



BIMCO

NEWBUILDCON

STANDARD NEWBUILDING CONTRACT

PART I

Version 1.3

Printed by BIMCO's Idea

Copyright Published by BIMCO Copenhagen, 2007

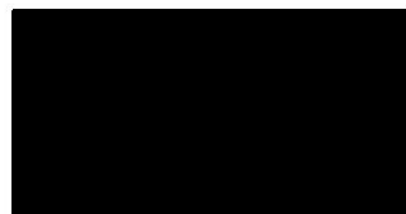
<p>1. Place and date of Contract (Cl. 3, Cl. 44(b), Cl. 47) 16 OCTOBER 2015</p> <p style="text-align: right; font-size: 24pt; font-family: cursive;">PORT GLASGOW</p>		
<p>2. Builder's name, full style address and contact details (Definitions)</p> <p>Name: FERGUSON MARINE ENGINEERING LIMITED Address: 1 REDWOOD CRESCENT, PEEL PARK, EAST KILBRIDE, G74 5PA</p> <p>Country: SCOTLAND Phone/Fax: 01475 742 300 / 01475 742 418 E-mail: [REDACTED]</p> <p>Company registration No. SC485060</p> <p>Additional names, addresses and contact numbers:</p> <p>Name: Address:</p> <p>Country: Phone/Fax: E-mail:</p> <p>Company registration No.</p>	<p>3. Buyer's name, full style address and contact details (Definitions)</p> <p>Name: CALEDONIAN MARITIME ASSETS LIMITED Address: MUNICIPAL BUILDINGS, FORE STREET, PORT GLASGOW</p> <p>Country: SCOTLAND Phone/Fax: 01475 949 925 E-mail: [REDACTED]</p> <p>Company registration No. SC001854</p> <p>Additional names, addresses and contact numbers:</p> <p>Name: Address:</p> <p>Country: Phone/Fax: E-mail:</p> <p>Company registration No.</p>	
<p>4. Vessel description/type (Definitions, Cl. 2(b))</p> <p>'EURO CLASS B', DUAL FUEL PASSENGER FERRY</p>	<p>State vessel type:</p> <p>(i) Dry bulk carrier: (ii) Tanker: (iii) Container vessel: (iv) Other (state type): RO-PAX FERRY</p>	
<p>A. Main dimensions (Cl. 2(b)):</p> <p>(i) LOA (m): 102.4 (ii) Length between perpendiculars (m): 97.8 (iii) Deadweight capacity DWT (mts): 900 (iv) Mean draft in salt water (m): 3.4</p>	<p>B1. Cargo capacity (Cl. 2(b)(v) and Cl. 11):</p> <p>(i) Cubic capacity: N/A (ii) Bale capacity: N/A (iii) Grain capacity: N/A</p>	<p>B2. TEU carrying capacity (only if applicable) (state number of containers):</p> <p>(i) Total on deck a. 20'/40'/45" TEU: N/A b. No. of reefers: N/A (ii) Total under deck a. 20'/40'/45" TEU: N/A b. No. of reefers: N/A (iii) No. of TEU homogenous loaded at 14 mts: N/A</p>
<p>C. Main engine(s): (Cl. 2(b)(ii), Cl. 2(b)(iv) and Cl. 9)</p> <p>(i) Maker/Type: 2x WARTSILA 8L 34DF - SEE ALSO ADDITIONAL CLAUSE 49 (ii) Max. Continuous Rating (MCR) (kilowatts at MCR): 2x 4,000kW (iii) RPM at MCR: 750 RPM (iv) Specific Fuel Oil Consumption at MCR (LNG) 7210 kJ / kWh ; (MGO) 183 g / kWh (v) Normal Continuous Rating (NCR): NOT APPLICABLE (vi) RPM at NCR: NOT APPLICABLE (vii) Type of fuel and specification (including Calorific Value (kcal/kg)): (LNG) 49,520 kJ / kg ; (MGO) 42,700 kJ / kg</p>		
<p>D. Average speed (Cl. 2(b)(i) and Cl. 8)</p> <p>(i) Service speed at design draft (m): (Design T = 3.4) (ii) Min. number of knots: 16.5 (iii) Engine output (kilowatts at MCR): 2 x 2,600 kW (iv) Percentage of engine's max. continuous power/sea margin: 65% / 15% (v) RPM: 750 RPM</p>	<p>E. Other matters (optional) (state any other technical requirements for the particular vessel type) (Cl. 2(b)(vi) and Cl. 12)</p> <p>CARRYING CAPACITY - NOT LESS THAN 1,000 (ONE THOUSAND) PASSENGERS; AND - NOT LESS THAN EITHER 127 (ONE HUNDRED AND TWENTY SEVEN) CARS OR 16 (SIXTEEN) HEAVY GOODS VEHICLES</p>	

Version 1.3

Printed by BIMCO's Idea

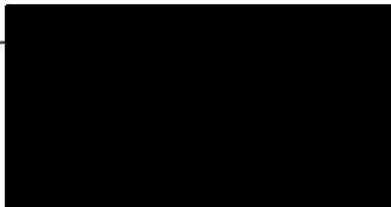
Copyright Published by BIMCO Copenhagen, 2007

<p>5. Shipyard(s) (If different from <u>Box 2</u>) (Full style address and contact details) (Definitions)</p> <p>Name: FERGUSON MARINE ENGINEERING LIMITED Address: NEWARK WORKS, CASTLE ROAD, PORT GLASGOW, PA14 5NJ</p> <p>Country: SCOTLAND Phone/Fax: 01475 742 300 / 01475 742 418 E-mail: LIAM.CAMPBELL@FERGUSONMARINE.COM</p> <p>Additional names, addresses and contact numbers:</p> <p>Name: Address:</p> <p>Country: Phone/Fax: E-mail:</p>		<p>Name: Address:</p> <p>Country: Phone/Fax: E-mail:</p>	
<p>6. Builder's Hull Number (Definitions, <u>Cl. 2(a)</u>) 801</p>		<p>7. Flag State (Definitions) UNITED KINGDOM</p>	
<p>8. Classification Society/Class Notation (Definitions, <u>Cl. 3</u>) LLOYDS REGISTER # 100 A1, ROLL ON-ROLL OFF CARGO AND PASSENGER SHIP, # LMC, PCAC 2, UMS, IFP, NWS, SCM, NAV1, ECO, LI, IHM, EU(B) GF, GREEN PASSPORT</p>		<p>9. Contract Price and Currency (Definitions, <u>Cl. 7</u>) (a) Price £48,500,000 (FORTY EIGHT MILLION FIVE HUNDRED THOUSAND POUNDS) (b) Currency GBP STERLING</p>	
<p>10. Contractual Date of Delivery (Definitions, <u>Cl. 14(c)(iii)(1)</u>) 25 MAY 2018</p>		<p>11. Payment Amounts and Time Due (Definitions, <u>Cl. 7</u>, <u>Cl. 15</u>, <u>Cl. 39(c)</u>)</p> <p>1st Instalment (see <u>Cl. 15(a)(i)</u>)</p> <p>2nd Instalment and time due</p> <p>3rd Instalment and time due</p> <p>4th Instalment and time due</p> <p>Final Instalment (see <u>Cl. 15(a)(iv)</u>)</p> <p>SEE CLAUSE 50 FOR FIFTEEN INSTALMENT PAYMENTS AND WHEN DUE</p>	
<p>12. Builder's Bank Account Details (<u>Cl. 15(d)</u>)</p> <p>Name: [REDACTED] Address: [REDACTED]</p> <p>Country: [REDACTED] Phone/Fax: E-mail: Sort code: [REDACTED] Account number: [REDACTED] Account name: [REDACTED]</p>			
<p>13. Speed Deficiency (<u>Cl. 8</u>, <u>Cl. 39(a)(iv)</u>)</p> <p>(i) Contract Price reduction amount: £50,000 (ii) Maximum amount: (state monetary limit): £150,000</p>		<p>15. Deadweight Deficiency (<u>Cl. 10</u>, <u>Cl. 39(a)(vii)</u>)</p> <p>(i) Deadweight tolerance: 10 TONNES (ii) Contract Price reduction amount: £5,000 (iii) Maximum amount: (state monetary limit): £250,000</p>	
<p>14. Excessive Fuel Consumption (<u>Cl. 9</u>, <u>Cl. 39(a)(v)</u>)</p> <p>(i) Contract Price reduction amount: £5,000 (ii) Maximum amount: (state monetary limit): £25,000</p>			
<p>16. Cubic Deficiency (<u>Cl. 11</u>, <u>Cl. 39(a)(vi)</u>)</p> <p>(i) Cubic capacity tolerance: N/A (ii) Contract Price reduction amount: N/A (iii) Maximum amount: (state monetary limit): N/A</p>		<p>17. Other Deficiencies (Optional)(<u>Cl. 12</u>, <u>Cl. 39(a)(viii)</u>) NOT APPLICABLE</p>	



