dispute Resolution). 613

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**SECTION 4 – DELIVERY**

<b>28. Delivery</b>	614
Subject to <a href="#">Clause 27(d)</a> (Sea Trials – Method of Acceptance or Rejection) the Vessel shall be delivered to the Buyer on or after the Delivery Date at the Shipyard or at a safe place in the immediate vicinity thereof in a clean and orderly condition, ready for service, upon:	615 616 617 618
(a) exchange and acceptance by the Parties hereto of a Protocol of Delivery and Acceptance signed by each Party acknowledging delivery of the Vessel by the Builder and acceptance thereof by the Buyer; and	619 620 621
(b) the provision by the Builder of the other documents listed in <a href="#">Clause 29</a> (Documents on delivery); and	622 623
(c) payment by the Buyer of the Final Instalment in accordance with <a href="#">Clause 30</a> (Final Instalment).	624 625
<b>29. Documents on Delivery</b>	626
Upon exchange of the Protocols of Delivery and Acceptance the Builder shall provide at no cost to the Buyer the following additional documents:	627 628
(a) Protocol of Trials made pursuant to the Specification.	629
(b) Protocol of Inventory and Equipment of the Vessel, including spare parts, as detailed in the Specification.	630 631
(c) Protocol of Surplus Consumable Stores which are payable by the Buyer to the Builder.	632 633
(d) Plans and Drawings pertaining to the Vessel together with all necessary instruction manuals, as detailed in the Specification.	634 635
(e) All certificates including the documents required to be furnished on delivery pursuant to this Contract. All certificates shall be issued without qualification.	636 637
If, however, the Classification certificate and/or other required certificates are not available at the time of delivery, the Buyer shall accept interim certificates provided that the Builder, at its cost and expense, provides the Buyer with final certificates as promptly as possible.	638 639 640
The Builder warrants that:	641
(i) such interim certificates shall enable the Vessel to be registered and trade and operate without restriction; and	642 643
(ii) final certificates shall be provided as above.	644
If the Builder fails to perform (i) and/or (ii) above, the Builder shall compensate the Buyer for any loss incurred as a consequence thereof, including loss of time.	645 646
(f) Declaration of Warranty by the Builder that the Vessel is free and clear of any liens, claims, charges, mortgages and other encumbrances.	647 648
(g) Builder’s Certificate.	649

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- (h) Certificate of Non-Registration. 650
- (i) Commercial invoices covering Final Instalment and modifications. 651
- (j) Bill of Sale or other document that certifies that the title of the Vessel passes to the Buyer. 652  
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- (k) IMO Hazardous Material Inventory Statement of Compliance in accordance with IMO Resolution A.962(23) (as referred to in [Clause 4](#) (IMO Hazardous Materials Inventory)). 654  
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- (l) Any other documents reasonably required by the Buyer.

The Buyer may require the Builder by giving reasonable notice, prior to delivery, to arrange for any documents listed above to be duly notarised and, if required, legalised at the Buyer's cost and expense. 658  
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**30. Final Instalment** 661

(a) The Final Instalment shall be adjusted in accordance with this Contract and notified by the Builder to the Buyer not later than seven (7) Banking Days prior to the notified date of delivery (see [Clause 27\(d\)](#) (Sea Trials – Method of Acceptance or Rejection)). Not later than two (2) Banking Days prior to the notified date of delivery the amount of the Final Instalment, as adjusted, shall be deposited with the Builder's Bank as set out in [Box 12](#), with irrevocable instructions that, subject to [Sub-Clause \(c\)](#) below, the amount shall be released to the Builder against presentation by the Builder of a copy of the Protocol of Delivery and Acceptance of the Vessel signed by the Builder and the Buyer. Interest, if any, accruing on such deposit shall be for the benefit of the Buyer. 662  
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(b) If the Buyer does not agree the amount of the Final Instalment as adjusted and notified by the Builder, the Buyer shall notify the Builder within five (5) running days. Thereafter the Buyer may take delivery of the Vessel on payment of the Final Instalment as adjusted (or such other amount as the Builder may agree) but without prejudice to the Buyer's rights and remedies under this Contract and the dispute shall be resolved in accordance with [Clause 42](#) (Dispute Resolution). 671  
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(c) If the Protocol of Delivery and Acceptance is not so presented within seven (7) days following the date for delivery of the Vessel as notified by the Builder in accordance with [Clause 27\(d\)](#) (Sea Trials – Method of Acceptance or Rejection), the Buyer shall have the right to withdraw the said deposit plus accrued interest. However, if and when a new date for delivery of the Vessel is notified to the Buyer by the Builder in accordance with [Clause 27\(d\)](#) (Sea Trials – Method of Acceptance or Rejection), the Buyer shall make a further cash deposit for the Final Instalment in accordance with the same terms and conditions as set out above. 677  
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**31. Title and Risk** 685

Title and risk of loss of or damage to the Vessel shall rest with the Builder until exchange of the Protocols of Delivery and Acceptance is effected, immediately upon which title and risk shall pass to the Buyer. 686  
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At the time of delivery the Vessel shall be free of all liens, claims, charges, mortgages and other encumbrances. 689  
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**32. Possession and Removal of the Vessel** 691

(a) The Buyer shall take physical possession of the Vessel immediately upon Delivery 692

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and Acceptance thereof. 693

(b) The Buyer shall remove the Vessel from the place of delivery within five (5) running days after Delivery and Acceptance as aforesaid. If the Buyer does not so remove the Vessel within the said period, the Buyer shall pay to the Builder reasonable mooring charges for the Vessel. The Builder shall also have the right to move the Vessel from the place of delivery to another safe place at its convenience at any time after the five (5) running days' period has expired provided the Buyer is notified accordingly. 694  
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**33. Vessel Registration** 700

The Buyer shall register the Vessel at its own cost and expense. 701

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**SECTION 5 – LEGAL**

<b>34. Permissible Delays</b>	702
<b>(a)</b> The Delivery Date shall be extended if any of the following events cause actual delay to the delivery of the Vessel:	703
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(i) Force majeure events	705
(1) acts of God;	706
(2) any government requisition, control, intervention, requirement or interference;	707
(3) threat or act of war, warlike operations, terrorism or the consequences thereof;	708
(4) riots, civil commotions, blockades or embargoes;	709
(5) epidemics;	710
(6) earthquakes, landslides, floods, tidal waves or extraordinary weather conditions;	711
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(7) strikes, lockouts or other industrial action, but only if of a general nature and not limited solely to the Builder and/or the Sub-contractors or their employees;	713
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(8) fire, accident, explosion (whether in the Shipyard or elsewhere);	715
(9) any interruption to the supply of public utilities to the Builder;	716
(10) any other cause of a similar nature to the above beyond the control of the Builder or its Sub-contractors;	717
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(11) delays to sea trials in accordance with <a href="#">Clause 27(b)</a> (Sea Trial – Weather Conditions).	719
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(ii) Other events	721
(1) Late delivery of, or delivery of, any defective Buyer’s Supplies in accordance with <a href="#">Clause 21(a)(iv)</a> (Buyer’s Supplies);	722
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(2) Delays due to modifications and changes in accordance with <a href="#">Clause 24(b)</a> or <a href="#">(e)</a> (Modifications and Changes);	724
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(3) Delays due to changes in rules and regulations in accordance with <a href="#">Clause 26</a> (Changes in Rules and Regulations);	726
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(4) An actual or constructive total loss in accordance with <a href="#">Clause 38(b)(ii)</a> (Insurances – Allocation of Insurance Proceeds);	728
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(5) Suspension of work pursuant to <a href="#">Clause 39(c)</a> (Suspension and Termination – Suspension of Work);	730
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(iii) Provided that in respect of (i) and (ii) above:	732
(1) such events were not caused by the error, neglect, act or omission of the Builder or its Sub-contractors; and	733
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(2) were not, or could not reasonably have been, foreseen by the Builder at the date of the Contract; and 735  
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(3) the Builder shall have complied with Sub-Clause (b) hereunder; and 737

(4) the Builder shall have made all reasonable efforts to avoid and minimise the effects such events have on the delivery of the Vessel. 738  
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**(b)** The Builder shall notify the Buyer within ten (10) running days of when the Builder becomes aware of the occurrence of any event of delay on account of which the Builder asserts that it may have the right to claim an extension of the Delivery Date. A failure to so notify shall bar the Builder from claiming an extension to the Delivery Date. The Builder shall also advise the Buyer in writing (A) within two (2) running days of the ending of any event notified under this Clause that the event has ended, and (B) as soon as reasonably possible after (A), the length of extension of the Delivery Date claimed by the Builder. 740  
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**35. Builder's Guarantee** 747

**(a)** The Builder shall guarantee the Vessel against any Defects (see Definitions) provided such Defects are: 748  
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(i) discovered within the number of months stated in Box 20 (hereinafter "the Guarantee Period") after delivery of the Vessel in accordance with Clause 28 (Delivery); and 750  
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(ii) notice thereof is given to the Builder as soon as reasonably possible after the discovery thereof and latest thirty (30) running days after the expiry of the Guarantee Period describing such Defects so far as reasonably practical 752  
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(hereinafter called "Guarantee Defects"). 755

**(b)** The Builder shall make any necessary repairs or replacements to rectify any Guarantee Defects or damage to the Vessel caused as a direct and immediate consequence of such Guarantee Defects. Such repairs and replacements shall be made at the Shipyard at the Builder's cost and expense. 756  
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**(c)** The Buyer shall have the right to arrange for the necessary repairs to rectify any Guarantee Defects or damage to the Vessel caused as a direct and immediate consequence of such Guarantee Defects to be made elsewhere or obtain any necessary replacement parts and materials: 760  
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(i) if it is impractical to bring the Vessel to the Shipyard; or 764

(ii) if the Builder cannot supply necessary replacement parts and materials without impairing or delaying the operation or working of the Vessel. 765  
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**(d)** In the event that the Buyer makes the necessary repairs or replacements at any other shipyard or works other than the Shipyard, the Buyer shall first, but as soon as possible, give the Builder notice of the time and place such repairs will be made. The Builder shall have the right, without prejudice, to inspect through its own representative the nature and extent of the Guarantee Defects to be replaced or repaired. The Builder shall, in such case, promptly advise the Buyer in writing, after such examination has been completed, of its acceptance or rejection of such Guarantee Defects as ones that are covered by the guarantee. 767  
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(i) The Builder shall pay the Buyer in the currency stated in Box 9 the reasonable cost 775

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and expenses of such repairs or replacements. 776

(ii) Where applicable, the Buyer shall return replaced parts to the Builder at the Builder's request and cost and expense provided the Builder makes such request at the time of the replacement. In the event that they are the subject of a dispute under Clause 42 (Dispute Resolution), the Builder shall hold the replaced parts available for inspection by the Buyer. Upon their replacement, the ownership of replaced parts shall revert to the Builder. 777-782

(e) The Builder guarantees repairs or replacements to the Vessel made under sub-Clause (b) above for an additional Guarantee Period of the number of months stated in Box 21 from the date of completion of such repairs or replacements provided such work has been performed by the Builder or its Sub-contractors. The additional Guarantee Period shall, however, not end on a date earlier than the end of the original Guarantee Period for any such item. 783-788

(f) If, as a result of the guarantee works, the Vessel has been lying idle continuously for a period in excess of thirty (30) days, the Guarantee Period shall be extended by the total number of such days (counting from the first day the Vessel is idle) that fall within the Guarantee Period, whether or not other work was carried out during such period. 789-792

(g) Without prejudice to any other rights the Buyer may have under this Contract, following the expiry of the Guarantee Period or in the event that the Builder is in breach of its obligation to rectify Guarantee Defects in accordance with this Clause, the Builder shall at the Buyer's request assign (to the extent to which it may validly do so) to the Buyer, or as the Buyer may direct, the right, title and interest of the Builder in and to all guarantees or warranties given by the Sub-contractors or suppliers of any of the materials or equipment used in the construction of the Vessel. 793-799

36. Guarantee Engineer 800

(a) The Buyer shall have the right to require the Builder to, or the Builder may, appoint a Guarantee Engineer to attend onboard the Vessel for such portion of the Guarantee Period as the Buyer may reasonably require. The Buyer and its employees shall provide the Guarantee Engineer with full co-operation in carrying out his duties. The Guarantee Engineer shall act as the Builder's representative on board and shall give the Buyer full co-operation to enable the Buyer to obtain the most efficient use of the Vessel's machinery and equipment. 801-807

(b) The Buyer shall provide the Guarantee Engineer with accommodation and provisions to a standard comparable to the Vessel's Chief Engineer, at no cost to the Builder. The Buyer shall pay the Builder the monthly lump sum stated in Box 24, or pro rata thereof for part of a month, as compensation for part of the cost and charges to be borne by the Builder in connection with the Guarantee Engineer. The Buyer shall also arrange and pay for the transportation of the Guarantee Engineer between the Vessel and his home country. 808-814

(c) The Guarantee Engineer shall, at all times and in all respects, be deemed to be the employee of the Builder. 815-816

(d) If the Buyer decides not to exercise its right to require the Builder to provide a Guarantee Engineer on board the Vessel, this shall not prejudice the Buyer's rights under the provisions of Clause 35 (Builder's Guarantee). 817-819

37. Responsibilities and exclusions from liabilities 820

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<i>Builder's exclusion Clauses</i>	821
<b>(a)</b> Liability for Defects discovered before or at the time of delivery	822
The Buyer's remedy for delay in delivery of the Vessel, or for Defects discovered before or at the time of such delivery, are set out in <a href="#">Clauses 8 to 13</a> inclusive and <a href="#">Clause 27(d)</a> (Sea Trials – Method of Acceptance or Rejection).	823 824 825
<b>(b)</b> Liability for Defects discovered after delivery	826
Except to the extent expressly provided in <a href="#">Clause 35</a> (Builder's Guarantee), the Builder shall have no liability in contract, tort (including negligence), breach of statutory duty or otherwise for:	827 828 829
(i) any Defect discovered after delivery of the Vessel or	830
(ii) any loss, damage or expenses caused as a consequence of such Defect (which shall include, but not be limited to, loss of time, loss of profit or earnings or demurrage directly or indirectly incurred by the Buyer).	831 832 833
<b>(c)</b> Liability for third party replacement or repair	834
The Builder shall not be responsible for any Defects in any part of the Vessel which may, subsequent to delivery of the Vessel, have been replaced or in any way repaired by any contractor, other than the Builder or its Sub-contractors, or for any such Defects which have been caused in whole or part by omission or improper use or maintenance of the Vessel on the part of the Buyer or by ordinary wear and tear.	835 836 837 838 839
<b>(d)</b> Implied terms	840
The guarantee contained in <a href="#">Clause 35</a> (Builder's Guarantee) replaces and excludes any other liability, guarantee, warranty and/or condition and/or innominate term imposed or implied by the law, customary, statutory or otherwise, by reason of the construction and Sale of the Vessel by the Builder for and to the Buyer.	841 842 843 844
<i>Mutual exclusion Clauses</i>	845
<b>(e)</b> Liability following termination	846
In the event of termination in accordance with the provisions of <a href="#">Clause 39</a> (Suspension and Termination), neither Party shall have any liability to the other whatsoever or howsoever arising, except as expressly provided in that Clause.	847 848 849
In the event, however, that a Party fails to perform the Contract, or unequivocally indicates its intention not to perform it, in a way which thereby permits the other Party to treat the Contract as at an end other than under the terms of the Contract, any such claim that the other party may have shall not be limited or excluded by the terms of this Contract.	850 851 852 853
<i>Responsibility Clauses</i>	854
<b>(f)</b> Responsibility for death and personal injury	855
Each Party to this Contract shall accept responsibility and liability for the death and personal injury of its Personnel, unless the death or personal injury was inflicted by the other Party or its Sub-contractors with the intent to cause such death or injury, or recklessly and with knowledge that such death or injury would probably result.	856 857 858 859
Each Party further agrees to indemnify and hold harmless the other Party, as regards both liability and legal costs, in the event of claims relating to or resulting from death or personal injury of its Personnel against the Party who is not responsible for them under this <a href="#">Sub-Clause 37(f)</a> .	860 861 862 863
<b>(g)</b> Responsibility for damage to or loss of property	864

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Unless otherwise provided in this Contract, each Party shall accept responsibility and liability for damage to or loss of its property and the property belonging to its Personnel unless such damage or loss was caused by the other Party or its Sub-contractors with the intent to cause such damage or loss, or recklessly and with knowledge that such damage or loss would probably result.