<p>18. Late Delivery Compensation (Cl. 13)</p> <p>(i) Amount per day: (a) £10,000 (b) £10,000</p> <p>(ii) Maximum amount: (state monetary limit): (a) £750,000, and if Box 18(i)(b) applies (b) £1,500,000</p>	<p>19. Guarantees (Cl. 14(a) and (b))</p> <p>(a) Buyer's guarantees (i) Number of days after signing Contract: NOT APPLICABLE (ii) Buyer's Instalment/Performance Guarantee: NOT APPLICABLE</p> <p>(b) Builder's guarantees (i) Number of days after signing Contract: 14 DAYS</p>	
<p>20. Guarantee Period (state number of months. If left blank 12 months shall apply) (Cl. 35(a)(i)) 12 MONTHS</p>	<p>21. Additional Guarantee Period (state number of months) (Cl. 35(a)) 12 MONTHS</p>	<p>22. Suspension and Termination (Cl. 39)</p> <p>(i) Running period (state number of days): 14 DAYS (ii) Notice period (state number of days): 14 DAYS</p>
<p>23. Governing law and Dispute Resolution (Cl. 41 and Cl. 42)</p> <p>(a) Governing law SCOTS (b) Place of dispute resolution EDINBURGH, SCOTLAND</p>		<p>24. Guarantee Engineer (state monthly lump sum) (Cl. 36(b)) [REDACTED]</p>
<p>25. Effective Date of Contract (state conditions to be fulfilled) (Cl. 44(a)) AS PER BOX 1</p>		<p>26. State number of days within which conditions have to be satisfied (Cl. 44(b)) NOT APPLICABLE</p>
<p>27. Optional additional vessels (state number) (Cl. 46) NOT APPLICABLE</p>		<p>28. Optional additional vessels contract price and delivery dates (Cl. 46) NOT APPLICABLE</p>
<p>29. Declaration of Options (state number of months after Effective date) (Cl. 46) NOT APPLICABLE</p>		<p>30. Interest (state rate of interest) (Cl. 18, Cl. 38(b)(iii)(2)(i), Cl. 39(a) and 39(f)(iv)) TWO PER CENT (2%) PER ANNUM</p>
<p>31. Buyer's Guarantor (state name of bank or party as appropriate, full style address and contact details) (Cl. 14(a))</p> <p>Name: NOT APPLICABLE Address:</p> <p>Country: Phone/Fax: E-mail:</p>		<p>32. Builder's Guarantor (state name of bank or party as appropriate, full style address and contact details) (Cl. 14(b), Cl. 27(d)(iv)(3))</p> <p>Name: [REDACTED] Address: [REDACTED]</p> <p>Country: UNITED KINGDOM Phone/Fax: E-mail:</p>
<p>33. Additional Annexes A – GUARANTEES B – SPECIFICATION C – TECHNICAL SCHEDULE D – GENERAL ARRANGEMENT E – ELECTRICAL SINGLE LINE DIAGRAM F – SPECIMEN MILESTONE CERTIFICATE</p>		<p>34. Numbers of Additional Clauses 49. – 59.</p>

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, Technical Schedule, ~~Maker's List~~, GA, 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, Technical Schedule, ~~Maker's List~~, GA, Plans and/or drawings, the provisions of this Contract shall prevail. In the event of inconsistency between the Specification and the Technical Schedule, ~~Maker's List~~, on the one hand and the GA, Plans and/or Drawings on the other, the Specifications/Technical Schedule, ~~Maker's List~~ shall prevail. In the case of inconsistency between any of the GA and/or the Plans and/or Drawings, the later in date shall prevail.

Version 1.3

Signature (Builder)



Director / Authorised signatory

Before this witness:



Signature (Buyer)



Director / Authorised signatory

Before this witness:



Printed by BIMCO's idea

Copyright Published by BIMCO Copenhagen, 2007

NEWBUILDCON - Standard Newbuilding Contract - PART II

LIST OF CLAUSES

v1.31

DEFINITIONS INTERPRETATION

SECTION 1 – VESSEL

1. Builder's and Buyer's obligations
2. Description
3. Classification, Rules and Regulations
4. IMO Hazardous Materials Inventory
5. Protective Coatings
6. Source of Origin

SECTION 2 – FINANCIAL

7. Contract Price
8. Speed Deficiency
9. Excessive Fuel Consumption
10. Deadweight Deficiency
11. Cubic Capacity Deficiency
12. Other Deficiencies (optional Clause)
13. Late Delivery for non-permissible delays
14. Guarantees
 - (a) Buyer's Instalment/Performance Guarantee
 - (b) Builder's Refund Guarantee
 - (c) Guarantee Compliance and Expiry
15. Payments
 - (a) Instalments
 - (b) Payment for Modifications and other items
 - (c) Payment of Liquidated Damages
 - (d) Payment Procedures
16. Taxes, duties, stamps, dues and fees
17. Right to set-off
18. Interest

SECTION 3 – PRODUCTION

19. Sub-contracting
20. Approvals
21. Buyer's Supplies
 - (a) Buyer
 - (b) Builder
22. Buyer's Representative, Assistants, Officers and Crew
23. Inspections, Tests and Trials
24. Modifications and Changes
25. Builder's Modifications and Substitution of Materials
26. Changes in Rules and Regulations
27. Sea Trials
 - (a) Notice
 - (b) Weather Conditions
 - (c) Conduct of the Sea Trials
 - (d) Method of Acceptance or Rejection

SECTION 4 – DELIVERY

28. Delivery
29. Documents on Delivery
30. Final Instalment
31. Title and Risk
32. Possession and Removal of the Vessel
33. Vessel Registration

SECTION 5 – LEGAL

34. Permissible Delays
35. Builder's Guarantee
36. Guarantee Engineer
37. Responsibilities and exclusions from liabilities
Builder's exclusion Clauses
 - (a) Liability for Defects discovered before

- or at the time of delivery.
- (b) Liability for Defects discovered after delivery
- (c) Liability for third party replacement or repair
- (d) Implied terms
Mutual exclusion Clauses
- (e) Liability following termination
Responsibility Clauses
- (f) Responsibility for death and personal injury
- (g) Responsibility for damage to or loss of property

38. Insurances

- (a) Builder's Insurances
- (b) Allocation of Insurance Proceeds

39. Suspension and Termination

- (a) Buyer's Termination
- (b) Builder's Termination
- (c) Suspension of Work
- (d) Deemed Insolvency
- (e) Effect of Buyer's Termination
- (f) Effect of Builder's Termination

40. Copyrights, Trade Marks and Patents

41. Governing law

42. Dispute Resolution

- (a) Classification/Regulatory Authorities
- (b) Expert determination
- (c) Arbitration and Mediation

SECTION 6 – SUNDRY

43. Notices
44. Effective date of Contract
45. Assignment
 - (a) Builder's assignment
 - (b) Buyer's assignment
46. Options
47. Entire Agreement
48. Third party rights

ADDITIONAL CLAUSES

49. Model Tests and Main Engines
50. Payment Amounts and Time Due
51. Audit
52. Access and Security
53. Anti-discrimination
54. Ethical & Social Requirements
55. No Blacklist
56. Status of the Parties
57. Freedom of Information
58. Anti-corruption and Anti-bribery
59. Miscellaneous

ANNEXES

ANNEX "A" – (GUARANTEES)

ANNEX "B" – (SPECIFICATION)

ANNEX "C" – (TECHNICAL SCHEDULE/MAKER'S LIST)

ANNEX "D" – (GENERAL ARRANGEMENT)

ANNEX "E" – (ELECTRICAL SINGLE LINE DIAGRAM)

ANNEX "F" – (SPECIMEN MILESTONE CERTIFICATE)

DEFINITIONS	1
In this Contract:	2
"Banking Day" means a day on which banks are open in the places stated in <u>Box 2</u> and <u>Box 3</u> and, where a remittance is in US dollars, in New York.	3 4
"Bareboat Charterer" means a company which has - at any time before the Delivery Date, including after the date of this Contract - entered into a bareboat charterer (as charterer) with the Buyer (as owner) of the Vessel, and of which the Buyer has given notice in writing to the Builder.	
"BBC's Representative" means a representative of the Bareboat Charterer as may be notified in writing by the Buyer to the Builder from time to time.	
"Builder" means the company or companies stated in <u>Box 2</u> , organised and existing under the laws of the country or countries stated in <u>Box 2</u> having their registered principal-office at the address stated in <u>Box 2</u> and including their personnel. If more than one company is stated in <u>Box 2</u> then they shall be jointly and severally liable.	5 6 7 8
"Builder's Guarantor" means the banks named in <u>Box 32</u> .	
"Buyer" means the company or companies stated in <u>Box 3</u> , organised and existing under the laws of the country or countries stated in <u>Box 3</u> having their principal office at the address stated in <u>Box 3</u> and including their personnel.	9 10 11
"Buyer's Representative" means the named representative of the Buyer who may be present at the Shipyard throughout the construction of the Vessel.	12 13
"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.	14 15
"Classification Society" means the classification society stated in <u>Box 8</u> .	16
"Contract Price" means the amount stated in <u>Box 9</u> as may be adjusted in accordance with the terms of this Contract.	17 18
"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 Technical Schedule, Maker's List GA and Electrical Single Line Diagram) and Plans and Drawings attached hereto.	19 20 21
"Contractual Date of Delivery" means the contractual date of delivery stated in <u>Box 10</u> .	22
"Defects" means any deficiencies or defects in the design, construction, material and/or workmanship on the part of the Builder or its Sub-contractors.	23 24
"Delivery Date" means the Contractual Date of Delivery as may be adjusted in accordance with the terms of this Contract.	25 26

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

"Electrical Single Line Diagram" means the diagram contained in Annex E.	
"Final Instalment" means the last instalment payable at delivery calculated in accordance with <u>Clause 15 (Payments)</u> .	27 28
"Flag State" means the State of the flag which the Vessel will fly when registered, as stated in <u>Box 7</u> .	29 30
"GA" means the general arrangement plan of the Vessel contained in Annex D.	
"Instalments" means the amounts payable in accordance with <u>Box 11 and Clause 50</u> .	31
"In writing" means any method of legible communication.	32
" Maker's List Technical Schedule" means the list of Sub-contractors, suppliers for equipment, machinery and services approved by the Parties and stated in Annex C.	33 34
"MCA" means the Maritime and Coastguard Agency of the United Kingdom.	
"Parties" means the Builder and the Buyer.	35
"Party" means the Builder or the Buyer, as the case may be.	36
"Passenger Certificate" means certificate issued by the Certifying Authority in respect of the Vessel by the MCA pursuant to the UK Merchant Shipping (Survey and Certification) Regulations 2015 or the UK Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000.	
"Permissible Delays" means delays to the construction and/or delivery of the Vessel and which entitle the Builder to extend the Delivery Date in accordance with <u>Clause 34 (Permissible Delays)</u> .	37 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
"Project Plan" means the building and testing schedule agreed between the Parties in accordance with <u>Clause 20(a)</u> .	
"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 MCA and the other bodies listed in the Specification.	45 46 47
"Shipyard" means the place or places stated in <u>Box 5</u> where the Vessel will be assembled and/or constructed.	48 49
"Specification" means the technical details of the Vessel 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

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31	"Vessel" means the vessel described in <u>Box 4</u> (including its machinery, equipment and appurtenances described in the Specification and GA) with hull number as per <u>Box 6</u> , built in accordance with this Contract.	54 55 56
	INTERPRETATION	57
	Singular/Plural	58
	In this Contract the singular includes the plural and vice versa as the context admits or requires.	59 60
	Headings	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
	Jointly and severally	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

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

SECTION 1 – VESSEL

1. Builder's and Buyer's obligations	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
2. Description	73
(a) The Vessel shall be constructed at the Shipyard and shall have the Builder's Hull Number stated in <u>Box 6</u> .	74 75
(b) The Vessel shall have the dimensions and characteristics as stated in <u>Box 4</u> 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 <u>Box 4D(i)</u> shall be at least the number of knots stated in <u>Box 4D(ii)</u> . During such a sea trial the engine's output in	79 80 81 82 83
kilowatts shall be as stated in <u>Box 4D(iii)</u> corresponding to the percentage of the engine's maximum continuous power output stated in <u>Box 4D(iv)</u> at the approximate revolutions per minute stated in <u>Box 4D(v)</u> .	84 85 86
(ii) Fuel Consumption - The fuel consumption of the main engine on the test bed separately using each of the fuels of the type (LNG and MGO respectively) and specification stated in <u>Box 4C(vii)</u> shall not exceed the number of kilojoules per kilowatt/hour and grams per kilowatt/hour stated in <u>Box 4C(iv)</u> when the engine develops the number of kilowatts with an effective calorific value of the number of kilojoules calories per kilogram stated in <u>Box 4C(ii)</u> and <u>Box 4C(vii)</u> respectively.	87 88 89 90 91
(iii) Deadweight - The Vessel's deadweight shall be the number of metric tons stated in <u>Box 4A(iii)</u> on international summer freeboard, corresponding to a mean draft in saltwater (specific gravity 1.025) as stated in <u>Box 4A(iv)</u> . 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 <u>Box 4C(i)</u> , <u>4C(ii)</u> and <u>4C(iii)</u> .	97 98 99
(v) Cargo Capacity – The Vessel's cargo capacity shall be the capacities stated in <u>Box 4B1</u> and <u>4B2</u>.	100 101
(vi) Other matters – The Vessel shall meet the technical requirements stated in <u>Box 4E</u> .	102 103
3. Classification, Rules and Regulations	104
(a) The Vessel shall be designed, constructed, surveyed, tested and delivered in	105

NEWBUILDCON - Standard Newbuilding Contract - PART II

v.1.31

compliance with the applicable laws, rules, regulations and requirements of the Classification Society stated in Box 8 , and the Regulatory Authorities, in particular (but without prejudice to the generality of the foregoing) to satisfy the technical and as-built requirements of MCA such as are required to obtain a Passenger Certificate:	106 107
(i) in force as of the date of this Contract stated in Box 1 , 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 Clause 28 (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 Clause 26 (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
4. IMO Hazardous Materials Inventory	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) In consultation 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
5. Protective Coatings	137
The Vessel's double-side skin spaces and dedicated seawater ballast tanks shall be coated in accordance with the Specification and the paint manufacturer's data sheets. In any event the minimum coating standard shall	138 139
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 Clause 3(a)	140 141 142 143 144

NEWBUILDCON - Standard Newbuilding Contract - PART II

VI.31

~~(Classification, Rules and Regulations).~~

145

6. Source of Origin

146

If so requested by the Buyer, the Builder shall identify the country of origin of all the main components listed in the **Technical Schedule**~~Maker's List~~ and Specification.