Each Party further agrees to indemnify and hold harmless the other Party, as regards both liability and legal costs, in the event of claims relating to or resulting from damage to or loss of property against the Party who is not responsible for them under this Sub-Clause 37(g).

38. Insurances 874

(a) Builder's Insurances 875

From the time of first steel cutting or equivalent (or delivery of the Buyer's Supplies, whichever is earlier) until the Vessel is completed, delivered to and accepted by the Buyer, the Builder shall (in the joint names (as assureds) of the Builder and the Buyer) effect and maintain at no cost to the Buyer, Builder's Risk Insurance for the Vessel and Buyer's Supplies. Such Builder's Risk Insurance shall:

(i) be provided by insurers reasonably acceptable to the Buyer; and 881

(ii) be on terms no less wide than Institute Clauses for Builder's Risk terms (1/6/88) including Institute War and Institute Strike Clauses; and 882 883

(iii) be in an amount not less than the aggregate of the payments made by the Buyer to The Builder plus the value of the Buyer's Supplies at the Shipyard. 884 885

If specifically requested by the Buyer, the Builder shall increase the amount insured under the policy to cover the rebuilding costs of the Vessel or such other amount as the Buyer may request. Any additional premium charged for this shall be paid by the Buyer. 886 887 888

The Builder shall provide the Buyer with copies of the insurance policy as placed. 889

The Buyer shall notify the Builder of the value of any subsequent changes in the value of the Buyer's Supplies for insurance purposes. Upon receipt of notice of change in value the Builder shall amend the insured value for the Buyer's Supplies accordingly. 890 891 892

(b) Allocation of Insurance Proceeds 893

(i) In the event that the Vessel is at any time prior to or at delivery damaged by any insured cause and provided such damage does not constitute an actual or constructive total loss of the Vessel, the Builder shall make good such damage and shall apply any amounts recovered under the insurance referred to in Sub-Clause (a) to the costs of any repair or replacement, including repair or replacement of lost or damaged Buyer's Supplies. Such damage shall be made good so as to comply with this Contract and all repairs shall be carried out in compliance with the requirements of the Classification Society and Regulatory Authorities as appropriate without qualification. 894 895 896 897 898 899 900 901

(ii) Should the Vessel become an actual or constructive total loss from any insured cause: 902 903

(1) the Builder and the Buyer may agree that a new vessel is built or the Vessel reconstructed in accordance with the terms of this Contract provided agreement is reached in writing to an extension of the Delivery Date and/or any other necessary amendment to the Contract, in which case any amounts recovered under the insurance referred to in Sub-Clause (a) will be applied to the construction or reconstruction of 904 905 906 907 908

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the Vessel if appropriate; or 909

(2) If the Builder and Buyer are unable to agree within a reasonable time on an extension to the Delivery Date and/or any other necessary amendment to the Contract as provided for in [Sub-Clause \(b\)\(ii\)\(1\)](#) the Builder shall: 910  
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(i) promptly refund to the Buyer the full amount of sums paid by the Buyer to the Builder together with interest thereon at a rate per annum as stated in [Box 30](#) from the date of payment to the date of refund; and 913  
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(ii) make payment to the Buyer of the insured value of the Buyer's Supplies or alternatively, at the Builder's cost, deliver the Buyer's Supplies to the Buyer in undamaged condition. 916  
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Once all payments have been made by the Builder to the Buyer in accordance with [Sub-Clause \(b\)\(ii\)\(2\)](#) this Contract shall be deemed terminated and all future rights and obligations of each of the Parties to the other shall cease whereupon the guarantees provided under this Contract shall be returned. 919  
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**39. Suspension and Termination** 923

**(a) Buyer's Termination** 924  
The Buyer shall have the right to terminate this Contract forthwith upon giving notice in the event that: 925  
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(i) the guarantor providing the Refund Guarantee on behalf of the Builder in accordance With [Clause 14\(b\)](#) (Guarantees – Builder's Refund Guarantee) is deemed insolvent pursuant to [Sub-Clause \(d\)](#) below, unless the Builder provides a replacement Refund Guarantee acceptable to the Buyer within 30 days of the Buyer's notice requiring A replacement Refund Guarantee to be provided, during which period no further payments shall be made to the Builder by the Buyer and provided that notice of termination is given before an acceptable replacement Refund Guarantee is received by the Buyer, or 927  
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(ii) the Builder fails to perform any work relating to the construction of the Vessel for a running period of at least the number of days stated in [Box 22\(i\)](#), excluding Permissible Delays, provided that thereafter the Buyer gives the Builder at least the number of days' written notice stated in [Box 22\(ii\)](#) of its intention to terminate this Contract under this Clause and within that period the Builder fails to remedy its breach and provided further that the notice of termination is given before the Builder has remedied its breach; or 935  
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(iii) (1) the delivery of the Vessel is delayed by more than 180 days by virtue of events that fall within [Clause 34\(a\)\(i\)](#) (Permissible Delays – Force Majeure events); or 942  
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(2) the delivery of the Vessel is delayed by more than 180 days by virtue of events which do not fall within [Clause 34\(a\)\(i\)](#) or [34\(a\)\(ii\)](#) (Permissible Delays); or 944  
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(3) the aggregate of delays to the delivery of the Vessel in (1) and (2) above is more than 270 days. 946  
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The Builder may at any time after the right to terminate has occurred give notice requesting that the Buyer either agrees to a new delivery date or terminates this Contract. Such new delivery date shall be a reasonable estimate by the Builder of the date when the Vessel will be ready for delivery. Within fifteen (15) days of the Builder's request, the Buyer shall notify the Builder of its decision. If the Buyer does not terminate this Contract then the new delivery date shall be deemed to be the Delivery Date provided it does not occur later than thirty (30) days prior to the expiry 948  
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of the Refund Guarantee ( <a href="#">Clause 14(b)</a> ) (Guarantees – Builder’s Refund Guarantee)).	955
Notwithstanding <a href="#">Clause 34(a)(i)</a> (Permissible Delays – Force majeure events) and	956
this <a href="#">Clause 39(a)(iii)(1), (2) or (3)</a> but subject to <a href="#">Clause 34(a)(ii)</a> (Permissible Delays	957
- Other events), if the Vessel is not delivered by that date, the Buyer shall have the	958
right to terminate this Contract. The Builder’s right to request the Buyer to agree a	959
new delivery date shall operate on each and every occasion the events stated in this	960
<a href="#">Sub-Clause (a)(iii)</a> give rise to the Buyer’s option to terminate.	961
(iv) The reduction in speed would entitle the Buyer to a reduction in the Contract Price	962
greater than the amount stated in <a href="#">Box 13(ii)</a> ; or	963
(v) The Buyer rejects the main engine and terminates the Contract in accordance with	964
<a href="#">Clause 9(c)(ii)(2)</a> ; or	965
(vi) The reduction in deadweight would entitle the Buyer to a reduction in the Contract	966
Price greater than the amount stated in <a href="#">Box 15(iii)</a> ; or	967
(vii) The reduction in cubic capacity would entitle the Buyer to a reduction in the Contract	968
Price greater than the amount stated in <a href="#">Box 16(iii)</a> ; or	969
(viii) The condition of the Vessel is deficient in the manner stated in <a href="#">Clause 12</a> (Other	970
Deficiencies) and <a href="#">Box 17</a> ; or	971
(ix) The Builder is in breach of <a href="#">Clause 14</a> (Guarantees).	972
<b>(b) Builder’s Termination</b>	973
The Builder shall have the right to terminate this Contract forthwith upon giving notice to	974
the Buyer in the event that:	975
(i) The guarantor providing the Instalment Guarantee or Performance Guarantee on	976
behalf of the Buyer under <a href="#">Clause 14(a)</a> (Buyer’s Instalment/Performance Guarantee)	977
is deemed insolvent pursuant to <a href="#">Sub-Clause (d)</a> below, unless the Buyer can provide	978
A replacement Performance Guarantee acceptable to the Builder within 30 days and	979
provided that notice of termination is given before an acceptable Buyer’s Instalment	980
or Performance Guarantee is received by the Builder, or	981
(ii) The Buyer fails to pay any sums due under this Contract for a period of twenty-one	982
(21) Banking Days provided that the Builder thereafter gives the Buyer at least 5	983
Banking Days notice of its intention to terminate under this Clause, and within that	984
period the Buyer fails to remedy the breach and provided that notice of termination	985
is given before the Buyer pays the outstanding sums due, or	986
(iii) The Buyer fails to take delivery of the Vessel tendered in accordance with this Contract,	987
or	988
(iv) The Buyer is in breach of <a href="#">Clause 14</a> (Guarantees).	989
<b>(c) Suspension of Work</b>	990
Without prejudice to <a href="#">Sub-Clause (b)</a> above the Builder shall have the right to suspend	991
Work under this Contract if the Buyer fails to pay any instalment stated in <a href="#">Box 11</a> due for	992
a period of fifteen (15) Banking Days until payment of such outstanding sums.	993
<b>(d) Deemed Insolvency</b>	994
A Party or the guarantor providing the Refund Guarantee shall be deemed insolvent if	995
proceedings are commenced against the insolvent Party or the guarantor for winding	996

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up, dissolution or reorganisation (otherwise than for the purpose of amalgamation or reconstruction), liquidation, the appointment of a receiver, trustee or similar officer, bankruptcy, suspension of payments or similar events.	997 998 999
A Party shall have the right to terminate this Contract forthwith upon giving notice if the Other Party or the guarantor is deemed insolvent.	1000 1001
<b>(e) Effect of Buyer's Termination</b>	1002
If this Contract is terminated by the Buyer, the Builder shall refund all sums paid by the Buyer to the Builder under <a href="#">Clause 7</a> (Contract Price) and <a href="#">Clause 15</a> (Payments) hereof plus interest thereon at the rate stated in <a href="#">Box 30</a> per annum from the date of payment to the date of refund. The Builder shall also return the Buyer's Supplies, or if they cannot be returned, the Builder shall pay to the Buyer an amount equal to the Buyer's cost for Such Buyer's Supplies.	1003 1004 1005 1006 1007 1008
<b>(f) Effect of Builder's Termination</b>	1009
If this Contract is terminated by the Builder, the Builder shall have the right to retain the Buyer's Supplies together with any instalments paid by the Buyer and shall have the right and power either to complete or not to complete the Vessel as it deems fit but in any event shall sell the Vessel (either in its complete or incomplete form), including those Buyer's Supplies which are installed or have been utilised on board the Vessel, at the best price reasonably obtainable at a public or private sale on reasonable terms and conditions.	1010 1011 1012 1013 1014 1015
(i) In the event of the sale of the Vessel in its complete form the proceeds of the sale received by the Builder shall be applied in the following order:	1016 1017
(1) to payment of all expenses incurred by the Builder in respect of the sale and otherwise incurred by the Builder as a result of the Buyer's default;	1018 1019
(2) to payment of all unpaid instalments of the Contract Price including any which would have been payable after the date of termination and interest on such instalments at the rate of interest stated in <a href="#">Box 30</a> from the respective due dates thereof to the date of application.	1020 1021 1022 1023
(ii) In the event of the sale of the Vessel in its incomplete form the proceeds of sale received by the Builder shall be applied in the following order:	1024 1025
(1) to payment of all expenses incurred by the Builder in respect of the sale and otherwise incurred by the Builder as a result of the Buyer's default;	1026 1027
(2) to payment of all unpaid instalments of the Contract Price to the extent due but not yet paid at the date of termination and interest on such instalments at the rate of interest stated in <a href="#">Box 30</a> from the respective due dates thereof to the date of application;	1028 1029 1030 1031
(3) to payment of all costs of part construction of the Vessel less any paid instalments and less any sums credited under (2) above;	1032 1033
(4) to payment of the Builder's reasonable net loss of profit caused by the Buyer's default.	1034 1035
(iii) In either of the above events if the proceeds of sale exceed the sums to which such proceeds are to be applied as aforesaid the Builder shall promptly pay any such excess to the Buyer without interest thereon, provided that the amount of such payment to the Buyer shall in no event exceed the total amount of instalments paid by the Buyer. The Builder shall at the same time either permit the Buyer to remove	1036 1037 1038 1039 1040

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- the Buyer's Supplies which are not installed or utilised onboard the Vessel (if any) from the Shipyard for the cost and expense of the Buyer, or give credit to the Buyer for the full value thereof. 1041  
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- (iv) If the proceeds of sale are insufficient to pay the Builder the total amounts due from the Buyer as aforesaid, the Builder may sell the Buyer's Supplies which are not installed or utilised onboard the Vessel (if any) at the best price reasonably obtainable at a public auction or private sale on reasonable terms and conditions, applying the proceeds of such sale toward the unsatisfied amounts due from the Buyer, and giving credit to the Buyer for any excess. 1044  
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- (v) If the proceeds of sale are still insufficient to pay the Builder the total amounts due from the Buyer as aforesaid, the Buyer shall pay to the Builder the amount of such deficiency, plus interest at the rate stated in [Box 30](#) to cover periods whenever payments from the Buyer became overdue. 1050  
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**40. Copyrights, Trade Marks and Patents** 1054

(a) Where they are owned and supplied by a Party, that Party shall retain all copyright, Trade mark, patent or similar rights (hereinafter called "Intellectual Property Rights") with respect to the Specification, Plans and Drawings, technical descriptions, calculations, Test results and other data, and information and documents concerning the design and construction of the Vessel. The other Party undertakes not to disclose the same or divulge any information contained therein to any third parties without the prior written consent of the first Party, except where it is necessary for usual operation, repair and maintenance of the Vessel and to subsequent owners. 1055  
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(b) Each Party shall ensure that any manufacture and/or supply according to specifications, drawings, models or other instructions supplied by it shall not infringe any Intellectual Property Rights of third parties. Should claims nevertheless be made against the other Party in respect of Intellectual Property Rights arising out of or in any way related to the performance of the Contract, the first Party shall keep the other Party indemnified against the cost of such claims, including any legal costs in connection therewith. 1063  
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(c) For the purpose of this [Sub-Clause \(c\)](#), "Information" means technical information relating to the Vessel designated by one Party as confidential, except information which corresponds in substance to information which: 1069  
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(i) was developed by and in possession of the other Party prior to first receipt from the first Party; and/or 1072  
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(ii) at the date hereof or hereafter, through no wrongful act or failure to act on the part of the other Party, enters the public domain. 1074  
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Where it is necessary during the performance of this Contract for the first Party to make Information available to the other Party, the other Party shall hold all such Information in confidence and not disclose it to any third parties or use it for any purpose other than as provided herein without the prior written consent of the first Party, which shall not be unreasonably withheld. 1076  
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**41. Governing law** 1081

This Contract shall be subject to English law unless another law is stated in [Box 23\(a\)](#) In which case the law stated in [Box 23\(a\)](#) shall apply. 1082  
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**42. Dispute Resolution** 1084

(a) Classification/Regulatory Authorities 1085  
Any dispute concerning the Vessel's compliance or non compliance with the rules, 1086