147

148

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

SECTION 2 – FINANCIAL

7. Contract Price	149
The Contract Price shall be the amount stated in <u>Box 9(a)</u> 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 <u>Box 9(b)</u> and in accordance with the payment terms stated in <u>Box 11</u> and <u>Clause 15</u> (Payments).	152 153 154
8. Speed Deficiency	155
If the speed of the Vessel as stated in <u>Box 4D(ii)</u> is not achieved in the manner stated in the Specification or <u>Clause 2(b)(i)</u> the following shall apply:	156 157
(a) There shall be no adjustment of the Contract Price except to the extent provided in Sub-clause 8(b).	158 159
(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 <u>Box 13(i)</u> 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 <u>Box 13(ii)</u> .	160 161 162 163
(c) If the reduction in speed would entitle the Buyer to a reduction in the Contract Price greater than the maximum amount stated in <u>Box 13(ii)</u> , the Buyer shall have the option to terminate this Contract in accordance with <u>Clause 39(a)(iv)</u> (Suspension and Termination).	164 165 166 167
9. Excessive Fuel Consumption	168
If the fuel consumption of the Vessel's main engine on the test bed using the fuel specified in <u>Box 4C(vii)</u> exceeds the figure stated in <u>Box 4C(iv)</u> the following shall apply:	169 170
(a) There shall be no adjustment of the Contract Price except to the extent provided in Sub-clause 9(b).	171 172
(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 <u>Box 14(i)</u> for each whole percentage in excess of 2% as liquidated damages up to a maximum amount as stated in <u>Box 14(ii)</u> .	173 174 175 176
(c) If the excess fuel consumption would entitle the Buyer to a reduction in the Contract Price greater than the maximum amount stated in <u>Box 14(ii)</u> , 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 <u>Box 14(ii)</u> 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 <u>Clause 39(a)(v)</u> (Suspension	187

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

and Termination).	188
10. Deadweight Deficiency	189
If the actual deadweight of the Vessel determined in accordance with the Specification is less than the deadweight stated in <u>Box 4A(iii)</u> 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 <u>Box 15(i)</u> then for each whole metric tonne in excess of the figure in <u>Box 15(i)</u> below the deadweight stated in <u>Box 4A(iii)</u> the Contract Price shall be reduced by the amount stated in <u>Box 15(ii)</u> as liquidated damages up to a maximum amount as stated in <u>Box 15(iii)</u> .	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 <u>Box 15(iii)</u> the Buyer shall have the option to terminate this Contract in accordance with <u>Clause 39(a)(vi)</u> (Suspension and Termination).	198 199 200 201
11. Cubic Capacity Deficiency	202
If the actual cubic capacity of the Vessel determined in accordance with the Specification is less than the cubic capacity specified in <u>Box 4B1(i)</u> 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 <u>Box 16(i)</u> then for each full cubic metre in excess of the figure in <u>Box 16(i)</u> below the cubic capacity stated in <u>Box 4B1(i)</u> the Contract Price shall be reduced by the amount stated in <u>Box 16(ii)</u> as liquidated damages up to a maximum amount as stated in <u>Box 16(iii)</u> .	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 <u>Box 16(iii)</u> the Buyer shall have the option to terminate this Contract in accordance with <u>Clause 39(a)(vii)</u> (Suspension and Termination).	211 212 213 214
12. Other Deficiencies (optional Clause)	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 <u>Box 4E</u> and <u>Box 17</u>. (See also <u>Clause 39(a)(viii)</u>).</i>	216 217 218 219
13. Late Delivery for non-permissible delays	220
If delivery takes place more than 4530 days after the Delivery Date then for each day thereafter the Contract Price shall be reduced by the amount stated in <u>Box 18(i)(a)</u> per day and if the Builder has not given the Buyer no less than 45 days' notice in writing of the date on which the Vessel is to be delivered to the Buyer in terms of Clause 28, in addition the amount stated in <u>Box 18(i)(b)</u> per day as liquidated damages up to a maximum delay of 120480 days (comprising a 4530 day grace period plus 75450 days).	221 222 223 224
If the delay exceeds 120480 days the Buyer shall have the option to terminate this Contract in accordance with <u>Clause 39(a)(iii)</u> (Suspension and Termination).	225 226
14. Guarantees	227

NEWBUILDCON - Standard Newbuilding Contract - PART II

VI.31

(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 <u>Box 19(a)(i)</u> after the signing of this Contract, deliver to the Builder an irrevocable and unconditional guarantee issued	229 230 231
by the bank or party stated in <u>Box 31</u> substantially in the form and substance set out in Annexes A(i) (Instalments) or A(ii) (Performance) as stated in <u>Box 19(a)(ii)</u>, failing which the Builder shall have the option to terminate this Contract in accordance with <u>Clause 39(b)(iv)</u> (Suspension and Termination).	232 233 234 235
(b) Builder's Refund Guarantee	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 <u>Box 19(b)(i)</u> after the signing of this Contract and before the date for payment of the first instalment in accordance with <u>Clause 15(a)(i)</u> (Payments – Instalments), provide the Buyer with a Refund Guarantee issued by the first class international bank or party named in <u>Box 32</u> substantially in the form	237 238 239 240 241
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 <u>Clause 39(a)(ix)</u> (Suspension and Termination). In the event that either (a) the Vessel is not delivered by 31 August 2018; or (b) as at 31 August 2018 the Parties are in a dispute to which Clause 42 applies in respect of a matter which would entitle the Buyer to terminate the Contract under Clause 39 and which will not be resolved by final unappealable judgement by 31 December 2018, then no later than 1 December 2018 the Builder shall provide a replacement Refund Guarantee, valid for 180 days from 1 January 2019 and thereafter extendable if necessary for such additional period or periods as may be required to extend the term of the said replacement Refund Guarantee to thirty (30) days after such final unappealable judgement, from a first class international bank, substantially in the form and substance in all material respects to the Refund Guarantee provided by the bank named in Box 32, such as to allow uninterrupted continuation of the benefit of the Refund Guarantee to the Buyer and to allow for payment to the Buyer only after final unappealable judgement in any such dispute. For the avoidance of doubt the Builder hereby expressly and irrevocably warrants and represents that no defence of mutuality, retention, self-help remedy or the withholding of performance shall be made or asserted in respect of the foregoing obligation to provide a replacement Refund Guarantee.	242 243 244
(c) Guarantee Compliance and Expiry	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 (and any replacement Refund Guarantee provided in accordance with sub-Clause 14(b)), remain in force until either	251
(1) 31 December 2018 a date at least 300 days after the Contractual Date of Delivery stated in <u>Box 10</u> or	252
30 days after the final resolution of any dispute under <u>Clause 42</u> (Dispute Resolution), whichever is the later; or	253 254
(2) delivery of the Vessel to, and acceptance of the Vessel by, the Buyer	255

NEWBUILDCON - Standard Newbuilding Contract - PART II

V1.31

whichever is the sooner; and-	256
(iv) in the case of the Refund Guarantee, be supported by a certified true copy Power of Attorney, certified true copy board resolution or similar certified true copy evidence of the authority of the signatories of each of Investec Bank plc and Investec Bank Limited.	
15. Payments	257
(a) Instalments	258
The Contract Price shall be paid by the Buyer to the Builder by Instalments, when due and payable in accordance with <u>Box 11</u> and this Clause, the pre-delivery Instalments being paid as advances and not deposits as follows:	259 260 261
(i) Unless otherwise stated in <u>Box 11</u> 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 <u>Clause 14(b)</u> (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 accordance with <u>Box 11</u> and <u>Clause 28</u> (Delivery).	271 272
(b) Payment for Modifications and other items	273
(i) The sums due or refundable as a result of modifications and changes, and changes in Rules and Regulations under <u>Clause 24</u> (Modifications and Changes) and <u>Clause 26</u> (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 <u>Clause 27(c)(iii)</u> (Conduct of the Sea Trial) and <u>Clause 22(b)</u> 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
(c) Payment of Liquidated Damages	282
Any amounts for liquidated damages under <u>Clause 8</u> (Speed Deficiency), <u>Clause 9</u> (Excessive Fuel Consumption), <u>Clause 10</u> (Deadweight Deficiency), <u>Clause 11</u> (Cubic Capacity Deficiency), <u>Clause 12</u> (Other Deficiencies) and <u>Clause 13</u> (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
(d) Payment Procedures	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 <u>Box 12</u> 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	292 293 294 295

NEWBUILDCON - Standard Newbuilding Contract - PART II

on its behalf.	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 <u>Clause 39(c)</u> (Suspension of Work).	300 301 302
16. Taxes, duties, stamps, dues and fees	303
(a) The Builder shall bear and pay all taxes, duties, stamps, dues and fees imposed in the place stated in <u>Box 2</u> 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 <u>Box 2</u> upon the Buyer's Supplies which shall be for the Buyer's cost and expense.	304 305 306 307
(b) The Buyer shall bear and pay all taxes, duties, stamps, dues and fees imposed outside the place stated in <u>Box 2</u> 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
(c) 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 amount paid.	312 313 314 315
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 <u>Clause 15</u> (Payments) and <u>Clause 30</u> (Final Instalment)).	317 318 319 320
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 <u>Box 30</u> on such outstanding sums (see also <u>Clause 39</u> (Suspension and Termination)).	322 323 324

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

SECTION 3 – PRODUCTION

19. Sub-contracting	325
The Builder shall employ the Sub-contractors as set out in the Specification or named in the Technical ScheduleMaker'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
20. Approvals	331
The times and numbers specified in this Clause shall apply unless otherwise stated in the Specification.	332
	333
(a) As soon as possible and not later than twenty-one (21) sixty (60) running days after the effective date of the Contract (see <u>Clause 44</u> (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) 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
(c) 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 <u>Clause 24</u> (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
(d) 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 <u>Clause 24</u> (Modifications and Changes), the Builder shall notify the Buyer accordingly	365
	366
	367

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

and proceed in accordance with <u>Clause 24</u> (Modifications and Changes). If the Buyer disagrees the matter shall be resolved in accordance with <u>Clause 24(e)</u> .	368
(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.	369
	370
	371
	372
	373
(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
	375
	376
	377
	378
	379
(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
	381
	382
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 <u>Clause 20(a)</u> (Approvals) or as may reasonably be required by the Builder.	385
	386
	387
	388
	389
	390
(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
	392
	393
	394
	395
	396
	397
	398
(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
	400
	401
(iv) If delay in delivery of any of the Buyer's Supplies in accordance with <u>Sub-Clause (a)</u> (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
	403
	404
	405
	406
(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
	409
	410
	411
	412
	413
(ii) The Buyer's Supplies shall be at all times the property of the Buyer but shall be at	414

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

the Builder's risk from the time of their delivery to the Shipyard until the time of their redelivery to the Buyer whether or not as part of the Vessel. Upon receipt by the Builder of the Buyer's Supplies they shall be clearly identifiable as such and promptly marked by the Builder as the property of the Buyer in a permanent and prominent manner.	415 416
22. Buyer's Representative, Assistants, Officers and Crew	417
(a) The Buyer and the Bareboat Charterer may, each 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:	418 419 420 421
(i) the names of the Buyer's Representative and the BBC's Representative, assistants and, as appropriate, officers and crew; and	422 423
(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	424 425 426 427 428
(iii) any other information reasonably required by the Builder to facilitate access to the Shipyard and/or premises of Sub-contractors.	429 430
(b) The Builder shall, at its own cost and expense, provide the Buyer's Representative and the BBC'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 the BBC'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 <u>Clause 15(b)</u> (Payments - Payment for Modifications and other items).	431 432 433 434 435 436 437 438 439
(c) The Builder shall have the right to request the Buyer to replace the Buyer's Representative or BBC'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.	440 441 442 443 444
(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.	445 446 447
(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.	448 449 450 451
23. Inspections, Tests and Trials	452

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

(a) To enable the Buyer's Representative and the BBC's Representative and assistants to carry out their duties and	453
inspect the work being done, the Buyer's Representative and/or assistants shall have the right to inspect the Vessel and to attend minuted progress and Project Plan review meetings with the Builder throughout the period of the construction of the Vessel and until its delivery and acceptance. These progress meetings shall be held at least once in every month and shall determine progress of design, fabrication and testing in accordance with the Project Plan and including remedial action in the event of any issues or anticipated issues arising that may cause delay or other failure to achieve the milestone events within the Project Plan. Written minutes, in a form to be agreed between the Parties, shall be prepared by the Builder's Representative. Such minutes shall be submitted to the Buyer's Representative within five (5) days of each meeting and comments (if any) shall be given within five (5) running days thereafter which failing the minute shall be deemed to be approved by the Buyer as issued by the Builder. When the minutes of each meeting are agreed between the Parties, each Party shall countersign the minute for their records.	454 455 456
(b) The Buyer's Representative and the BBC'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 (and in any event not less than twenty-one (21) days) notice in advance of all such tests, trials and inspections to enable the Buyer's Representative and/or the BBC's Representative and/or assistants to attend. If the Buyer's Representative and/or	457 458 459 460 461
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.	462 463 464
(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 BBC'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.	465 466 467 468 469 470 471
(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.	472 473 474 475 476 477 478
24. Modifications and Changes	479
(a) The Buyer shall have the right at any time to request reasonable modifications or changes in the Specification and/or GA and/or Technical Schedule and/or Electrical Single Line Diagram 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.	480 481 482 483
(b) The Builder shall, as soon as possible after receipt of the written request for	484

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

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.	485 486 487 488 489 490 491 492
(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.	493 494 495
(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.	496 497 498
(e) If the Buyer does not accept the Builder's notice as provided in <u>Clause 20(d)</u> (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 <u>Clause 42</u> (Dispute Resolution).	499 500 501 502 503 504
(f) If the Buyer elects not to continue with the request for modifications and/or changes, the Buyer shall notify the Builder accordingly.	505 506
(g) If the Buyer does not respond within seven (7) running days after receipt of the Builder's notice in <u>Sub-Clause (b)</u> , the Buyer shall be deemed to have withdrawn the request for modifications and/or changes.	507 508 509
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.	511 512 513 514 515 516
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.	517 518 519 520 521 522
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:	524 525 526
(a) Upon receipt of notice of such changes either Party shall promptly notify the other Party thereof.	527 528

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

(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 <u>Clause 42</u> (Dispute Resolution).	529 530 531 532 533 534 535 536 537
(c) If such changes are not compulsory but the Buyer requires the changes to be incorporated, <u>Clause 24</u> (Modifications and Changes) shall apply.	538 539
27. Sea Trials	540
The times and numbers specified in this Clause shall apply unless otherwise stated in the Specification.	541 542
(a) Notice	543
The Buyer's Representative and the BBC'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 twenty-one (21) 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.	544 545 546 547
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 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.	548 549 550 551 552 553 554
(b) Weather Conditions	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 <u>Clause 34</u> (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
(c) Conduct of the Sea Trials	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	571 572 573

NEWBUILDCON - Standard Newbuilding Contract - PART II

VI.31

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.	574 575
(d) Method of Acceptance or Rejection	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 Sub-Clause (d) 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 of the Vessel in its intended trade but the Builder is unable to rectify the matter within a reasonable time and in any event before the accrual of the Buyer's right to terminate in accordance with <u>Clause 39</u> (Suspension and Termination), the Builder may nevertheless require the Buyer to take delivery of the Vessel, on condition that the Builder first:	596 597 598 599 600 601
(1) undertakes to remedy the Delivery Defects for its own cost and expense as soon as possible; and	602 603
(2) agrees in writing to indemnify the Buyer for any loss incurred as a consequence thereof, including loss of time; and	604 605
(3) provides the Buyer with a guarantee issued by [REDACTED] or if [REDACTED]	606
<u>Box 32</u> is not filled in, a bank guarantee from a first class bank) substantially in the form and substance set out in Annex A(iiiv) for a sum which the Buyer reasonably requests to cover (1) and (2) above, failing agreement such sum to be resolved in accordance with <u>Clause 42</u> (Dispute Resolution);	607 608 609 610
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 resolved in accordance with <u>Clause 42</u> (Dispute Resolution).	612 613