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regulations and requirements of the Classification Society or other Regulatory Authorities shall be referred to the Classification Society or other Regulatory Authorities, as the case 1087  
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may be, the final decision of which shall be final and binding upon the Parties hereto. All other disputes shall be referred to expert determination or arbitration in accordance with [Sub-Clauses \(b\)](#) through [\(e\)](#). 1089  
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**(b) Expert determination** 1092  
Unless [Sub-Clause \(a\)](#) applies or [Sub-Clauses \(c\)](#) to [\(e\)](#) apply, in the event that a dispute arises under this Contract either Party may require by notice in writing to the other Party that such dispute be referred to an independent third party (an "Expert") as the Parties jointly nominate in writing, subject to the following procedure: 1093  
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(i) if the Parties fail to nominate an Expert within seven (7) days of the date of the notice referred to in this [Sub-Clause \(b\)](#), the dispute shall be resolved in accordance with [Sub-Clauses \(c\)](#) to [\(e\)](#) below; 1097  
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(ii) the Expert shall act as an expert and not as an arbitrator and his decision shall be final and binding upon the Parties; 1100  
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(iii) the Expert's determination shall be conducted in accordance with the following rules, unless otherwise agreed by the Parties: 1102  
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(1) the Parties may make written representations within seven (7) days of the Expert's appointment and shall copy in full such written representations to the other Party within such time period; 1104  
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(2) the Parties shall have a further seven (7) days to make written comments on each other's representations and shall copy in full such written comments to the other Party within such time period; 1107  
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(3) the Expert may call for such other documents and written evidence from the Parties as the Expert may reasonably require and the Parties shall provide such documents and written evidence within the period specified by the Expert. The Parties shall copy, in full, such documents and written evidence to the other Party within such time period provided that if either Party claims any such information is confidential to it then, provided in the reasonable opinion of the Expert that Party has properly claimed the same as confidential, the Expert shall not disclose the same to the other Party or to any third party; 1110  
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(4) the Expert shall decide whether or not to take oral representations from or on behalf of either Party, but if he does so he shall give the other Party the opportunity to be present; 1118  
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(5) the Expert shall have regard to all representations and evidence before him when making his decision, which shall be in writing, and give full reasons for his decision; and 1121  
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(6) the Expert shall use all reasonable endeavours to publish his decision within twenty-eight (28) days of his appointment. 1124  
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(iv) Unless the Parties agree otherwise, each Party shall bear its own costs of a reference to the Expert, and fees and expenses of the Expert shall be borne equally between the Parties. 1126  
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(v) Without prejudice to the rest of this [Sub-Clause \(b\)](#) the Parties shall consider on an ongoing basis whether or not it would be suitable to refer any dispute to an Expert or to enter into mediation in accordance with [Sub-Clause \(e\)](#). 1129  
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**(c) \* Arbitration and Mediation** 1132  
Unless [Sub-Clause \(a\)](#) or [\(b\)](#) applies and unless [Box 23\(b\)](#) states a place other than London, any dispute arising out of or in connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause. 1133  
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The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. 1138  
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The reference shall be to three arbitrators. A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party requiring the other Party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other Party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the Party referring a dispute to arbitration may, without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of a sole arbitrator shall be binding on both Parties as if he had been appointed by agreement. 1141  
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Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator. 1152  
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In cases where neither the claim nor any counterclaim exceeds the sum of US\$100,000 (or such other sum as the Parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced. 1154  
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**(d) \*Unless [Sub-Clauses \(a\)](#), [\(b\)](#) or [\(c\)](#) apply**, any dispute arising out of or in connection with this Contract shall be referred to arbitration at the place stated in [Box 23\(b\)](#), subject to the procedures applicable there. 1158  
1159  
1160

**(e) Notwithstanding [Sub-Clauses \(c\)](#) and [\(d\)](#) above**, the Parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract. 1161  
1162  
1163

In the case of a dispute in respect of which arbitration has been commenced under [\(c\)](#) or [\(d\)](#) above, the following shall apply: 1164  
1165

(i) Either Party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other Party of a written notice (the "Mediation Notice") calling on the other Party to agree to mediation. 1166  
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(ii) The other Party shall thereupon within fourteen (14) calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the Parties shall thereafter agree a mediator within a further fourteen (14) calendar days, failing which on the application of either Party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance 1169  
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- with such procedure and on such terms as the Parties may agree or, in the event of disagreement, as may be set by the mediator. 1175  
1176
- (iii) If the other Party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the Parties. 1177  
1178  
1179
- (iv) The mediation shall not affect the right of either Party to seek such relief or take such steps as it considers necessary to protect its interest. 1180  
1181
- (v) Either Party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration. 1182  
1183  
1184  
1185
- (vi) Unless otherwise agreed or specified in the mediation terms, each Party shall bear its own costs incurred in the mediation and the Parties shall share equally the mediator's costs and expenses. 1186  
1187  
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- (vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration. 1189  
1190  
1191
- (Note: The Parties should be aware that the mediation process may not necessarily interrupt time limits.)* 1192  
1193
- \* [Sub-Clauses \(c\)](#) and [\(d\)](#) are alternatives; state place of dispute resolution in [Box 23\(b\)](#). 1194  
1195
- If [Box 23\(b\)](#) is not appropriately filled in, [Sub-Clause \(c\)](#) of this Clause shall apply. 1196

**SECTION 6 – SUNDRY**

<b>43. Notices</b>	1197
(a) All notices given by either Party or their agents to the other Party or their agents in accordance with the provisions of this Contract shall be in writing and shall, unless specifically provided in this Contract to the contrary, be sent to the address for that other Party as set out in <a href="#">Box 2</a> or <a href="#">Box 3</a> as appropriate or to such other address as the other Party may designate in writing.	1198 1199 1200 1201 1202
(b) A notice may be sent by post, facsimile, electronically or delivered by hand in accordance with <a href="#">Sub-Clause (a)</a> .	1203 1204
(c) Any notice given under this Contract shall take effect on receipt by the other party And shall be deemed to have been received:	1205 1206
(i) if posted, on the seventh (7th) day after posting;	1207
(ii) if sent by facsimile or electronically, on the day of transmission;	1208
(iii) if delivered by hand, on the day of delivery.	1209
And in each case proof of posting, transmission or handing in shall be proof that notice Has been given.	1210 1211
<b>44. Effective date of Contract</b>	1212
(a) This Contract shall become effective when the conditions stated in <a href="#">Box 25</a> have been satisfied. If no conditions are stated in <a href="#">Box 25</a> then the effective date of the Contract shall be the date stated in <a href="#">Box 1</a> . The Parties shall immediately notify each other when the conditions stated in <a href="#">Box 25</a> relevant to that Party have been satisfied.	1213 1214 1215 1216
(b) If any of the conditions referred to above have not been satisfied within the number of days stated in <a href="#">Box 26</a> after the date of this Contract stated in <a href="#">Box 1</a> , this Contract shall be deemed null and void and both Parties shall immediately be relieved of any obligations or liabilities to the other Party under this Contract.	1217 1218 1219 1220
<b>45. Assignment</b>	1221
(a) Builder's assignment The Builder shall have the right to assign the benefits of this Contract to the Builder's financiers for the purpose of securing the Builder's financing.	1222 1223 1224
(b) Buyer's assignment	1225
(i) The Buyer shall have the right to assign the benefits of this Contract to the Buyer's financiers for the purpose of securing the Buyer's financing.	1226 1227
(ii) The Buyer shall have the right, subject to the Builder's consent which shall not be unreasonably withheld, to assign, transfer or novate this Contract to any other third party.	1228 1229 1230
<b>46. Options</b>	1231
The Buyer shall have the option for the construction by the Builder of additional vessels as stated in <a href="#">Box 27</a> at the contract price and delivery dates stated in <a href="#">Box 28</a> , but otherwise on the same terms and conditions as this Contract with logical amendments. Such option must be declared by the Buyer to the Builder within the number of months stated in <a href="#">Box 29</a> following the Effective date of this Contract referred to in <a href="#">Clause 44</a> (Effective date of	1232 1233 1234 1235 1236

v1.31

Contract). 1237

**47. Entire Agreement** 1238

This Contract constitutes the entire agreement between the Parties and no promise, 1239  
undertaking, representation, warranty or statement by either Party prior to the date of 1240  
this Contract stated in [Box 1](#) shall affect this Contract. Any modification of this Contract 1241  
shall not be of any effect unless in writing signed by or on behalf of the Parties. 1242

**48. Third party rights** 1243

Unless expressly identified in this Contract, no third parties shall have the right to enforce 1244  
any term of this Contract. 1245

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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 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 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 maybe 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]

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 maybe 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]

COPY

ANNEX A(iii)

REFUND GUARANTEE

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 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 payment in respect of the contract price 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 (or at the Builder's direction) by you or on your behalf.

'Interest Rate' means the rate of interest 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, including Contractual Interest which shall be [here insert amount] plus any Award Interest.

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

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

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) 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), 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 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 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 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, you (b) the payment to you by the Builder or by us of all sums secured by this Guarantee, and (c) 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 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.
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 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 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

**NEWBUILDCON - Standard Newbuilding Contract – PART II**

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 maybe 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 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]. [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]

## NEWBUILDCON - Standard Newbuilding Contract – PART II

### ANNEX A(iv)

#### IRREVOCABLE LETTER OF GUARANTEE FOR BUILDER'S OBLIGATIONS UNDER [CLAUSE 27](#)

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 Vessel, as the same maybe 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]

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

2. In consideration of you entering into the Contract, agreeing to take delivery of the Vessel, 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) that if the Builder becomes liable to pay any sum to you in accordance with the terms of [Clause 27\(c\)\(iv\)](#) of the Contract in respect of 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 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 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) the repair of the 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.
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 maybe 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 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]. [We hereby authorise and nominate the following agent to accept service of any court proceedings on our behalf: [here insert name and

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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 a 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 “B” - (SPECIFICATION)  
BIMCO STANDARD NEWBUILDING CONTRACT  
CODE NAME: NEWBUILDCON

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ANNEX “C” - (MAKER’S LIST)  
BIMCO STANDARD NEWBUILDING CONTRACT  
CODE NAME: NEWBUILDCON

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WORKING  
COPY

## RISKS COVERED

1. This insurance covers all risks of loss of or damage to the subject-matter insured except as provided in Clauses 4, 5, 6 and 7 below. Risks Clause
2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 or elsewhere in this insurance. General Average Clause
3. This insurance is extended to indemnify the Assured against such proportion of liability under the contract of affreightment "Both to Blame Collision" Clause as is in respect of a loss recoverable hereunder. In the event of any claim by shipowners under the said Clause the Assured agree to notify the Underwriters who shall have the right, at their own cost and expense, to defend the Assured against such claim. "Both to Blame Collision" Clause

## EXCLUSIONS

4. In no case shall this insurance cover  
4.1 loss damage or expense attributable to wilful misconduct of the Assured  
4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured  
4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this Clause 4.3 "packing" shall be deemed to include stowage in a container or liftvan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants)  
4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured  
4.5 loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)  
4.6 loss damage or expense arising from insolvency or financial default of the owners managers charterers or operators of the vessel  
4.7 loss damage or expense arising from the use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter. General Exclusions Clause
5. 5.1 In no case shall this insurance cover loss damage or expense arising from unseaworthiness of vessel or craft, unfitness of vessel craft conveyance container or liftvan for the safe carriage of the subject-matter insured, where the Assured or their servants are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein. Unseaworthiness and Unfitness Exclusion Clause  
5.2 The Underwriters waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination, unless the Assured or their servants are privy to such unseaworthiness or unfitness.
6. In no case shall this insurance cover loss damage or expense caused by  
6.1 civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power  
6.2 capture seizure arrest restraint or detention (piracy excepted), and the consequences thereof or any attempt thereat  
6.3 derelict mines torpedoes bombs or other derelict weapons of war. War Exclusion Clause
7. In no case shall this insurance cover loss damage or expense  
7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions  
7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions  
7.3 caused by any terrorist or any person acting from a political motive. Strikes Exclusion Clause

## DURATION

8. 8.1 This insurance attaches from the time the goods leave the warehouse or place of storage at the place named herein for the commencement of the transit, continues during the ordinary course of transit and terminates either Transit Clause  
8.1.1 on delivery to the Consignees' or other final warehouse or place of storage at the destination named herein,  
8.1.2 on delivery to any other warehouse or place of storage, whether prior to or at the destination named herein, which the Assured elect to use either  
8.1.2.1 for storage other than in the ordinary course of transit or  
8.1.2.2 for allocation or distribution,  
or  
8.1.3 on the expiry of 60 days after completion of discharge overseaside of the goods hereby insured from the oversea vessel at the final port of discharge, whichever shall first occur.  
8.2. If, after discharge overseaside from the oversea vessel at the final port of discharge, but prior to termination of this insurance, the goods are to be forwarded to a destination other than that to which they are insured hereunder, this insurance, whilst remaining subject to termination as provided for above, shall not extend beyond the commencement of transit to such other destination.  
8.3. This insurance shall remain in force (subject to termination as provided for above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment.
9. If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before delivery of the goods as provided for in Clause 8 above, then this insurance shall also terminate unless prompt notice is given to the Underwriters and continuation of cover is requested when the insurance shall remain in force, subject to an additional premium if required by the Underwriters, either Termination of Contract of Carriage Clause

- 9.1 until the goods are sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the goods hereby insured at such port or place, whichever shall first occur,  
or  
9.2 if the goods are forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named herein or to any other destination, until terminated in accordance with the provisions of Clause 8 above.

10. Where, after attachment of this insurance, the destination is changed by the Assured, held covered at a premium and on conditions to be arranged subject to prompt notice being given to the Underwriters Change of Voyage Clause

**CLAIMS**

11. 11.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss. Insurable Interest Clause  
11.2 Subject to 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Underwriters were not.

12. Where, as a result of the operation of a risk covered by this insurance the insured transit is terminated at a port or place other than that to which the subject-matter is covered under this insurance, the Underwriters will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter to the destination to which it is insured hereunder. Forwarding Charges Clause

*This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4, 5, 6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their servants.*

13. No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter to the destination to which it is insured would exceed its value on arrival. Constructive Total Loss Clause

14. 14.1 If any Increased Value insurance is effected by the Assured on the cargo insured herein the agreed value of the cargo shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured. Increased Value Clause

*In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.*

**14.2 Where this insurance is on Increased Value the following clause shall apply:**

*The agreed value of the cargo shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the cargo by the Assured, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured.*

*In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.*

**BENEFIT OF INSURANCE**

15. This insurance shall not inure to the benefit of the carrier or other bailee. Not to Inure Clause

**MINIMISING LOSSES**

16. It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder Duty of Assured Clause  
16.1 to take such measures as may be reasonable for the purpose of averting or minimizing such loss,  
and

16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised and the Underwriters will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

17. Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party. Waiver Clause

**AVOIDANCE OF DELAY**

18. It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control. Reasonable Despatch Clause

**LAW AND PRACTICE**

19. This insurance is subject to English law and practice. English Law and Practice Clause

**NOTE.-** It is necessary for the Assured when they become aware of an event which is "held covered" under this insurance to give prompt notice to the Underwriters and the right to such cover is dependent upon compliance with this obligation.

Shipper	
Consignee (if 'Order' state Notify Party and Address)	
Notify Party and Address (leave blank if stated above)	
Local vessel	from (Local Port of loading)
Ocean vessel	Port of loading
Port of discharge	Final destination (if on carriage)

# CARRIER

It is agreed that no responsibility shall attach to the Carrier or his Agents for failure to notify the Consignee of the arrival of the goods.

Marks and Nos; Container No:	Number and kind of packages: description of goods	Gross Weight	Measurement

Particulars of goods are those declared by Shippers

The terms, conditions and exceptions of this contract (upon which the rate of freight is based) and which are hereby mutually agreed upon, are as follows:-  
 Received by the Carrier from the Merchant in apparent good order and condition (unless otherwise noted herein) the total number or quantity of containers or other packages or units indicated, stated by the Merchant to comprise the goods specified above, for carriage subject to all the terms hereof (INCLUDING THE TERMS ON THE REVERSE HEREOF AND THE TERMS OF THE CARRIER'S APPLICABLE TARIFF) from the Place of Receipt or the Port of Delivery, whichever is applicable. In accepting this Bill of Lading, the Merchant expressly accepts and agrees to all its terms, conditions and exceptions whether printed, stamped or written or otherwise incorporated, notwithstanding any local privileges and customs and/or the signing of this Bill of Lading by the Merchant.