SECTION 4 – DELIVERY

28. Delivery	614
Subject to <u>Clause 27(d)</u> (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 <u>Clause 29</u> (Documents on delivery); and	622 623
(c) payment by the Buyer of the Final Instalment in accordance with <u>Clause 30</u> (Final Instalment).	624 625
29. Documents on Delivery	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 listed in the Specification including the documents required to be furnished on delivery pursuant to this Contract. All certificates shall be issued without qualification, save where conventional for newbuildings.	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

NEWBUILDCON - Standard Newbuilding Contract - PART II

VI.31

(g) Builder's Certificate.	649
(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.	652 653
(k) IMO Hazardous Material Inventory Statement of Compliance in accordance with IMO Resolution A.962(23) (as referred to in <u>Clause 4</u> (IMO Hazardous Materials Inventory)).	654 655 656 657
(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.	658 659 660
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 <u>Clause 27(d)</u> (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 <u>Box 12</u>, with irrevocable instructions that, subject to <u>Sub-Clause (c)</u> 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.	662 663 664 665 666 667 668 669 670
(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 <u>Clause 42</u> (Dispute Resolution).	671 672 673 674 675 676
(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 <u>Clause 27(d)</u> (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 <u>Clause 27(d)</u> (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.	677 678 679 680 681 682 683 684
31. Title and Risk	685
Title and Following payment of the Second Instalment of the Contract Price by the Buyer, and at the Buyer's option upon a period of 14 days written notice thereafter, title to and ownership in the Vessel during its construction and every part thereof which are appropriated to the Vessel or are intended to be appropriated to the Vessel (including without limitation the hull and all equipment, machinery, materials, accessories and components, together "Materiel") shall be transferred to the Buyer as the Vessel is built and as and when the Builder acquires title thereto provided that, at the relevant time, the Buyer is not in default of its obligations under this Contract notwithstanding that	686

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

any such Materiel shall subsequently be worked upon by the Builder or otherwise processed or incorporated into the Vessel. Notwithstanding the foregoing, 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. Prior to exchange of Protocols of Delivery and Acceptance neither Party shall mortgage the Vessel or its Materiel nor allow the creation of a lien or other charge in favour of a third party over the Vessel or its Materiel.

687
688

At the time of delivery the Vessel shall be free of all liens, claims, charges, mortgages and other encumbrances. The Builder shall ensure that all Materiel sold by the Builder to the Buyer under this Contract is clearly identifiable and upon receipt by the Builder is promptly marked as being owned by the Buyer in a permanent and prominent manner. The Builder shall indemnify and hold the Buyer harmless for any losses arising from the Builder's failure so to mark any Materiel entering the Builder's premises for the performance of this Contract.

689
690

Following payment of the Second Instalment of the Contract Price and the declaration by the Buyer of the exercise of the option to acquire ownership in accordance with this Clause 31 the Builder shall, if requested in writing by the Buyer on a notice period of no less than 14 days, and not more than once in any calendar month, meet with the Buyer's Representative at an agreed time and provide a list of all Materiel acquired or intended to be acquired by the Buyer pursuant to this Clause, at which meeting the relevant Materiel shall be inspected and physically delivered and possession passed to the Buyer and a memorandum acknowledging such delivery, possession and ownership by the Buyer of such Materiel shall be signed by the Builder's and the Buyer's Representatives. Such Materiel shall then be redelivered to the Builder for the purpose of the performance of the Contract.

32. Possession and Removal of the Vessel

691
692
693

(a) The Buyer shall take physical possession of the Vessel immediately upon Delivery and Acceptance thereof.

(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
695
696
697
698
699

33. Vessel Registration

700
701

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

SECTION 5 – LEGAL

34. Permissible Delays	702
(a) The Delivery Date shall be extended if any of the following events cause actual delay to the delivery of the Vessel:	703
	704
(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
	712
(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
	714
(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
	718
(11) delays to sea trials in accordance with <u>Clause 27(b)</u> (Sea Trial – Weather Conditions).	719
	720
(ii) Other events	721
(1) Late delivery of, or delivery of, any defective Buyer's Supplies in accordance with <u>Clause 21(a)(iv)</u> (Buyer's Supplies);	722
	723
(2) Delays due to modifications and changes in accordance with <u>Clause 24(b)</u> or <u>(e)</u> (Modifications and Changes);	724
	725
(3) Delays due to changes in rules and regulations in accordance with <u>Clause 26</u> (Changes in Rules and Regulations);	726
	727
(4) An actual or constructive total loss in accordance with <u>Clause 38(b)(ii)</u> (Insurances – Allocation of Insurance Proceeds);	728
	729
(5) Suspension of work pursuant to <u>Clause 39(c)</u> (Suspension and Termination – Suspension of Work);	730
	731
(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
	734

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

(2) were not, or could not reasonably have been, foreseen by the Builder at the date of the Contract; and	735 736
(3) the Builder shall have complied with <u>Sub-Clause (b)</u> 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.	738 739
(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.	740 741 742 743 744 745 746
35. Builder's Guarantee	747
(a) The Builder shall guarantee the Vessel against any Defects (see Definitions) provided such Defects are:	748 749
(i) discovered within the number of months stated in <u>Box 20</u> (hereinafter "the Guarantee Period") after delivery of the Vessel in accordance with <u>Clause 28</u> (Delivery); and	750 751
(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	752 753 754
(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.	756 757 758 759
(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:	760 761 762 763
(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.	765 766
(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.	767 768 769 770 771 772 773 774
(i) The Builder shall pay the Buyer in the currency stated in <u>Box 9</u> the reasonable cost	775

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

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 <u>Clause 42</u> (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.	777 778 779 780 781 782
(e) The Builder guarantees repairs or replacements to the Vessel made under <u>sub-Clause (b)</u> above for an additional Guarantee Period of the number of months stated in <u>Box 21</u> 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.	783 784 785 786 787 788
(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.	789 790 791 792
(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.	793 794 795 796 797 798 799
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.	801 802 803 804 805 806 807
(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 <u>Box 24</u> , 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.	808 809 810 811 812 813 814
(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 <u>Clause 35</u> (Builder's Guarantee).	817 818 819
37. Responsibilities and exclusions from liabilities	820

NEWBUILDCON - Standard Newbuilding Contract - PART II

4131

<i>Builder's exclusion Clauses</i>		821
(a) 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 <u>Clauses 8 to 13</u> inclusive and <u>Clause 27(d)</u> (Sea Trials – Method of Acceptance or Rejection).		823 824 825
(b) Liability for Defects discovered after delivery		826
Except to the extent expressly provided in <u>Clause 35</u> (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
(c) 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
(d) Implied terms		840
The guarantee contained in <u>Clause 35</u> (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
(e) Liability following termination		846
In the event of termination in accordance with the provisions of <u>Clause 39</u> (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
(f) 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 <u>Sub-Clause 37(f)</u> .		860 861 862 863
(g) Responsibility for damage to or loss of property		864

NEWBUILDCON - Standard Newbuilding Contract - PART II

v131

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.	865 866 867 868 869
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).	870 871 872 873
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:	876 877 878 879 880
(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 within seven (7) days of the commencement of steel cutting.	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	904 905 906 907

NEWBUILDCON - Standard Newbuilding Contract - PART II

V1.31

referred to in <u>Sub-Clause (a)</u> will be applied to the construction or reconstruction of the Vessel if appropriate; or	908 909
(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 <u>Sub-Clause (b)(ii)(1)</u> the Builder shall:	910 911 912
(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 <u>Box 30</u> from the date of payment to the date of refund; and	913 914 915
(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.	916 917 918
Once all payments have been made by the Builder to the Buyer in accordance with <u>Sub-Clause (b)(ii)(2)</u> 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.	919 920 921 922
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:	925 926
(i) the guarantor providing the Refund Guarantee on behalf of the Builder in accordance With <u>Clause 14(b)</u> (Guarantees – Builder's Refund Guarantee) is deemed insolvent pursuant to <u>Sub-Clause (d)</u> 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	927 928 929 930 931 932 933 934
(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 <u>Box 22(i)</u> , excluding Permissible Delays, provided that thereafter the Buyer gives the Builder at least the number of days' written notice stated in <u>Box 22(ii)</u> 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	935 936 937 938 939 940 941
(iii) (1) the delivery of the Vessel is delayed by more than 90480 days by virtue of events that fall within <u>Clause 34(a)(i)</u> (Permissible Delays – Force Majeure events); or (2) the delivery of the Vessel is delayed by more than 90480 days by virtue of events which do not fall within <u>Clause 34(a)(i)</u> or <u>34(a)(ii)</u> (Permissible Delays); or (3) the aggregate of delays to the delivery of the Vessel in (1) and (2) above is more than 120270 days.	942 943 944 945 946 947
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	948 949 950 951 952 953

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

Delivery Date provided it does not occur later than thirty (30) days prior to the expiry of the Refund Guarantee (<u>Clause 14(b)</u>) (Guarantees – Builder’s Refund Guarantee)).	954
Notwithstanding <u>Clause 34(a)(i)</u> (Permissible Delays – Force majeure events) and this <u>Clause 39(a)(iii)(1), (2) or (3)</u> but subject to <u>Clause 34(a)(ii)</u> (Permissible Delays - Other events), if the Vessel is not delivered by that date, the Buyer shall have the right to terminate this Contract. The Builder’s right to request the Buyer to agree a new delivery date shall operate on each and every occasion the events stated in this <u>Sub-Clause (a)(iii)</u> give rise to the Buyer’s option to terminate.	955 956 957 958 959 960 961
(iv) The reduction in speed would entitle the Buyer to a reduction in the Contract Price greater than the amount stated in <u>Box 13(ii)</u> ; or	962 963
(v) The Buyer rejects the main engine and terminates the Contract in accordance with <u>Clause 9(c)(ii)(2)</u> ; or	964 965
(vi) The reduction in deadweight would entitle the Buyer to a reduction in the Contract Price greater than the amount stated in <u>Box 15(iii)</u> ; or	966 967
(vii) The Builder fails to provide a replacement Refund Guarantee in accordance with Clause 14(b) on or before 1 December 2018; or The reduction in cubic capacity would entitle the Buyer to a reduction in the Contract Price greater than the amount stated in <u>Box 16(iii)</u>; or	968 969
(vii)(viii) The condition of the Vessel is deficient in the manner stated in <u>Clause 12 (Other Deficiencies)</u> and <u>Box 17</u>; or	970 971
The Builder is in breach of <u>Clause 14</u> (Guarantees), <u>Clause 53 (Anti-discrimination)</u>, <u>Clause 54 (Ethical & Social Requirements)</u>, <u>Clause 55 (No Blacklist)</u> or <u>Clause 58 (Anti-corruption and Anti-bribery)</u>.	972
(b) Builder’s Termination	973
The Builder shall have the right to terminate this Contract forthwith upon giving notice to the Buyer in the event that:	974 975
The guarantor providing the Instalment Guarantee or Performance Guarantee on behalf of the Buyer under <u>Clause 14(a)</u> (Buyer’s Instalment/Performance Guarantee) is deemed insolvent pursuant to <u>Sub-Clause (d)</u> below, unless the Buyer can provide A replacement Performance Guarantee acceptable to the Builder within 30 days and provided that notice of termination is given before an acceptable Buyer’s Instalment or Performance Guarantee is received by the Builder, or	976 977 978 979 980 981
(i) The Buyer fails to pay any sums due under this Contract for a period of twenty-one (21) Banking Days provided that the Builder thereafter gives the Buyer at least 5 Banking Days notice of its intention to terminate under this Clause, and within that period the Buyer fails to remedy the breach and provided that notice of termination is given before the Buyer pays the outstanding sums due, or	982 983 984 985 986
(ii) The Buyer fails to take delivery of the Vessel tendered in accordance with this Contract, or	987 988
The Buyer is in breach of <u>Clause 14</u> (Guarantees);	989
(c) Suspension of Work	990
Without prejudice to <u>Sub-Clause (b)</u> above the Builder shall have the right to suspend Work under this Contract if the Buyer fails to pay any instalment stated in <u>Box 11</u> due for	991 992

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

a period of fifteen (15) Banking Days until payment of such outstanding sums.	993
(d) Deemed Insolvency	994
A Party or the guarantor providing the Refund Guarantee shall be deemed insolvent if proceedings are commenced against the insolvent Party or the guarantor for winding 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.	995 996 997 998 999
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
(e) Effect of Buyer's Termination	1002
If this Contract is terminated by the Buyer, the Builder shall refund all sums paid by the Buyer to the Builder under Clause 7 (Contract Price) and Clause 15 (Payments) hereof plus interest thereon at the rate stated in Box 30 per annum from the date of payment to the date of refund and when all sums paid as aforesaid have been received by the Buyer, the Buyer shall transfer title and ownership of the Vessel and all her Material to the Builder. 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
(f) Effect of Builder's Termination	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. The Buyer shall transfer title and ownership of the Vessel to the Builder for the sole purpose of such sale and shall provide all reasonable co-operation to the Builder in respect of such sale.	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 <u>Box 30</u> 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 <u>Box 30</u> 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	1032

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

and less any sums credited under (2) above;	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 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.	1036 1037 1038 1039 1040 1041 1042 1043
(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 1045 1046 1047 1048 1049
(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 <u>Box 30</u> to cover periods whenever payments from the Buyer became overdue.	1050 1051 1052 1053
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 and provided in such exception that any contract of the first Party with a sub-contractor does not prohibit such disclosure.	1055 1056 1057 1058 1059 1060 1061 1062
(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, provided that (i) such indemnity shall not apply to the extent that such claim arises from use of such specifications, models or instructions as reasonably contemplated by this Contract (in the case of such use by the Buyer) in combination with materials not provided by the Builder; and (ii) the indemnified party:	1063 1064 1065 1066 1067 1068
(A) promptly notifies the indemnifying party upon becoming aware of such claim;	
(B) makes no admission of liability, agreement or compromise in relation to such claim without the prior written approval of the indemnifying party;	
(C) gives the indemnifying party conduct and control or negotiations and litigation resulting from any such claim; and	

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

(D) provides the indemnifying party with such reasonable co-operation and assistance as the indemnifying party requires in relation to such claim.	
(c) For the purpose of this <u>Sub-Clause (c)</u> , "Information" means technical information relating to the Vessel designated by one Party as confidential, except information which corresponds in substance to information which:	1069 1070 1071
(i) was developed by and in possession of the other Party prior to first receipt from the first Party; and/or	1072 1073
(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 1075
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 1077 1078 1079 1080
41. Governing law	1081
This Contract shall be subject to Scots English law. Save in respect of disputes as described in Clause 42(a) and 42(b) any other dispute shall be subject to the exclusive jurisdiction of the Commercial Court of the Court of Session in Edinburgh unless another law is stated in <u>Box 23(a)</u> in which case the law stated in <u>Box 23(a)</u> shall apply.	1082 1083
42. Dispute Resolution	1084
(a) Classification/Regulatory Authorities	1085
Any dispute concerning the Vessel's compliance or non compliance with the rules, 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 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 <u>Sub-Clauses (b) of this Clause 42, or by commercial procedure in the Court of Session in accordance with Clause 41 above through (e)</u> .	1086 1087 1088 1089 1090 1091
(b) Expert determination	1092
Unless <u>Sub-Clause (a)</u> applies or <u>Sub-Clauses (c) to (e)</u> 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 1094 1095 1096
(i) if the Parties fail to nominate an Expert within seven (7) days of the date of the notice referred to in this <u>Sub-Clause (b)</u> , the dispute shall be resolved in accordance with <u>Sub-Clauses (c) to (e)</u> below;	1097 1098 1099
(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 1101
(iii) the Expert's determination shall be conducted in accordance with the following rules, unless otherwise agreed by the Parties:	1102 1103
(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	1104 1105