Ocean Freight Payable at _____	Place and date of issue _____
Number of Original Bs/L _____	IN WITNESS whereof three (3) original Bills of Lading (unless otherwise stated herein) all of this tenor and date have been signed one of which being accomplished the other(s) to be void.
Number of Packages (in words) _____	by _____ [full legal title and country of incorporation of agent]
	as agent, for and on behalf of Borchard Line Ltd. England as Carrier under the Bill of Lading

**COPY NOT NEGOTIABLE**

**CRB(2)**

CONDITIONS CONTINUED OVERLEAF







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**BIMCO STANDARD BAREBOAT CHARTER  
CODE NAME: "BARECON 2001"**

**PART I**

1. Shipbroker		2. Place and date	
3. Owners/Place of business ( <a href="#">Cl. 1</a> )		4. Bareboat Charterers/Place of business ( <a href="#">Cl. 1</a> )	
5. Vessel's name, call sign and flag ( <a href="#">Cl. 1</a> and <a href="#">3</a> )			
6. Type of Vessel		7. GT/NT	
8. When/Where built		9. Total DWT (abt.) in metric tons on summer freeboard	
10. Classification Society ( <a href="#">Cl. 9</a> )		11. Date of last special survey by the Vessel's classification society	
12. Further particulars of Vessel (also indicate minimum number of months' validity of class certificates agreed acc. to <a href="#">Cl. 3</a> )			
13. Port or Place of delivery ( <a href="#">Cl. 3</a> )		14. Time for delivery ( <a href="#">Cl. 4</a> )	15. Cancelling date ( <a href="#">Cl. 5</a> )
16. Port or Place of redelivery ( <a href="#">Cl. 15</a> )		17. No. of months' validity of trading and class certificates upon redelivery ( <a href="#">Cl. 15</a> )	
18. Running days' notice if other than stated in <a href="#">Cl. 4</a>		19. Frequency of dry-docking ( <a href="#">Cl. 10(g)</a> )	
20. Trading limits ( <a href="#">Cl. 6</a> )			
21. Charter period ( <a href="#">Cl. 2</a> )		22. Charter hire ( <a href="#">Cl. 11</a> )	
23. New class and other safety requirements (state percentage of Vessel's insurance value acc. to <a href="#">Box 29</a> ( <a href="#">Cl. 10(a)(ii)</a> ))			
24. Rate of interest payable acc. to <a href="#">Cl. 11 (f)</a> and, if applicable, acc. to <a href="#">PART IV</a>		25. Currency and method of payment ( <a href="#">Cl. 11</a> )	

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26. Place of payment; also state beneficiary and bank account ( <a href="#">Cl. 11</a> )	27. Bank guarantee/bond (sum and place) ( <a href="#">Cl. 24</a> ) (optional)
28. Mortgage(s), if any (state whether <a href="#">12(a)</a> or <a href="#">(b)</a> applies; if <a href="#">12(b)</a> applies state date of Financial Instrument and name of Mortgagee(s)/Place of business) ( <a href="#">Cl. 12</a> )	29. Insurance (hull and machinery and war risks) (state value acc. to <a href="#">Cl. 13(f)</a> or, if applicable, acc. to <a href="#">Cl. 14(k)</a> ) (also state if <a href="#">Cl. 14</a> applies)
30. Additional insurance cover, if any, for Owners' account limited to ( <a href="#">Cl. 13(b)</a> ) or, if applicable, <a href="#">Cl. 14(g)</a> )	31. Additional insurance cover, if any, for Charterers' account limited to ( <a href="#">Cl. 13(b)</a> ) or, if applicable, <a href="#">Cl. 14(g)</a> )
32. Latent defects (only to be filled in if period other than stated in <a href="#">Cl. 3</a> )	33. Brokerage commission and to whom payable ( <a href="#">Cl. 27</a> )
34. Grace period (state number of clear banking days) ( <a href="#">Cl. 28</a> )	35. Dispute Resolution (state <a href="#">30(a)</a> , <a href="#">30(b)</a> or <a href="#">30(c)</a> ; if <a href="#">30(c)</a> agreed Place of Arbitration <u>must</u> be stated ( <a href="#">Cl. 30</a> ))
36. War cancellation (indicate countries agreed) ( <a href="#">Cl. 26(f)</a> )	
37. Newbuilding Vessel (indicate with "yes" or "no" whether <a href="#">PART III</a> applies) (optional)	38. Name and place of Builders (only to be filled in if <a href="#">PART III</a> applies)
39. Vessel's Yard Building No. (only to be filled in if <a href="#">PART III</a> applies)	40. Date of Building Contract (only to be filled in if <a href="#">PART III</a> applies)
41. Liquidated damages and costs shall accrue to (state party acc. to <a href="#">Cl. 1</a> ) a) b) c)	
42. Hire/Purchase agreement (indicate with "yes" or "no" whether <a href="#">PART IV</a> applies) (optional)	43. Bareboat Charter Registry (indicate with "yes" or "no" whether <a href="#">PART V</a> applies) (optional)
44. Flag and Country of the Bareboat Charter Registry (only to be filled in if <a href="#">PART V</a> applies)	45. Country of the Underlying Registry (only to be filled in if <a href="#">PART V</a> applies)
46. Number of additional clauses covering special provisions, if agreed	

PREAMBLE - It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include [PART I](#) and [PART II](#). In the event of a conflict of conditions, the provisions of [PART I](#) shall prevail over those of [PART II](#) to the extent of such conflict but no further. It is further mutually agreed that [PART III](#) and/or [PART IV](#) and/or [PART V](#) shall only apply and only form part of this Charter if expressly agreed and stated in [Boxes 37, 42 and 43](#). If [PART III](#) and/or [PART IV](#) and/or [PART V](#) apply, it is further agreed that in the event of a conflict of conditions, the provisions of [PART I](#) and [PART II](#) shall prevail over those of [PART III](#) and/or [PART IV](#) and/or [PART V](#) to the extent of such conflict but no further.

Signature (Owners)	Signature (Charterers)
--------------------	------------------------

**PART II**  
**“BARECON 2001” Standard Bareboat Charter**

<b>1. Definitions</b>	1	thereof to the Charterers asking whether they will	73
In this Charter, the following terms shall have the meanings hereby assigned to them:	2	exercise their option of cancelling, and the option must	74
“The Owners” shall mean the party identified in <a href="#">Box 3</a> ;	3	then be declared within one hundred and sixty-eight	75
“The Charterers” shall mean the party identified in <a href="#">Box 4</a> ;	4	(168) running hours of the receipt by the Charterers of	76
“The Vessel” shall mean the vessel named in <a href="#">Box 5</a> and with particulars as stated in <a href="#">Boxes 6 to 12</a> .	5	such notice or within thirty-six (36) running hours after	77
“Financial Instrument” means the mortgage, deed of covenant or other such financial security instrument as annexed to this Charter and stated in <a href="#">Box 28</a> .	6	the cancelling date, whichever is the earlier. If the	78
	7	Charterers do not then exercise their option of cancelling,	79
	8	the seventh day after the readiness date stated in the	80
	9	Owners’ notice shall be substituted for the cancelling	81
	10	date indicated in <a href="#">Box 15</a> for the purpose of this <a href="#">Clause 5</a> .	82
		(c) Cancellation under this <a href="#">Clause 5</a> shall be without	83
		prejudice to any claim the Charterers may otherwise	84
		have on the Owners under this Charter.	85
<b>2. Charter Period</b>	11		
In consideration of the hire detailed in <a href="#">Box 22</a> ,	12		
the Owners have agreed to let and the Charterers have	13		
agreed to hire the Vessel for the period stated in <a href="#">Box 21</a>	14		
(“The Charter Period”).	15		
<b>3. Delivery</b>	16	<b>6. Trading Restrictions</b>	86
<i>(not applicable when Part III applies, as indicated in <a href="#">Box 37</a>)</i>	17	The Vessel shall be employed in lawful trades for the	87
(a) The Owners shall before and at the time of delivery	18	carriage of suitable lawful merchandise within the trading	88
exercise due diligence to make the Vessel seaworthy	19	limits indicated in <a href="#">Box 20</a> .	89
And in every respect ready in hull, machinery and	20	The Charterers undertake not to employ the Vessel or	90
equipment for service under this Charter.	21	suffer the Vessel to be employed otherwise than in	91
The Vessel shall be delivered by the Owners and taken	22	conformity with the terms of the contracts of insurance	92
over by the Charterers at the port or place indicated in	23	(including any warranties expressed or implied therein)	93
<a href="#">Box 13</a> in such ready safe berth as the Charterers may	24	without first obtaining the consent of the insurers to such	94
direct.	25	employment and complying with such requirements as	95
(b) The Vessel shall be properly documented on	26	to extra premium or otherwise as the insurers may	96
delivery in accordance with the laws of the flag State	27	prescribe.	97
indicated in <a href="#">Box 5</a> and the requirements of the	28	The Charterers also undertake not to employ the Vessel	98
classification society stated in <a href="#">Box 10</a> . The Vessel upon	29	or suffer her employment in any trade or business which	99
delivery shall have her survey cycles up to date and	30	is forbidden by the law of any country to which the Vessel	100
trading and class certificates valid for at least the number	31	may sail or is otherwise illicit or in carrying illicit or	101
of months agreed in <a href="#">Box 12</a> .	32	prohibited goods or in any manner whatsoever which	102
(c) The delivery of the Vessel by the Owners and the	33	may render her liable to condemnation, destruction,	103
taking over of the Vessel by the Charterers shall	34	seizure or confiscation.	104
constitute a full performance by the Owners of all the	35	Notwithstanding any other provisions contained in this	105
Owners’ obligations under this <a href="#">Clause 3</a> , and thereafter	36	Charter it is agreed that nuclear fuels or radioactive	106
the Charterers shall not be entitled to make or assert	37	products or waste are specifically excluded from the	107
any claim against the Owners on account of any	38	cargo permitted to be loaded or carried under this	108
conditions, representations or warranties expressed or	39	Charter. This exclusion does not apply to radio-isotopes	109
implied with respect to the Vessel but the Owners shall	40	used or intended to be used for any industrial,	110
be liable for the cost of but not the time for repairs or	41	commercial, agricultural, medical or scientific purposes	111
renewals occasioned by latent defects in the Vessel,	42	provided the Owners’ prior approval has been obtained	112
her machinery or appurtenances, existing at the time of	43	to loading thereof.	113
delivery under this Charter, provided such defects have	44		
manifested themselves within twelve (12) months after	45	<b>7. Surveys on Delivery and Redelivery</b>	114
delivery unless otherwise provided in <a href="#">Box 32</a> .	46	<i>(not applicable when Part III applies, as indicated in <a href="#">Box 37</a>)</i>	115
		The Owners and Charterers shall each appoint	116
<b>4. Time for Delivery</b>	47	surveyors for the purpose of determining and agreeing	117
<i>(not applicable when Part III applies, as indicated in <a href="#">Box 37</a>)</i>	48	in writing the condition of the Vessel at the time of	118
The Vessel shall not be delivered before the date	49	delivery and redelivery hereunder. The Owners shall	119
indicated in <a href="#">Box 14</a> without the Charterers’ consent and	50	bear all expenses of the On-hire Survey including loss	120
the Owners shall exercise due diligence to deliver the	51	of time, if any, and the Charterers shall bear all expenses	121
Vessel not later than the date indicated in <a href="#">Box 15</a> .	52	of the Off-hire Survey including loss of time, if any, at	122
Unless otherwise agreed in <a href="#">Box 18</a> , the Owners shall	53	the daily equivalent to the rate of hire or pro rata thereof.	123
give the Charterers not less than thirty (30) running days’	54		
preliminary and not less than fourteen (14) running days’	55	<b>8. Inspection</b>	124
definite notice of the date on which the Vessel is	56	The Owners shall have the right at any time after giving	125
expected to be ready for delivery.	57	reasonable notice to the Charterers to inspect or survey	126
The Owners shall keep the Charterers closely advised	58	the Vessel or instruct a duly authorised surveyor to carry	127
of possible changes in the Vessel’s position.	59	out such survey on their behalf:-	128
		(a) to ascertain the condition of the Vessel and satisfy	129
<b>5. Cancelling</b>	60	themselves that the Vessel is being properly repaired	130
<i>(not applicable when Part III applies, as indicated in <a href="#">Box 37</a>)</i>	61	and maintained. The costs and fees for such inspection	131
(a) Should the Vessel not be delivered latest by the	62	or survey shall be paid by the Owners unless the Vessel	132
cancelling date indicated in <a href="#">Box 15</a> , the Charterers shall	63	is found to require repairs or maintenance in order to	133
have the option of cancelling this Charter by giving the	64	achieve the condition so provided:	134
Owners notice of cancellation within thirty-six (36)	65	(b) in dry-dock if the Charterers have not dry-docked	135
running hours after the cancelling date stated in <a href="#">Box</a>	66	Her in accordance with <a href="#">Clause 10(a)</a> . The costs and fees	136
<a href="#">15</a> , failing which this Charter shall remain in full force	67	for such inspection or survey shall be paid by the	137
and effect.	68	Charterers: and	138
(b) If it appears that the Vessel will be delayed beyond	69	(c) for any other commercial reason they consider	139
the cancelling date, the Owners may, as soon as they	70	necessary (provided it does not unduly interfere with	140
are in a position to state with reasonable certainty the	71	the commercial operation of the Vessel). The costs and	141
day on which the Vessel should be ready, give notice	72	fees for such inspection and survey shall be paid by the	142
		Owners.	143
		All time used in respect of inspection, survey or repairs	144
		shall be for the Charterers’ account and form part of the	145

**PART II**  
**“BARECON 2001” Standard Bareboat Charter**

Charter Period.	146	(b) <u>Operation of the Vessel</u> - The Charterers shall at	219
The Charterers shall also permit the Owners to inspect	147	their own expense and by their own procurement man,	220
the Vessel's log books whenever requested and shall	148	visual, navigate, operate, supply, fuel and, whenever	221
whenever required by the Owners furnish them with full	149	required, repair the Vessel during the Charter Period	222
information regarding any casualties or other accidents	150	and they shall pay all charges and expenses of every	223
or damage to the Vessel.	151	kind and nature whatsoever incidental to their use and	224
<b>9. Inventories, Oil and Stores</b>	152	operation of the Vessel under this Charter, including	225
A complete inventory of the Vessel's entire equipment,	153	annual flag State fees and any foreign general	226
outfit including spare parts, appliances and of all	154	municipality and/or state taxes. The Master, officers	227
consumable stores on board the Vessel shall be made	155	and crew of the Vessel shall be the servants of the Charterers	228
by the Charterers in conjunction with the Owners on	156	for all purposes whatsoever, even if for any reason	229
delivery and again on redelivery of the Vessel. The	157	appointed by the Owners.	230
Charterers and the Owners, respectively, shall at the	158	Charterers shall comply with the regulations regarding	231
time of delivery and redelivery take over and pay for all	159	officers and crew in force in the country of the Vessel's	232
bunkers, lubricating oil, unbroached provisions, paints,	160	flag or any other applicable law.	233
ropes and other consumable stores (excluding spare	161	(c) The Charterers shall keep the Owners and the	234
parts) in the said Vessel at the then current market prices	162	mortgagee(s) advised of the intended employment,	235
at the ports of delivery and redelivery, respectively. The	163	planned dry-docking and major repairs of the Vessel,	236
Charterers shall ensure that all spare parts listed in the	164	as reasonably required.	237
inventory and used during the Charter Period are	165	(d) <u>Flag and Name of Vessel</u> – During the Charter	238
replaced at their expense prior to redelivery of the	166	Period, the Charterers shall have the liberty to paint the	239
vessel.	167	Vessel in their own colours, install and display their	240
<b>10. Maintenance and Operation</b>	168	funnel insignia and fly their own house flag. The	241
(a)(i) <u>Maintenance and Repairs</u> - During the Charter	169	Charterers shall also have the liberty, with the Owners'	242
Period the Vessel shall be in the full possession	170	consent, which shall not be unreasonably withheld, to	243
and at the absolute disposal for all purposes of the	171	change the flag and/or the name of the Vessel during	244
Charterers and under their complete control in	172	the Charter Period. Painting and re-painting, instalment	245
every respect. The Charterers shall maintain the	173	and re-instalment, registration and re-registration, if	246
Vessel, her machinery, boilers, appurtenances and	174	required by the Owners, shall be at the Charterers'	247
spare parts in a good state of repair, in efficient	175	expense and time.	248
operating condition and in accordance with good	176	(e) <u>Changes to the Vessel</u> – Subject to <a href="#">Clause 10(a)(ii)</a> ,	249
commercial maintenance practice and, except as	177	the Charterers shall make no structural changes in the	250
provided for in <a href="#">Clause 14(i)</a> , if applicable, at their	178	Vessel or changes in the machinery, boilers, appurten-	251
own expense they shall at all times keep the	179	ances or spare parts thereof without in each instance	252
Vessel's Class fully up to date with the Classification	180	first securing the Owners' approval thereof. If the Owners	253
Society indicated in <a href="#">Box 10</a> and maintain all other	181	so agree, the Charterers shall, if the Owners so require,	254
necessary certificates in force at all times.	182	restore the Vessel to its former condition before the	255
(ii) <u>New Class and Other Safety Requirements</u> - In the	183	termination of this Charter.	256
event of any improvement, structural changes or	184	(f) <u>Use of the Vessel's Outfit, Equipment and</u>	257
new equipment becoming necessary for the	185	<u>Appliances</u> - The Charterers shall have the use of all	258
continued operation of the Vessel by reason of new	186	outfit, equipment, and appliances on board the Vessel	259
class requirements or by compulsory legislation	187	at the time of delivery, provided the same or their	260
costing (excluding the Charterers' loss of time)	188	substantial equivalent shall be returned to the Owners	261
more than the percentage stated in <a href="#">Box 23</a> , or if	189	on redelivery in the same good order and condition as	262
<a href="#">Box 23</a> is left blank, 5 per cent. of the Vessel's	190	when received, ordinary wear and tear excepted. The	263
insurance value as stated in <a href="#">Box 29</a> , then the	191	Charterers shall from time to time during the Charter	264
extent, if any, to which the rate of hire shall be varied	192	Period replace such items of equipment as shall be so	265
and the ratio in which the cost of compliance shall	193	damaged or worn as to be unfit for use. The Charterers	266
be shared between the parties concerned in order	194	are to procure that all repairs to or replacement of any	267
to achieve a reasonable distribution thereof as	195	damaged, worn or lost parts or equipment be effected	268
between the Owners and the Charterers having	196	in such manner (both as regards workmanship and	269
regard, inter alia, to the length of the period	197	quality of materials) as not to diminish the value of the	270
remaining under this Charter shall, in the absence	198	Vessel. The Charterers have the right to fit additional	271
of agreement, be referred to the dispute resolution	199	equipment at their expense and risk but the Charterers	272
method agreed in <a href="#">Clause 30</a> .	200	shall remove such equipment at the end of the period if	273
(iii) <u>Financial Security</u> - The Charterers shall maintain	201	requested by the Owners. Any equipment including radio	274
financial security or responsibility in respect of third	202	equipment on hire on the Vessel at time of delivery shall	275
party liabilities as required by any government,	203	be kept and maintained by the Charterers and the	276
including federal, state or municipal or other division	204	Charterers shall assume the obligations and liabilities	277
or authority thereof, to enable the Vessel, without	205	of the Owners under any lease contracts in connection	278
penalty or charge, lawfully to enter, remain at, or	206	therewith and shall reimburse the Owners for all	279
leave any port, place, territorial or contiguous	207	expenses incurred in connection therewith, also for any	280
waters of any country, state or municipality in	208	new equipment required in order to comply with radio	281
performance of this Charter without any delay. This	209	regulations.	282
obligation shall apply whether or not such	210	(g) <u>Periodical Dry-Docking</u> - The Charterers shall dry-	283
requirements have been lawfully imposed by such	211	dock the Vessel and clean and paint her underwater	284
government or division or authority thereof.	212	parts whenever the same may be necessary, but not	285
The Charterers shall make and maintain all arrange-	213	less than once during the period stated in <a href="#">Box 19</a> or, if	286
ments by bond or otherwise as may be necessary to	214	<a href="#">Box 19</a> has been left blank, every sixty (60) calendar	287
satisfy such requirements at the Charterers' sole	215	months after delivery or such other period as may be	288
expense and the Charterers shall indemnify the Owners	216	required by the Classification Society or flag State.	289
against all consequences whatsoever (including loss of	217	<b>11. Hire</b>	290
time) for any failure or inability to do so.	218	(a) The Charterers shall pay hire due to the Owners	291
		punctually in accordance with the terms of this Charter	292

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in respect of which time shall be of the essence.	293	withheld. Such insurances shall be arranged by the	366
(b) The Charterers shall pay to the Owners for the hire of the Vessel a lump sum in the amount indicated in <a href="#">Box 22</a> which shall be payable not later than every thirty (30) running days in advance, the first lump sum being payable on the date and hour of the Vessel's delivery to the Charterers. Hire shall be paid continuously throughout the Charter Period.	294 295 296 297 298 299 300	Charterers to protect the interests of both the Owners and the Charterers and the mortgagee(s) (if any), and The Charterers shall be at liberty to protect under such insurances the interests of any managers they may appoint. Insurance policies shall cover the Owners and the Charterers according to their respective interests. Subject to the provisions of the Financial Instrument, if any, and the approval of the Owners and the insurers, the Charterers shall effect all insured repairs and shall undertake settlement and reimbursement from the insurers of all costs in connection with such repairs as well as insured charges, expenses and liabilities to the extent of coverage under the insurances herein provided for.	367 368 369 370 371 372 373 374 375 376 377 378 379 380
(c) Payment of hire shall be made in cash without discount in the currency and in the manner indicated in <a href="#">Box 25</a> and at the place mentioned in <a href="#">Box 26</a> .	301 302 303	The Charterers also to remain responsible for and to effect repairs and settlement of costs and expenses incurred thereby in respect of all other repairs not covered by the insurances and/or not exceeding any possible franchise(s) or deductibles provided for in the insurances.	381 382 383 384 385 386
(d) Final payment of hire, if for a period of less than thirty (30) running days, shall be calculated proportionally according to the number of days and hours remaining before redelivery and advance payment to be effected accordingly.	304 305 306 307 308	All time used for repairs under the provisions of sub-clause 13(a) and for repairs of latent defects according to <a href="#">Clause 3(c)</a> above, including any deviation, shall be for the Charterers' account.	387 388 389 390
(e) Should the Vessel be lost or missing, hire shall cease from the date and time when she was lost or last heard of. The date upon which the Vessel is to be treated as lost or missing shall be ten (10) days after the Vessel was last reported or when the Vessel is posted as missing by Lloyd's, whichever occurs first. Any hire paid in advance to be adjusted accordingly.	309 310 311 312 313 314 315	(b) If the conditions of the above insurances permit additional insurance to be placed by the parties, such cover shall be limited to the amount for each party set out in <a href="#">Box 30</a> and <a href="#">Box 31</a> , respectively. The Owners or the Charterers as the case may be shall immediately furnish the other party with particulars of any additional insurance effected, including copies of any cover notes or policies and the written consent of the insurers of any such required insurance in any case where the consent of such insurers is necessary.	391 392 393 394 395 396 397 398 399 400
(f) Any delay in payment of hire shall entitle the Owners to interest at the rate per annum as agreed in <a href="#">Box 24</a> . If <a href="#">Box 24</a> has not been filled in, the three months Interbank offered rate in London (LIBOR or its successor) for the currency stated in <a href="#">Box 25</a> , as quoted by the British Bankers' Association (BBA) on the date when the hire fell due, increased by 2 per cent., shall apply.	316 317 318 319 320 321 322	(c) The Charterers shall upon the request of the Owners, provide information and promptly execute such documents as may be required to enable the Owners to comply with the insurance provisions of the Financial Instrument.	401 402 403 404 405
(g) Payment of interest due under <a href="#">sub-clause 11(f)</a> shall be made within seven (7) running days of the date of the Owners' invoice specifying the amount payable or, in the absence of an invoice, at the time of the next hire payment date.	323 324 325 326 327	(d) Subject to the provisions of the Financial Instrument, if any, should the Vessel become an actual, constructive, compromised or agreed total loss under the insurances required under <a href="#">sub-clause 13(a)</a> , all insurance payments for such loss shall be paid to the Owners who shall distribute the moneys between the Owners and the Charterers according to their respective interests. The Charterers undertake to notify the Owners and the mortgagee(s), if any, of any occurrences in consequence of which the Vessel is likely to become a total loss as defined in this Clause.	406 407 408 409 410 411 412 413 414 415 416
<b>12. Mortgage</b>	328	(e) The Owners shall upon the request of the Charterers, promptly execute such documents as may be required to enable the Charterers to abandon the Vessel to insurers and claim a constructive total loss.	417 418 419 420
<i>(only to apply if <a href="#">Box 28</a> has been appropriately filled in)</i>	329	(f) For the purpose of insurance coverage against hull and machinery and war risks under the provisions of <a href="#">sub-clause 13(a)</a> , the value of the Vessel is the sum indicated in <a href="#">Box 29</a> .	421 422 423 424
*) (a) The Owners warrant that they have not effected any mortgage(s) of the Vessel and that they shall not effect any mortgage(s) without the prior consent of the Charterers, which shall not be unreasonably withheld.	330 331 332 333	<b>14. Insurance, Repairs and Classification</b>	425
*) (b) The Vessel chartered under this Charter is financed by a mortgage according to the Financial Instrument. The Charterers undertake to comply, and provide such information and documents to enable the Owners to comply, with all such instructions or directions in regard to the employment, insurances, operation, repairs and maintenance of the Vessel as laid down in the Financial Instrument or as may be directed from time to time during the currency of the Charter by the mortgagee(s) in conformity with the Financial Instrument. The Charterers confirm that, for this purpose, they have acquainted themselves with all relevant terms, conditions and provisions of the Financial Instrument and agree to acknowledge this in writing in any form that may be required by the mortgagee(s). The Owners warrant that they have not effected any mortgage(s) other than stated in <a href="#">Box 28</a> and that they shall not agree to any amendment of the mortgage(s) referred to in <a href="#">Box 28</a> or effect any other mortgage(s) without the prior consent of the Charterers, which shall not be unreasonably withheld.	334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354	<i>(Optional, only to apply if expressly agreed and stated in <a href="#">Box 29</a>, in which event <a href="#">Clause 13</a> shall be considered deleted).</i>	426 427 428
*) <i>(Optional, <a href="#">Clauses 12(a)</a> and <a href="#">12(b)</a> are alternatives; indicate alternative agreed in <a href="#">Box 28</a>).</i>	355 356	(a) During the Charter Period the Vessel shall be kept insured by the Owners at their expense against hull and machinery and war risks under the form of policy or policies attached hereto. The Owners and/or insurers shall not have any right of recovery or subrogation against the Charterers on account of loss of or any damage to the Vessel or her machinery or appurtenances covered by such insurance, or on account of payments made to discharge claims against or liabilities of the Vessel or the Owners covered by such insurance. Insurance policies shall cover the Owners and the	429 430 431 432 433 434 435 436 437 438 439
<b>13. Insurance and Repairs</b>	357		
(a) During the Charter Period the Vessel shall be kept insured by the Charterers at their expense against hull and machinery, war and Protection and Indemnity risks (and any risks against which it is compulsory to insure for the operation of the Vessel, including maintaining financial security in accordance with sub-clause 10(a)(iii)) in such form as the Owners shall in writing approve, which approval shall not be un-reasonably	358 359 360 361 362 363 364 365		

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Charterers according to their respective interests.	440		
(b) During the Charter Period the Vessel shall be kept insured by the Charterers at their expense against Protection and Indemnity risks (and any risks against which it is compulsory to insure for the operation of the Vessel, including maintaining financial security in accordance with <a href="#">sub-clause 10(a)(iii)</a> in such form as the Owners shall in writing approve which approval shall not be unreasonably withheld.	441 442 443 444 445 446 447 448		
(c) In the event that any act or negligence of the Charterers shall vitiate any of the insurance herein provided, the Charterers shall pay to the Owners all losses and indemnify the Owners against all claims and demands which would otherwise have been covered by such insurance.	449 450 451 452 453 454		
(d) The Charterers shall, subject to the approval of the Owners or Owners' Underwriters, effect all insured repairs, and the Charterers shall undertake settlement of all miscellaneous expenses in connection with such repairs as well as all insured charges, expenses and liabilities, to the extent of coverage under the insurances provided for under the provisions of <a href="#">sub-clause 14(a)</a> . The Charterers to be secured reimbursement through the Owners' Underwriters for such expenditures upon presentation of accounts.	455 456 457 458 459 460 461 462 463 464		
(e) The Charterers to remain responsible for and to effect repairs and settlement of costs and expenses incurred thereby in respect of all other repairs not covered by the insurances and/or not exceeding any possible franchise(s) or deductibles provided for in the insurances.	465 466 467 468 469 470		
(f) All time used for repairs under the provisions of <a href="#">sub-clauses 14(d)</a> and <a href="#">14(e)</a> and for repairs of latent defects according to <a href="#">Clause 3</a> above, including any deviation, shall be for the Charterers' account and shall form part of the Charter Period. The Owners shall not be responsible for any expenses as are incident to the use and operation of the Vessel for such time as may be required to make such repairs.	471 472 473 474 475 476 477 478		
(g) If the conditions of the above insurances permit additional insurance to be placed by the parties such cover shall be limited to the amount for each party set out in <a href="#">Box 30</a> and <a href="#">Box 31</a> , respectively. The Owners or the Charterers as the case may be shall immediately furnish the other party with particulars of any additional insurance effected, including copies of any cover notes or policies and the written consent of the insurers of any such required insurance in any case where the consent of such insurers is necessary.	479 480 481 482 483 484 485 486 487 488		
(h) Should the Vessel become an actual, constructive, compromised or agreed total loss under the insurances required under <a href="#">sub-clause 14(a)</a> , all insurance payments for such loss shall be paid to the Owners, who shall distribute the moneys between themselves and the Charterers according to their respective interests.	489 490 491 492 493 494		
(i) If the Vessel becomes an actual, constructive, compromised or agreed total loss under the insurances arranged by the Owners in accordance with <a href="#">sub-clause 14(a)</a> , this Charter shall terminate as of the date of such loss.	495 496 497 498 499		
(j) The Charterers shall upon the request of the Owners, promptly execute such documents as may be required to enable the Owners to abandon the Vessel to the insurers and claim a constructive total loss.	500 501 502 503		
(k) For the purpose of insurance coverage against hull and machinery and war risks under the provisions of <a href="#">sub-clause 14(a)</a> , the value of the Vessel is the sum indicated in <a href="#">Box 29</a> .	504 505 506 507		
(l) Notwithstanding anything contained in <a href="#">sub-clause 10(a)</a> , it is agreed that under the provisions of <a href="#">Clause 14</a> , if applicable, the Owners shall keep the Vessel's Class fully up to date with the Classification Society indicated in <a href="#">Box 10</a> and maintain all other necessary certificates in force at all times.	508 509 510 511 512 513		
		<b>15. Redelivery</b>	514
		At the expiration of the Charter Period the Vessel shall be redelivered by the Charterers to the Owners at a safe and ice-free port or place as indicated in <a href="#">Box 16</a> , in such ready safe berth as the Owners may direct. The Charterers shall give the Owners not less than thirty (30) running days' preliminary notice of expected date, range of ports of redelivery or port or place of redelivery and not less than fourteen (14) running days' definite notice of expected date and port or place of redelivery. Any changes thereafter in the Vessel's position shall be notified immediately to the Owners. The Charterers warrant that they will not permit the Vessel to commence a voyage (including any preceding ballast voyage) which cannot reasonably be expected to be completed in time to allow redelivery of the Vessel within the Charter Period. Notwithstanding the above, should the Charterers fail to redeliver the Vessel within the Charter Period, the Charterers shall pay the daily equivalent to the rate of hire stated in <a href="#">Box 22</a> plus 10 per cent. or to the market rate, whichever is the higher, for the number of days by which the Charter Period is exceeded. All other terms, conditions and provisions of this Charter shall continue to apply. Subject to the provisions of <a href="#">Clause 10</a> , the Vessel shall be redelivered to the Owners in the same or as good structure, state, condition and class as that in which she was delivered, fair wear and tear not affecting class excepted. The Vessel upon redelivery shall have her survey cycles up to date and trading and class certificates valid for at least the number of months agreed in <a href="#">Box 17</a> .	515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545
		<b>16. Non-Lien</b>	546
		The Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the Owners in the Vessel. The Charterers further agree to fasten to the Vessel in a conspicuous place and to keep so fastened during the Charter Period a notice reading as follows: "This Vessel is the property of (name of Owners). It is under charter to (name of Charterers) and by the terms of the Charter Party neither the Charterers nor the Master have any right, power or authority to create, incur or permit to be imposed on the Vessel any lien whatsoever."	547 548 549 550 551 552 553 554 555 556 557 558 559
		<b>17. Indemnity</b>	560
		(a) The Charterers shall indemnify the Owners against any loss, damage or expense incurred by the Owners arising out of or in relation to the operation of the Vessel by the Charterers, and against any lien of whatsoever nature arising out of an event occurring during the Charter Period. If the Vessel be arrested or otherwise detained by reason of claims or liens arising out of her operation hereunder by the Charterers, the Charterers shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail. Without prejudice to the generality of the foregoing, the Charterers agree to indemnify the Owners against all consequences or liabilities arising from the Master, officers or agents signing Bills of Lading or other documents.	561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576
		(b) If the Vessel be arrested or otherwise detained by reason of a claim or claims against the Owners, the Owners shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail. In such circumstances the Owners shall indemnify the Charterers against any loss, damage or expense incurred by the Charterers (including hire paid under this Charter) as a direct consequence of such arrest or detention.	577 578 579 580 581 582 583 584 585 586

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<b>18. Lien</b>	587	or thereupon to be frustrated or otherwise terminated	657
The Owners to have a lien upon all cargoes, sub-hires	588	and the Charterers shall continue to pay the stipulated	658
and sub-freights belonging or due to the Charterers or	589	hire in the manner provided by this Charter until the time	659
any sub-charterers and any Bill of Lading freight for all	590	when the Charter would have terminated pursuant to	660
claims under this Charter, and the Charterers to have a	591	any of the provisions hereof always provided however	661
lien on the Vessel for all moneys paid in advance and	592	that in the event of “Requisition for Hire” any Requisition	662
not earned.	593	Hire or compensation received or receivable by the	663
<b>19. Salvage</b>	594	Owners shall be payable to the Charterers during the	664
All salvage and towage performed by the Vessel shall	595	remainder of the Charter Period or the period of the	665
be for the Charterers’ benefit and the cost of repairing	596	“Requisition for Hire” whichever be the shorter.	666
damage occasioned thereby shall be borne by the	597	<b>(b)</b> In the event of the Owners being deprived of their	667
Charterers.	598	ownership in the Vessel by any Compulsory Acquisition	668
<b>20. Wreck Removal</b>	599	of the Vessel or requisition for title by any governmental	669
In the event of the Vessel becoming a wreck or	600	or other competent authority (hereinafter referred to as	670
obstruction to navigation the Charterers shall indemnify	601	“Compulsory Acquisition”), then, irrespective of the date	671
the Owners against any sums whatsoever which the	602	during the Charter Period when “Compulsory Acqui-	672
Owners shall become liable to pay and shall pay in	603	sition” may occur, this Charter shall be deemed	673
consequence of the Vessel becoming a wreck or	604	terminated as of the date of such “Compulsory	674
obstruction to navigation.	605	Acquisition”. In such event Charter Hire to be considered	675
<b>21. General Average</b>	606	as earned and to be paid up to the date and time of	676
The Owners shall not contribute to General Average.	607	such “Compulsory Acquisition”.	677
<b>22. Assignment, Sub-Charter and Sale</b>	608	<b>26. War</b>	678
<b>(a)</b> The Charterers shall not assign this Charter nor	609	<b>(a)</b> For the purpose of this Clause, the words “War	679
sub-charter the Vessel on a bareboat basis except with	610	Risks” shall include any war (whether actual or	680
the prior consent in writing of the Owners, which shall	611	threatened), act of war, civil war, hostilities, revolution,	681
not be unreasonably withheld, and subject to such terms	612	rebellion, civil commotion, warlike operations, the laying	682
and conditions as the Owners shall approve.	613	of mines (whether actual or reported), acts of piracy,	683
<b>(b)</b> The Owners shall not sell the Vessel during the	614	acts of terrorists, acts of hostility or malicious damage,	684
currency of this Charter except with the prior written	615	blockades (whether imposed against all vessels or	685
consent of the Charterers, which shall not be unreason-	616	imposed selectively against vessels of certain flags or	686
ably withheld, and subject to the buyer accepting an	617	ownership, or against certain cargoes or crews or	687
assignment of this Charter.	618	otherwise howsoever), by any person, body, terrorist or	688
<b>23. Contracts of Carriage</b>	619	political group, or the Government of any state	689
<b>*) (a)</b> The Charterers are to procure that all documents	620	whatsoever, which may be dangerous or are likely to be	690
issued during the Charter Period evidencing the terms	621	or to become dangerous to the Vessel, her cargo, crew	691
and conditions agreed in respect of carriage of goods	622	or other persons on board the Vessel.	692
shall contain a paramount clause incorporating any	623	<b>(b)</b> The Vessel, unless the written consent of the	693
legislation relating to carrier’s liability for cargo	624	Owners be first obtained, shall not continue to or go	694
compulsorily applicable in the trade; if no such legislation	625	through any port, place, area or zone (whether of land	695
exists, the documents shall incorporate the Hague-Visby	626	or sea), or any waterway or canal, where it reasonably	696
Rules. The documents shall also contain the New Jason	627	appears that the Vessel, her cargo, crew or other	697
Clause and the Both-to-Blame Collision Clause.	628	persons on board the Vessel, in the reasonable	698
<b>*) (b)</b> The Charterers are to procure that all passenger	629	judgement of the Owners, may be, or are likely to be,	699
tickets issued during the Charter Period for the carriage	630	exposed to War Risks. Should the Vessel be within any	700
of passengers and their luggage under this Charter shall	631	such place as aforesaid, which only becomes danger-	701
contain a paramount clause incorporating any legislation	632	ous, or is likely to be or to become dangerous, after her	702
relating to carrier’s liability for passengers and their	633	entry into it, the Owners shall have the right to require	703
luggage compulsorily applicable in the trade; if no such	634	the Vessel to leave such area.	704
legislation exists, the passenger tickets shall incorporate	635	<b>(c)</b> The Vessel shall not load contraband cargo, or to	705
the Athens Convention Relating to the Carriage of	636	pass through any blockade, whether such blockade be	706
Passengers and their Luggage by Sea, 1974, and any	637	imposed on all vessels, or is imposed selectively in any	707
protocol thereto.	638	way whatsoever against vessels of certain flags or	708
	639	ownership, or against certain cargoes or crews or	709
	640	otherwise howsoever, or to proceed to an area where	710
	641	she shall be subject, or is likely to be subject to	711
	642	a belligerent’s right of search and/or confiscation.	712
<b>24. Bank Guarantee</b>	640	<b>(d)</b> If the insurers of the war risks insurance, when	713
<i>(Optional, only to apply if <a href="#">Box 27</a> filled in)</i>	641	<a href="#">Clause 14</a> is applicable, should require payment of	714
The Charterers undertake to furnish, before delivery of	642	premiums and/or calls because, pursuant to the	715
the Vessel, a first class bank guarantee or bond in the	643	Charterers’ orders, the Vessel is within, or is due to enter	716
sum and at the place as indicated in <a href="#">Box 27</a> as guarantee	644	and remain within, any area or areas which are specified	717
for full performance of their obligations under this	645	by such insurers as being subject to additional premiums	718
Charter.	646	because of War Risks, then such premiums and/or calls	719
<b>25. Requisition/Acquisition</b>	647	shall be reimbursed by the Charterers to the Owners at	720
<b>(a)</b> In the event of the Requisition for Hire of the Vessel	648	the same time as the next payment of hire is due.	721
by any governmental or other competent authority	649	<b>(e)</b> The Charterers shall have the liberty:	722
(hereinafter referred to as “Requisition for Hire”)	650	<b>(i)</b> to comply with all orders, directions, recommend-	723
irrespective of the date during the Charter Period when	651	ations or advice as to departure, arrival, routes,	724
“Requisition for Hire” may occur and irrespective of the	652	sailing in convoy, ports of call, stoppages,	725
length thereof and whether or not it be for an indefinite	653	destinations, discharge of cargo, delivery, or in any	726
or a limited period of time, and irrespective of whether it	654	other way whatsoever, which are given by the	727
may or will remain in force for the remainder of the	655	Government of the Nation under whose flag the	728
Charter Period, this Charter shall not be deemed thereby	656	Vessel sails, or any other Government, body or	729
		group whatsoever acting with the power to compel	730

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compliance with their orders or directions;	731	written notice to the Charterers, to give the	804
(ii) to comply with the orders, directions or recom-	732	Charterers a specified number of days grace within	805
mendations of any war risks underwriters who have	733	which to rectify the failure without prejudice to the	806
the authority to give the same under the terms of	734	Owners' right to withdraw and terminate under this	807
the war risks insurance;	735	Clause if the Charterers fail to comply with such	808
(iii) to comply with the terms of any resolution of the	736	notice;	809
Security Council of the United Nations, any	737	(iii) the Charterers fail to rectify any failure to comply	810
directives of the European Community, the effective	738	with the requirements of <a href="#">sub-clause 10(a)(i)</a>	811
orders of any other Supranational body which has	739	(Maintenance and Repairs) as soon as practically	812
the right to issue and give the same, and with	740	possible after the Owners have requested them in	813
national laws aimed at enforcing the same to which	741	writing so to do and in any event so that the Vessel's	814
the Owners are subject, and to obey the orders	742	insurance cover is not prejudiced.	815
and directions of those who are charged with their	743	(b) <u>Owners' Default</u>	816
enforcement.	744	If the Owners shall by any act or omission be in breach	817
(f) In the event of outbreak of war (whether there be a	745	of their obligations under this Charter to the extent that	818
declaration of war or not) (i) between any two or more	746	the Charterers are deprived of the use of the Vessel	819
of the following countries: the United States of America;	747	and such breach continues for a period of fourteen (14)	820
Russia; the United Kingdom; France; and the People's	748	running days after written notice thereof has been given	821
Republic of China, (ii) between any two or more of the	749	by the Charterers to the Owners, the Charterers shall	822
countries stated in <a href="#">Box 36</a> , both the Owners and the	750	be entitled to terminate this Charter with immediate effect	823
Charterers shall have the right to cancel this Charter,	751	by written notice to the Owners.	824
whereupon the Charterers shall redeliver the Vessel to	752	(c) <u>Loss of Vessel</u>	825
the Owners in accordance with <a href="#">Clause 15</a> , if the Vessel	753	This Charter shall be deemed to be terminated if the	826
has cargo on board after discharge thereof at	754	Vessel becomes a total loss or is declared as a	827
destination, or if debarred under this Clause from	755	constructive or compromised or arranged total loss. For	828
reaching or entering it at a near, open and safe port as	756	the purpose of this sub-clause, the Vessel shall not be	829
directed by the Owners, or if the Vessel has no cargo	757	deemed to be lost unless she has either become an	830
on board, at the port at which the Vessel then is or if at	758	actual total loss or agreement has been reached with	831
sea at a near, open and safe port as directed by the	759	her underwriters in respect of her constructive,	832
Owners. In all cases hire shall continue to be paid in	760	compromised or arranged total loss or if such agreement	833
accordance with <a href="#">Clause 11</a> and except as aforesaid all	761	with her underwriters is not reached it is adjudged by a	834
other provisions of this Charter shall apply until	762	competent tribunal that a constructive loss of the Vessel	835
redelivery.	763	has occurred.	836
<b>27. Commission</b>	764	(d) Either party shall be entitled to terminate this	837
The Owners to pay a commission at the rate indicated	765	Charter with immediate effect by written notice to the	838
in <a href="#">Box 33</a> to the Brokers named in <a href="#">Box 33</a> on any hire	766	other party in the event of an order being made or	839
paid under the Charter. If no rate is indicated in <a href="#">Box 33</a> ,	767	resolution passed for the winding up, dissolution,	840
the commission to be paid by the Owners shall cover	768	liquidation or bankruptcy of the other party (otherwise	841
the actual expenses of the Brokers and a reasonable	769	than for the purpose of reconstruction or amalgamation)	842
fee for their work.	770	or if a receiver is appointed, or if it suspends payment,	843
If the full hire is not paid owing to breach of the Charter	771	ceases to carry on business or makes any special	844
by either of the parties the party liable therefor shall	772	arrangement or composition with its creditors.	845
indemnify the Brokers against their loss of commission.	773	(e) The termination of this Charter shall be without	846
Should the parties agree to cancel the Charter, the	774	prejudice to all rights accrued due between the parties	847
Owners shall indemnify the Brokers against any loss of	775	prior to the date of termination and to any claim that	848
commission but in such case the commission shall not	776	either party might have.	849
exceed the brokerage on one year's hire.	777	<b>29. Repossession</b>	850
<b>28. Termination</b>	778	In the event of the termination of this Charter in	851
(a) <u>Charterers' Default</u>	779	accordance with the applicable provisions of <a href="#">Clause 28</a> ,	852
The Owners shall be entitled to withdraw the Vessel from	780	the Owners shall have the right to repossess the Vessel	853
the service of the Charterers and terminate the Charter	781	from the Charterers at her current or next port of call, or	854
with immediate effect by written notice to the Charterers if:	782	at a port or place convenient to them without hindrance	855
(i) the Charterers fail to pay hire in accordance with	783	or interference by the Charterers, courts or local	856
<a href="#">Clause 11</a> . However, where there is a failure to	784	authorities. Pending physical repossession of the Vessel	857
make punctual payment of hire due to oversight,	785	in accordance with this <a href="#">Clause 29</a> , the Charterers shall	858
negligence, errors or omissions on the part of the	786	hold the Vessel as gratuitous bailee only to the Owners.	859
Charterers or their bankers, the Owners shall give	787	The Owners shall arrange for an authorised represent-	860
the Charterers written notice of the number of clear	788	ative to board the Vessel as soon as reasonably	861
banking days stated in <a href="#">Box 34</a> (as recognised at	789	practicable following the termination of the Charter. The	862
the agreed place of payment) in which to rectify	790	Vessel shall be deemed to be repossessed by the	863
the failure, and when so rectified within such	791	Owners from the Charterers upon the boarding of the	864
number of days following the Owners' notice, the	792	Vessel by the Owners' representative. All arrangements	865
payment shall stand as regular and punctual.	793	and expenses relating to the settling of wages,	866
Failure by the Charterers to pay hire within the	794	disembarkation and repatriation of the Charterers'	867
number of days stated in <a href="#">Box 34</a> of their receiving	795	Master, officers and crew shall be the sole responsibility	868
the Owners' notice as provided herein, shall entitle	796	of the Charterers.	869
the Owners to withdraw the Vessel from the service	797	<b>30. Dispute Resolution</b>	870
of the Charterers and terminate the Charter without	798	(a) This Contract shall be governed by and construed	871
further notice;	799	in accordance with English law and any dispute arising	872
(ii) the Charterers fail to comply with the requirements of:	800	out of or in connection with this Contract shall be referred	873
(1) <a href="#">Clause 6</a> (Trading Restrictions)	801	to arbitration in London in accordance with the Arbitration	874
(2) <a href="#">Clause 13(a)</a> (Insurance and Repairs)	802	Act 1996 or any statutory modification or re-enactment	875
provided that the Owners shall have the option, by	803	thereof save to the extent necessary to give effect to	876

**PART II**  
**“BARECON 2001” Standard Bareboat Charter**

the provisions of this Clause.	877		952
The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.	878 879 880 881		953 954 955 956
The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.	882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899	(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.	957 958 959 960 961
Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.	900	(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.	962
In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.	901 902 903 904 905 906 907	(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.	963 964 965 966 967 968 969
*) (b) This Contract shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Contract shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgement may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.	908 909 910 911 912 913 914 915 916 917 918 919	(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.	970 971 972 973 974
In cases where neither the claim nor any counterclaim exceeds the sum of US\$50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.	920 921 922 923 924 925	(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.	975 976 977 978 979
*) (c) This Contract shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Contract shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.	926 927 928 929 930 931	(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)	980 981
(d) Notwithstanding (a), (b) or (c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Contract.	932 933 934 935	(e) If <a href="#">Box 35</a> in Part I is not appropriately filled in, sub-clause 30(a) of this Clause shall apply. <a href="#">Sub-clause 30(d)</a> shall apply in all cases.	982 983 984
In the case of a dispute in respect of which arbitration has been commenced under (a), (b) or (c) above, the following shall apply:-	936 937 938	*) <a href="#">Sub-clauses 30(a), 30(b) and 30(c)</a> are alternatives; indicate alternative agreed in <a href="#">Box 35</a> .	985 986
(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.	939 940 941 942 943	<b>31. Notices</b>	987
(ii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that	944 945 946 947 948 949 950 951	(a) Any notice to be given by either party to the other party shall be in writing and may be sent by fax, telex, registered or recorded mail or by personal service.	988 989 990
		(b) The address of the Parties for service of such communication shall be as stated in <a href="#">Boxes 3 and 4</a> respectively.	991 992 993



“BARECON 2001” Standard Bareboat Charter

**PART IV  
HIRE/PURCHASE AGREEMENT**

*(Optional, only to apply if expressly agreed and stated in Box 42)*

**OPTIONAL  
PART**

On expiration of this Charter and provided the Charterers have fulfilled their obligations according to Part I and II as well as Part III, if applicable, it is agreed, that on payment of the final payment of hire as per <a href="#">Clause 11</a> the Charterers have purchased the Vessel with everything belonging to her and the Vessel is fully paid for.	1 2 3 4 5 6 7	In exchange for payment of the last month's hire instalment the Sellers shall furnish the Buyers with a Bill of Sale duly attested and legalized, together with a certificate setting out the registered encumbrances, if any. On delivery of the Vessel the Sellers shall provide for deletion of the Vessel from the Ship's Register and deliver a certificate of deletion to the Buyers.	28 29 30 31 32 33 34
<i>In the following paragraphs the Owners are referred to as the Sellers and the Charterers as the Buyers.</i>	8 9	The Sellers shall, at the time of delivery, hand to the Buyers all classification certificates (for hull, engines, anchors, chains, etc.), as well as all plans which may be in Sellers' possession.	35 36 37 38
The Vessel shall be delivered by the Sellers and taken over by the Buyers on expiration of the Charter.	10 11	The Wireless Installation and Nautical Instruments, unless on hire, shall be included in the sale without any extra payment.	39 40 41
The Sellers guarantee that the Vessel, at the time of delivery, is free from all encumbrances and maritime liens or any debts whatsoever other than those arising from anything done or not done by the Buyers or any existing mortgage agreed not to be paid off by the time of delivery. Should any claims, which have been incurred prior to the time of delivery be made against the Vessel, the Sellers hereby undertake to indemnify the Buyers against all consequences of such claims to the extent it can be proved that the Sellers are responsible for such claims. Any taxes, notarial, consular and other charges and expenses connected with the purchase and registration under Buyers' flag, shall be for Buyers' account. Any taxes, consular and other charges and expenses connected with closing of the Sellers' register, shall be for Sellers' account.	12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	The Vessel with everything belonging to her shall be at Sellers' risk and expense until she is delivered to the Buyers, subject to the conditions of this Contract and the Vessel with everything belonging to her shall be delivered and taken over as she is at the time of delivery, after which the Sellers shall have no responsibility for possible faults or deficiencies of any description.	42 43 44 45 46 47 48
		The Buyers undertake to pay for the repatriation of the Master, officers and other personnel if appointed by the Sellers to the port where the Vessel entered the Bareboat Charter as per <a href="#">Clause 3</a> (Part II) or to pay the equivalent cost for their journey to any other place.	49 50 51 52 53

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**PART V**

**PROVISIONS TO APPLY FOR VESSELS REGISTERED IN A BAREBOAT CHARTER REGISTRY**

*(Optional, only to apply if expressly agreed and stated in Box 43)*

<b>1. Definitions</b>	1	<b>3. Termination of Charter by Default</b>	17
For the purpose of this PART V, the following terms shall	2	If the Vessel chartered under this Charter is registered	18
have the meanings hereby assigned to them:	3	in a Bareboat Charter Registry as stated in <a href="#">Box 44</a> , and	19
<u>“The Bareboat Charter Registry”</u> shall mean the registry	4	if the Owners shall default in the payment of any amounts	20
of the State whose flag the Vessel will fly and in which	5	due under the mortgage(s) specified in <a href="#">Box 28</a> , the	21
the Charterers are registered as the bareboat charterers	6	Charterers shall, if so required by the mortgagee, direct	22
during the period of the Bareboat Charter.	7	the Owners to re-register the Vessel in the Underlying	23
<u>“The Underlying Registry”</u> shall mean the registry of the	8	Registry as shown in <a href="#">Box 45</a> .	24
state in which the Owners of the Vessel are registered	9	In the event of the Vessel being deleted from the	25
as Owners and to which jurisdiction and control of the	10	Bareboat Charter Registry as stated in <a href="#">Box 44</a> , due to a	26
Vessel will revert upon termination of the Bareboat	11	default by the Owners in the payment of any amounts	27
Charter Registration.	12	due under the mortgage(s), the Charterers shall have	28
<b>2. Mortgage</b>	13	the right to terminate this Charter forthwith and without	29
The Vessel chartered under this Charter is financed by	14	prejudice to any other claim they may have against the	30
a mortgage and the provisions of <a href="#">Clause 12(b)</a> (Part II)	15	Owners under this Charter.	31
shall apply.	16		

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CONTRATTO DI NOLEGGIO PER UNITÀ DA DIPORTO

CODE NAME: "ISYBA-YTIME" - ED. 2005

FORMULARIO REDATTO EDISTRIBUITO DA ISYBA - RIPRODUZIONE VIETATA

CONTRATTO DI NOLEGGIO PER UNITÀ DA DIPORTO

Stipulato a

in data

Con il presente contratto fatto in duplice originale e composto da Parte I, Parte II, appendice "A" ed eventuali allegati, da valere ad ogni effetto di legge anche se concluso a distanza tramite posta, telefax ed e-mail, tra le Parti sottoindicate si conviene quanto segue.

PARTE I: DEFINIZIONI E DETTAGLI

A) NOLEGGIANTE (da qui in poi chiamato "Noleggiante")

B) NOLEGGIATORE (da qui in poi chiamato "Noleggiatore")

C) UNITÀ DA DIPORTO (da qui in poi chiamata "Unità")

Denominata:

Bandiera:

Sigla di iscrizione:

Lunghezza f.t.:

Costruita da:

Anno di costruzione:

Tipo e Modello:

Comandante:

N° Ospiti:

N° equipaggio:

D) DURATA DEL NOLEGGIO

E) CONSEGNA - RICONSEGNA

Dal giorno ore

Porto di consegna

Al giorno ore

Porto di riconsegna

F) NOLO

G) FONDO PER APPROVVIGIONAMENTI

H) SPESE DI CONSEGNA E DI RICONSEGNA

I) DEPOSITO CAUZIONALE

L) LIMITI DI NAVIGAZIONE

M) MEDIATORE MARITTIMO (v. Parte II, cl. 13)

N) PAGAMENTI

CODE NAME:

CONTRATTO DI NOLEGGIO PER UNITÀ DA DIPORTO

O) DIRITTO DI RECESSO (Direttiva 97/7/CE - Decreto Legislativo 22/05/1999, n. 185)

Nel caso in cui il presente contratto fosse concluso a distanza ed il Noleggiatore sia un Consumatore (intendendo tale la persona fisica che agisca per fini che non rientrano nel quadro della sua attività professionale), quest'ultimo potrà esercitare il diritto di recesso entro 10 giorni lavorativi dalla conclusione del contratto, inviando al Noleggiante: a) lettera raccomandata A/R; oppure, b) telegramma, telex, telefax ed e-mail, purché tale comunicazione sia confermata mediante lettera raccomandata con avviso di ricevimento entro le 48 ore successive. Il diritto di recesso non può essere esercitato: a) nel caso in cui l'esecuzione del presente contratto debba iniziare prima del termine di dieci giorni lavorativi dalla conclusione del contratto stesso; b) quando il Noleggiante, su richiesta del Noleggiatore, si impegna a consegnare l'unità ad una data determinata o in un periodo prestabilito.

P) CONDIZIONI PARTICOLARI

Con la firma del presente contratto, composto da Parte I, Parte II, appendice "A" ed eventuali allegati, il Noleggiante ed il Noleggiatore dichiarano di averlo letto, concordato ed approvato in ogni sua parte, mentre il Mediatore lo sottoscrive solo in detta qualità e per accettazione dell'incarico di Depositario.

Il Noleggiante

Il Noleggiatore

Il Mediatore

## PARTE II: CONDIZIONI

1. NOLEGGIO - Il Noleggio dell'unità rimane stabilito per il periodo di tempo convenuto alle condizioni contenute nel presente contratto fatto in duplice originale e composto da Parte I, Parte II, appendice "A" ed eventuali allegati. L'unità deve essere utilizzata solo per diporto a scopo ricreativo, escludendo espressamente il suo impiego per l'insegnamento della navigazione da diporto, per attività sportive e quale unità appoggio per immersioni subacquee. Il Noleggiante si impegna a non stipulare alcun altro contratto di noleggio relativo all'unità per lo stesso periodo di tempo.

2. OBBLIGHI DEL NOLEGGIANTE - Il Noleggiante deve:

- consegnare l'unità al Noleggiatore nel luogo e nei tempi convenuti, adeguate attrezzature, forniture ed equipaggiamento, nonché dei prescritti documenti e delle dotazioni di sicurezza previste per legge e sotto ogni aspetto in condizioni di navigabilità, provvista di un Comandante e di equipaggio che siano in possesso delle abilitazioni professionali previste dalla normativa vigente;
- garantire al Noleggiatore che l'unità alla consegna avrà le caratteristiche indicate nell'appendice "A";
- mantenere a sue spese l'unità in condizioni di navigabilità, di piena efficienza ed idonea all'uso pattuito e pagare tutte le spese inerenti l'equipaggio (paghe, contributi, panatiche, etc.);
- assicurare e tenere assicurata l'unità secondo quanto previsto nella Parte II, clausola 12.

3. OBBLIGHI DEL NOLEGGIATORE - Il Noleggiatore deve:

- pagare al Noleggiante il nolo relativo al periodo di noleggio pattuito nei modi e nei termini convenuti; versare il fondo per approvvigionamenti nei modi e termini convenuti; versare, a garanzia di qualsiasi obbligazione a suo carico derivante dal presente contratto, il deposito cauzionale nei modi e termini convenuti;
- utilizzare l'unità esclusivamente per diporto a scopo ricreativo, tra porti e ancoraggi buoni e sicuri compresi entro i limiti di navigazione convenuti ove possa stare con sicurezza sempre galleggiante; la navigazione giornaliera non potrà eccedere in media le 6 ore, salvo patto contrario;
- sostenere tutte le spese per la fornitura di combustibile, di lubrificanti, di acqua, di elettricità, del cibo e delle bevande per sé ed i suoi ospiti, i costi di comunicazione ed in genere tutte le spese ed i costi conseguenti all'utilizzo dell'unità da parte del Noleggiatore e dei suoi ospiti;
- sostenere i danni non indennizzabili dall'assicuratore per fatto o colpa del Noleggiatore stesso e dei suoi ospiti;
- riconsegnare l'unità al Noleggiante nel luogo e nei tempi convenuti e nel medesimo buono stato in cui venne consegnata, salvo il normale deperimento, libera da ogni vincolo e gravame dipendente da obbligazioni assunte dal Noleggiatore; in caso siano necessarie riparazioni a spese del Noleggiatore, questi dovrà effettuarle prima della riconsegna.

Inoltre il Noleggiatore si impegna espressamente: a non effettuare con l'unità il trasporto di passeggeri e merci, nè effettuare alcun tipo di commercio; a non tenere a bordo armi, esplosivi e sostanze stupefacenti, neanche per uso personale; a non ospitare a bordo dell'unità, in navigazione, persone in numero superiore a quello convenuto, esclusi i membri dell'equipaggio; ad indennizzare il Noleggiante per ogni perdita, danno o responsabilità derivante da qualsiasi infrazione alle precedenti disposizioni; a non sub-noleggiare l'unità, nè a cedere i diritti derivanti dal presente contratto, senza autorizzazione scritta del Noleggiante.

4. FONDO PER APPROVVIGIONAMENTI - Il Noleggiatore deve versare nei modi e nei termini convenuti il fondo per approvvigionamenti; tale somma sarà messa a disposizione del Comandante e verrà da questi gestita durante il noleggio per fare fronte alle spese generate dagli ordini e dalla presenza a bordo del Noleggiatore e dei suoi ospiti. Nonostante il versamento del fondo per approvvigionamenti, il Noleggiatore garantisce di avere con sé fondi sufficienti e prontamente disponibili per pagare tutte le spese ed i costi a lui attribuibili durante il noleggio.

5. DEPOSITO CAUZIONALE - Il Noleggiatore, a garanzia di qualsiasi obbligazione a suo carico derivante dal presente contratto, deve versare il deposito cauzionale nei modi e nei termini convenuti. Tale somma sarà custodita dal Depositario nei modi previsti dalle leggi vigenti e dovrà essere restituita al Noleggiatore, senza interessi, entro il primo giorno lavorativo successivo al termine del periodo di noleggio o a quello della definizione di tutte le questioni in disputa.

6. PAGAMENTI - I pagamenti relativi al nolo e delle spese di consegna e riconsegna, nonché il versamento del fondo per approvvigionamenti e del deposito cauzionale, devono essere effettuati dal Noleggiatore al Noleggiante nei modi e nei termini convenuti. Se, invece, il presente contratto è stato concluso tramite il Mediatore Marittimo indicato nella Parte I, voce M, incaricato da ambo le parti di svolgere la funzione di Depositario, allora tutte le somme che il Noleggiatore deve corrispondere al Noleggiante in conseguenza del presente contratto devono essere conferite al Depositario che le custodirà nei modi previsti dalle leggi vigenti provvedendo a:

- pagare il 50% (cinquanta per cento) del nolo complessivo al Noleggiante, dedotte le provvigioni spettanti al Mediatore, tramite bonifico bancario da eseguire entro e non oltre il primo giorno lavorativo successivo a quello di avvenuta consegna dell'unità al Noleggiatore.
- versare il Fondo per Approvvigionamenti al Noleggiante o al Comandante, tramite bonifico bancario da eseguire entro 7 (sette) giorni lavorativi prima dell'inizio del periodo di noleggio.
- pagare le spese di consegna e/o di riconsegna al Noleggiante tramite bonifico bancario da eseguire entro e non oltre il primo giorno lavorativo successivo a quello di avvenuta consegna dell'unità al Noleggiatore.
- pagare il saldo del nolo complessivo al Noleggiante tramite bonifico bancario da eseguire entro e non oltre il primo giorno lavorativo successivo alla conclusione del periodo di noleggio.

Nel caso il Noleggiante o il Noleggiatore comunicasse per iscritto al Depositario, prima della conclusione del noleggio, l'intenzione di ricorrere alla procedura arbitrale per risolvere le controversie relative al presente contratto, allora ogni somma che sia ancora custodita presso il Depositario verrà da questi trattenuta e sarà quindi distribuita agli aventi diritto secondo le indicazioni contenute nel lodo arbitrale.



7. MANCATI PAGAMENTI - In caso di:

- mancato pagamento dell'acconto nei modi e nei termini convenuti, il presente contratto dovrà ritenersi nullo.
- mancato pagamento del saldo e/o versamento del fondo per approvvigionamenti e/o del deposito cauzionale nei modi e nei termini convenuti, il presente contratto sarà considerato risolto e l'Armatore potrà trattenere tutti i pagamenti ricevuti con diritto al risarcimento dei danni.

RIPRODUZION  
VIETATA

8. RITARDO NELLA CONSEGNA - Qualora la consegna dell'unità fosse ritardata rispetto al termine ivi indicato:

- per causa di Forza Maggiore, per un periodo inferiore o uguale alle 8 (quarantotto) ore o ad 1/10 (un decimo) della durata del noleggio, quale sia il più breve, il Noleggiante dovrà restituire al Noleggiatore il nolo pro-rata non guadagnato, o, in alternativa e previo accordo con il Noleggiatore, il Noleggiante dovrà concedere al Noleggiatore il prolungamento della durata del noleggio per una durata pari a quella del ritardo nella consegna.
- per causa di Forza Maggiore, per un periodo superiore alle 8 (quarantotto) ore o ad 1/10 (un decimo) della durata del noleggio, quale sia il più breve, il presente contratto sarà considerato risolto; in questo caso il Noleggiante dovrà restituire immediatamente al Noleggiatore qualsiasi compenso pagato in anticipo senza deduzioni, interessi e diritto a risarcimento danni, o, in alternativa e previo accordo con il Noleggiatore, il Noleggiante dovrà concedere al Noleggiatore il prolungamento della durata del noleggio per una durata pari a quella del ritardo nella consegna.
- per qualsiasi causa diversa da Forza Maggiore, il presente contratto sarà considerato risolto per inadempienza del Noleggiante; in questo caso il Noleggiante dovrà restituire immediatamente al Noleggiatore qualsiasi compenso pagato in anticipo, senza deduzioni e senza interessi, unitamente ad una somma pari al 50% (cinquanta per cento) del nolo complessivo a titolo di risarcimento danni.

FORMULARE  
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9. RITARDO NELLA RICONSEGNA - Qualora la riconsegna dell'unità fosse ritardata rispetto al termine ivi indicato:

- per causa di Forza Maggiore, il presente contratto rimarrà in vigore alle stesse condizioni ed il Noleggiatore dovrà corrispondere al Noleggiante un corrispettivo pari alla rata di nolo originaria, calcolata pro-rata, per ogni giorno (o parte di esso) fino a quando la riconsegna sarà effettuata, senza diritto a risarcimento danni a parte del Noleggiante.
- per qualsiasi causa diversa da Forza Maggiore, il Noleggiante dovrà pagare al Noleggiante un corrispettivo pari alla rata di nolo originaria, calcolata pro-rata e maggiorata del 40% (quaranta per cento), per ogni giorno (o parte di esso) fino a quando la riconsegna sarà effettuata e, inoltre, sarà tenuto ad indennizzare il Noleggiante contro qualsiasi danno o perdita che dovesse subire a seguito della mancata disponibilità dell'unità o per l'annullamento di un successivo contratto di noleggio o il ritardo nella consegna ad altro Noleggiatore.

3)-

10. SOSPENSIONE DEL NOLO - Se dopo la consegna al Noleggiatore e per fatto non imputabile al medesimo:

- l'unità non fosse in grado di fornire le sue prestazioni per un periodo non superiore alle 24 (ventiquattro) ore consecutive o di 1/10 (un decimo) della durata del noleggio, quale sia il più breve, a causa di guasti alle macchine od altri apparati di bordo, di danni allo scafo od altro sinistro, il nolo sarà sospeso dal momento in cui si è verificata l'interruzione fino al momento in cui l'unità potrà riprendere il servizio nella stessa posizione di rotta o equivalente; il combustibile, l'olio lubrificante e l'acqua consumati durante il periodo di interruzione saranno a carico del Noleggiante e saranno contabilizzati al prezzo dell'ultimo rifornimento. Resta ferma la scadenza del contratto, salvo patto contrario.
- l'unità andasse perduta o l'interruzione per le cause sopra citate dovesse superare le 24 (ventiquattro) ore consecutive o 1/10 (un decimo) della durata del noleggio, quale sia il più breve, il Noleggiatore potrà invocare la risoluzione del presente contratto dandone immediata comunicazione scritta al Comandante. Qualsiasi compenso pagato in anticipo, a partire dal momento in cui si è verificata l'interruzione o la perdita, dovrà essere restituito al Noleggiatore, che avrà pure il diritto al rimborso delle spese di viaggio e di alloggio per sé ed i suoi ospiti necessaria a raggiungere il porto previsto per la riconsegna. In queste circostanze la riconsegna dell'unità avverrà nel luogo ove si è verificata l'interruzione o laddove l'unità è andata perduta.

La rilevazione di ogni interruzione deve avvenire tramite apposito verbale, redatto in contraddittorio tra il Comandante ed il Noleggiatore.

CODE NAME:

11. COMANDANTE - Il Comandante deve eseguire gli ordini del Noleggiatore con la dovuta sollecitudine e prestare con tutti i mezzi a bordo, insieme con l'equipaggio, ogni usuale assistenza al Noleggiatore. In particolare il Comandante deve: condurre l'unità dove gli sarà ordinato, sempre vento, tempo ed altre circostanze permettendo e premesso che il luogo o il porto sia a suo giudizio sicuro e adatto; tenere aggiornato il giornale nautico secondo le normative vigenti in materia; rilevare, tramite apposito verbale scritto in contraddittorio con il Noleggiatore, la quantità di combustibile presente a bordo alla consegna ed alla riconsegna; presentare al Noleggiatore, al termine del noleggio, un resoconto per quanto possibile documentato di tutte le spese ed i costi a carico del Noleggiatore e questi deve pagare al Comandante prima della riconsegna ogni somma ancora scoperta oppure, nel caso avesse anticipato più del dovuto, deve ricevere il rimborso corrispondente. Inoltre, se il Noleggiatore o uno qualunque dei suoi ospiti dovessero non rispettare quanto stabilito dalla cl. 3 e se tale comportamento si protrasse anche dopo che il Comandante abbia fatto rilevare ciò al Noleggiatore per iscritto, allora il Comandante avrà il potere di condurre l'unità al porto previsto per la riconsegna e, a rientro avvenuto, il noleggio dovrà essere considerato concluso; in questo caso il Noleggiatore non avrà diritto ad alcun rimborso.

CONTRATTO  
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PORTO

12. ASSICURAZIONI - Il Noleggiante deve assicurare e tenere assicurata l'unità per tutta la durata della noleggio tramite polizza corpi stimata comprendente i casi di avaria particolare e ricorso terzi 4/4, nonché stipulare idonea polizza assicurativa a copertura della responsabilità civile verso terzi derivante dalla circolazione dell'unità e a copertura dei terzi trasportati. Il Noleggiatore può richiedere che prima dell'imbarco gli sia fornita copia di tutte le polizze per consultazione. Se il Noleggiatore non ritenesse sufficienti i massimali di copertura dovrà darne comunicazione scritta al Noleggiante, il quale sarà tenuto ad elevarli fino ai limiti richiesti, ma le spese relative saranno a carico del Noleggiatore. Sono in ogni caso a carico del Noleggiatore i danni non indennizzabili dall'assicuratore per fatto o colpa del Noleggiatore stesso e dei suoi ospiti.

Il Noleggiante (data e firma)	Il Noleggiatore (data e firma)	Il Mediatore (data e firma)
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13. RECESSO DEL NOLEGGIANTE - Nel caso il Noleggiante, prima dell'inizio del noleggio, comunicasse per iscritto al Noleggiatore il recesso del presente contratto:

- a) per causa di Forza Maggiore, allora dovrà prontamente restituire al Noleggiatore qualsiasi compenso pagato in anticipo, senza interessi e risarcimento danni;
- b) per qualsiasi causa diversa da Forza Maggiore, allora dovrà prontamente restituire al Noleggiatore qualsiasi compenso pagato in anticipo, senza interessi, oltre al pagamento di una penale a titolo di risarcimento danni pari:
  - i) al 25% (venticinque per cento) del nolo, se la comunicazione di rescissione perviene al Noleggiatore più di 30 (trenta) giorni prima dell'inizio del noleggio;
  - ii) al 35% (trentacinque per cento) del nolo, se la comunicazione di rescissione perviene al Noleggiatore tra 30 (trenta) e 14 (quattordici) giorni prima dell'inizio del noleggio;
  - iii) al 50% (cinquanta per cento) del nolo, se la comunicazione di rescissione perviene al Noleggiatore meno di 14 (quattordici) giorni prima dell'inizio del noleggio.

In caso di rescissione del presente contratto da parte del Noleggiante, per qualsiasi causa compresa la Forza Maggiore, questi sarà tenuto al pagamento dell'intera provvigione spettante al Mediatore.

RIPRODUZIONE VIETATA

FORMULARIO REDATTO ED ISTRUITO DA ISYBA

14. RECESSO DEL NOLEGGIATORE - Fatto salvo quanto previsto nella Parte I, voce O, qualora il Noleggiatore, prima dell'inizio del noleggio, comunicasse per iscritto al Noleggiante il recesso dal presente contratto:

- a) per causa di Forza Maggiore, allora avrà diritto al rimborso di qualsiasi compenso pagato in anticipo, senza interessi, dedotta la provvigione dovuta al Mediatore;
- b) per qualsiasi causa diversa da Forza Maggiore, il Noleggiante avrà l'obbligo di trattenere tutti i pagamenti ricevuti, senza diritto a risarcimento danni; tuttavia, se il Noleggiante sarà in grado di rinoleggiare l'unità per lo stesso periodo a condizioni non meno favorevoli di quelle qui pattuite, allora restituirà al Noleggiatore l'ammontare dei pagamenti ricevuti detraendo però una somma pari a tutte le spese, incluse le provvigioni, sostenute per la conclusione del presente contratto e per l'eventuale rinoleggio.

15. SALVATAGGIO - Il compenso netto per salvataggio e assistenza prestato ad altre unità sarà ripartito in parti uguali tra il Noleggiante ed il Noleggiatore. Tutte le misure prese dal Noleggiante per stabilire l'ammontare del compenso spettante per il salvataggio e per ottenerne il pagamento saranno vincolanti per il Noleggiatore.

16. FORZA MAGGIORE - Ai fini del presente contratto sono considerati causa di Forza Maggiore gli Atti di Dio o qualsiasi accadimento al di fuori del ragionevole controllo del Noleggiante e del Noleggiatore (es.: fatti di Principi, Governanti e Popolo; sciopero; guerra dichiarata o meno; terrorismo; pirateria; incendio; esplosione; accidente della navigazione; fortuna o accidente di mare; difetti alle macchine, allo scafo e agli apparati di bordo non imputabili a responsabilità del Noleggiante).

3) - DI

"ISYBA - YTIME" - PARTE II (

PAG. 3

17. MEDIATORE - Il Noleggiante ed il Noleggiatore riconoscono il Mediatore Marittimo indicato nella Parte I, voce M, quale unico intermediario del presente contratto e parte di questo solo per quanto attiene all'attività di mediazione svolta in favore di ambo le parti. La provvigione spettante al Mediatore è dovuta contestualmente alla conclusione del presente contratto, deve essere calcolata sul nolo lordo complessivo, è pagata dal Noleggiante, si intende acquisita anche se il contratto venisse meno per qualsiasi causa compresa la Forza Maggiore e deve essere corrisposta anche sulle eventuali spese di consegna e/o di riconsegna, nonché sull'eventuale estensione del periodo di noleggio. Inoltre, il Noleggiante ed il Noleggiatore conferiscono al Mediatore Marittimo, che accetta, l'incarico di svolgere la funzione di Depositario, autorizzandolo a ricevere, custodire e trasferire il nolo, il fondo per approvvigionamenti, le spese di consegna e/o di riconsegna ed il deposito cauzionale secondo le previsioni contenute nel presente contratto.

18. LEGGE E CONTROVERSIE - Per quanto non disposto dal presente contratto si fa espresso richiamo alla legge italiana. La risoluzione di ogni e qualsiasi controversia relativa al presente contratto sarà risolta tramite Arbitrato libero presso la Camera Arbitrale Marittima Genova.

CODE NAME:

Il Noleggiante (data e firma)	Il Noleggiatore (data e firma)	Il Mediatore (data e firma)
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CONTRATTO DI NOLEGGIO PER UNITÀ ADI PORTO

Ai sensi degli artt. 1341 e 1342 Cod. Civ. il Noleggiante ed il Noleggiatore dichiarano espressamente di aver letto, concordato ed approvato le clausole del presente contratto riportate nella Parte I alle voci D, E, F, G, H, I, L, M, N, O, P, nonché quelle riportate nella Parte II ai numeri 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18.

Il Noleggiante (data e firma)	Il Noleggiatore (data e firma)	Il Mediatore (data e firma)
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APPENDICE "A"

La presente Appendice "A" costituisce parte integrante del contratto di riferimento, come individuato alla voce "1" che segue.

RIPRODUZIONE VIETATA

1. ESTREMI CONTRATTO DI RIFERIMENTO

Tipo contratto:	Mediatore:
Luogo di stipula:	Data di stipula:
Noleggiante:	Noleggiatore:

FORMULARE REDATTO E DISTRIBUITO DA ISYBA

2. INDIVIDUAZIONE E CARATTERISTICHE TECNICHE PRINCIPALI UNITÀ

Denominata:	Bandiera:
Sigla di iscrizione:	Lunghezza f.t.:
Costruita da:	Anno di costruzione:
Tipo e Modello:	Seriale scafo:
Certificazione CE:	Omologazione:
Lunghezza f.t.:	Larghezza:
Pescaggio:	Dislocamento:
Motorizzazione:	Matricole motori:
Capacità gasolio:	Capacità acqua:
N. minimo equipaggio:	N. max persone a bordo:

1) - DI "ISYBA-YTIME" - APPENDICE "A" (PAG. 1)

3. ASSICURAZIONI - POLIZZA CORPI

4. ASSICURAZIONI - POLIZZA R.C.

CODE NAME:

5. NOTE

5. FIRME

Con la firma della presente Appendice "A" le Parti sopra individuate dichiarano espressamente di averla letta, concordata ed approvata, mentre il Mediatore la sottoscrive solo in detta qualità.

Il Noleggiante (data e firma)	Il Noleggiatore (data e firma)	Il Mediatore (data e firma)
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CONTRATTO DI NOLEGGIO PER UNITÀ ADI PORTO

## **DOMANDA DI ARBITRATO IRRITUALE/ RITUALE**

### **1 - DATI DELLA PARTE**

NOME E COGNOME/ DENOMINAZIONE  
RESIDENZA/ SEDE LEGALE

(IN QUALITÀ DI LEGALE RAPPRESENTANTE/ PRESIDENTE IN CASO DI SOCIETÀ)

\* EVENTUALE: RAPPRESENTATA E DIFESA DA ....., GIUSTA PROCURA IN CALCE/ A MARGINE ALLA PRESENTE DOMANDA, PRESSO IL CUI STUDIO IN ..... ELEGGE DOMICILIO AI FINI DEL PRESENTE PROCEDIMENTO (LA PARTE PUÒ STARE IN GIUDIZIO PERSONALMENTE OPPURE PUÒ SCEGLIERE DI ESSERE RAPPRESENTATA E DIFESA DA UN LEGALE)

### **PRESENTA DOMANDA DI ARBITRATO NEI CONFRONTI DI**

### **2 - DATI DEL CONVENUTO/ I**

NOME E COGNOME/ DENOMINAZIONE  
RESIDENZA/ SEDE LEGALE (o del Procuratore presso cui domiciliata se già noto)

### **3 – OGGETTO DELLA CONTROVERSIA:**

DESCRIZIONE DELLA CONTROVERSIA CON ESPOSIZIONE DEI FATTI, INDICAZIONE DEGLI ESTREMI DEL CONTRATTO AL QUALE LA CONTROVERSIA SI RIFERISCE, INDICAZIONE DELLA CONVENZIONE ARBITRALE DA CUI DERIVA LA COMPETENZA DELLA CAMERA ARBITRALE (COM PROMESSO O CLAUSOLA COM PROMISSORIA), SPECIFICANDO LA NATURA DELL'ARBITRATO (IRRITUALE O RITUALE).

### **4A - IN CASO DI COLLEGIO ARBITRALE:**

NOMINA DELL'ARBITRO IN CASO DI COLLEGIO ARBITRALE COM POSTO DA TRE ARBITRI AI SENSI DELL'ART. 3 – I COMMA DEL REGOLAMENTO ARBITRALE

### **4 B) IN CASO DI ARBITRO UNICO:**

- INDICAZIONE DEL NOMINATIVO SCELTO DALLE PARTI
- RICHIESTA AL PRESIDENTE DELLA CAMERA ARBITRALE DI PROCEDERE ALLA DESIGNAZIONE DELL'ARBITRO

### **CHIEDE**

CHE IL COSTITUENDO COLLEGIO ARBITRALE/ L'ARBITRO DECIDA IN VIA IRRITUALE/ RITUALE (SECONDO QUANTO PREVISTO DALLA CONVENZIONE ARBITRALE), RISPONDA AI SEGUENTI QUESITI:

- .....
- .....
- .....

### **5 - SI PRODUCONO I SEGUENTI DOCUMENTI:**

1. COPIA DELL'ATTO CONTENENTE LA CONVENZIONE ARBITRALE
2. ....
3. ....

LUOGO ....., DATA .....

FIRMA DELLA PARTE E DEL SUO PROCURATORE (SE LA PARTE È RAPPRESENTATA E DIFESA).

MODALITÀ DI DEPOSITO:

LA DOMANDA, LE MEMORIE E LA DOCUMENTAZIONE PRODOTTE VANNO DEPOSITATE IN SEGRETERIA IN UN NUMERO DI COPIE PARI AL NUMERO DEGLI ARBITRI PIÙ UNA COPIA PER OGNI CONTROPARTE E UNA PER LA SEGRETERIA.

IN CASO DI ARBITRATO RITUALE LA PARTE DEVE PROVVEDERE ALLA NOTIFICA DELLA RELATIVA DOMANDA ALLE CONTROPARTI, FORNENDONE PROVA ALLA SEGRETERIA.