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

within such time period;	1106
(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 1108 1109
(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 1111 1112 1113 1114 1115 1116 1117
(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 1119 1120
(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 1122 1123
(6) the Expert shall use all reasonable endeavours to publish his decision within twenty-eight (28) days of his appointment.	1124 1125
(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 1127 1128
(v) Without prejudice to the rest of this <u>Sub-Clause (b)</u> 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 <u>Sub-Clause (e)</u> .	1129 1130 1131
(c) *Arbitration and Mediation Unless <u>Sub-Clause (a)</u> or <u>(b)</u> applies and unless <u>Box 23(b)</u> 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.	1132 1133 1134 1135 1136 1137
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 1139 1140
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	1141 1142 1143 1144 1145 1146 1147 1148 1149 1150

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

by agreement.	1151
Nothing herein shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.	1152 1153
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 1155 1156 1157
(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 Clause (ae) 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 proceedings have arbitration has been commenced under (ae) 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 1167 1168
(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 to a mediator will be deemed to lapse 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.	1169 1170 1171 1172 1173 1174 1175 1176
(iii) If the other Party does not agree to mediate, that fact may be brought to the attention of the Court Tribunal and may be taken into account by the Court Tribunal when allocating expenses 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 Court Tribunal that they have agreed to mediation. The arbitration Court procedure shall continue during the conduct of the mediation but the Tribunal Court may take the mediation timetable into account when setting the timetable for steps in the arbitration proceedings .	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 1188

NEWBUILDCON - Standard Newbuilding Contract - PART II

v1.31

(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal Court except to the extent that they are disclosable under the law and procedure governing the Court proceedings arbitration .	1189 1190 1191
<i>(Note: The Parties should be aware that the mediation process may not necessarily interrupt time limits.)</i>	1192 1193
* <u>Sub-Clauses (c) and (d)</u> are alternatives; state place of dispute resolution in <u>Box 23(b)</u> .	1194 1195
If <u>Box 23(b)</u> is not appropriately filled in, <u>Sub-Clause (c)</u> of this Clause shall apply.	1196

NEWBUILDCON - Standard Newbuilding Contract - PART II

131

SECTION 6 – SUNDRY

43. Notices	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 <u>Box 2</u> or <u>Box 3</u> 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 <u>Sub-Clause (a)</u> .	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
44. Effective date of Contract	1212
(a) This Contract shall become effective when the conditions stated in <u>Box 25</u> have been satisfied. If no conditions are stated in <u>Box 25</u> then the effective date of the Contract shall be on the date stated in <u>Box 1</u>. The Parties shall immediately notify each other when the conditions stated in <u>Box 25</u> 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 <u>Box 26</u> after the date of this Contract stated in <u>Box 1</u>, 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
45. Assignment	1221
(a) Builder's assignment	1222
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.	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
46. Options	1231
The Buyer shall have the option for the construction by the Builder of additional vessels as stated in <u>Box 27</u> at the contract price and delivery dates stated in <u>Box 28</u>, 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 <u>Box 29</u> following the Effective date of this Contract referred to in <u>Clause 44</u> (Effective date of	1232 1233 1234 1235 1236

NEWBUILDCON - Standard Newbuilding Contract - PART II

v131

~~Contract).~~

1237

47. Entire Agreement

1238

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

1239

1240

1241

1242

48. Third party rights

1243

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

1244

1245

49. MODEL TESTS AND MAIN ENGINES

- 49.1 *Model Tests* – The model tests referred to in sub-group 108 of the Specification (the “**Model Tests**”) shall be arranged by the Builder as soon as reasonably practicable after the signature of this Contract at an approved facility which is available for such tests. The Buyer hereby approves the model testing facilities of Vienna Model Basin, Austria and Force Technology, Denmark for this purpose.
- 49.2 *Main Engines* – Following the issue by the testing facility of the final written report of the Model Tests, based upon the data provided by the Builder (which shall include details of lightweight reduction due to alternative engine ratings, auxiliary systems, gearboxes, shafting, bearings, propellers, silencers and exhausts, any modifications to the Vessel lines and/or deadweight capability) the Buyer may in terms of Clause 24 request in writing the change of the two eight cylinder main engines described in the Specification (Wartsila 8L 34DF) with two six-cylinder main engines of the same manufacture (Wartsila 6L 34DF). The said request shall be considered a modification to the Specification, to which all the provisions of Clause 24 shall apply. The request shall be notified by the Buyer to the Builder in writing within 7 days of the date of the said final written report referred to above, which failing the Buyer’s right to make it shall lapse.
- 49.3 In the event that the Buyer requests to change the main engines, the Builder shall in accordance with Clause 24 but within 21 days following the Buyer’s notice, give the Buyer a written proposal of the consequences of implementing such changes, including but not limited to such modifications and logical amendments as may be necessary to the Specification, Technical Schedule, GA or Electrical Single Line Diagram required by the change. The Buyer may then elect in writing within 14 days to agree to such changes and necessary amendments to this Contract. In that event, the Parties shall within 21 days of such proposal sign an Addendum to this Contract formalising such amendments, which failing Clause 24(e) shall apply.

50. PAYMENT AMOUNTS AND TIME DUE

50.1 The Instalments shall become individually due and payable in consideration of the Builder achieving certain progress milestones (each, a “**Milestone Event**”) in the construction of the Vessel accordance with the Project Plan. The chronology of Instalments and milestone events is as follows:

<i>Instal-ment No.</i>	<i>Estimated Date</i>	<i>Milestone Event</i>	<i>Value</i>	<i>Percentage</i>
1	30 Oct 2015	Receipt of Refund Guarantee	£2,400,000	4.948%
2	12 Nov 2015	Procurement Deposits Long Lead Items (1) (See Clause 50.2 and 50.3)	£12,100,000	24.950%
3	15 Dec 2015	Cutting of Steel	£1,400,000	2.887%
4	15 Jan 2016	Procurement Deposits Long Lead Items (2) (See Clause 50.2)	£1,000,000	2.062%
5	18 Apr 2016	10% Fabrication	£2,400,000	4.948%
6	14 Jun 2016	25% Fabrication	£3,650,000	7.526%
7	15 Aug 2016	35% Fabrication	£3,650,000	7.526%

NEWBUILDCON - Standard Newbuilding Contract - Additional Clauses – Hull 801

8	14 Oct 2016	50% Fabrication	£2,400,000	4.948%
9	14 Nov 2016	Major Equipment and Lock Out Items Installations (See Clause 50.2)	£1,375,000	2.835%
10	15 Dec 2016	75% Fabrication	£1,200,000	2.474%
11	16 Jan 2017	100% Fabrication	£1,200,000	2.474%
12	14 Mar 2017	Berth Join Up	£1,200,000	2.474%
13	17 Apr 2017	Hull Inspection Prior to Paint	£1,200,000	2.474%
14	14 Aug 2017	Launch	£1,200,000	2.474%
15	25 May 2018	Delivery	£12,125,000	25.000%
		TOTAL	£48,500,000	100.000%

- 50.2 In relation to Instalments number 2, 4 and 9 the Builder shall in addition to the Milestone Certificate referred to below also supply unpriced purchase orders as evidence of the orders then placed with suppliers of major equipment, which shall include – Main Propulsion, Manoeuvring Equipment, Gas Tanks, Electrical Distribution, Power Management, Ramps, Navigation, Fire Safety, Lifesaving and Communication.
- 50.3 In relation to Instalment number 2, in the event that any supplier of major equipment (which shall include as a minimum the suppliers of the (a) Main Propulsion; (b) Ramps; (c) Decks; and (d) Navigation and Communications systems) provides to the Builder a refund guarantee or similar security in respect of the deposits made upon ordering such equipment then (i) the Builder shall procure that such guarantee or security is assignable to the Buyer in security; and (ii) the Builder shall assign such guarantee or security to the Buyer in security (and issue a notice of assignment to the relevant guarantor or security provider) within thirty (30) days of receipt of the same from the supplier in question. The assignment(s) described within the foregoing provisions shall expressly include the value of the guarantee or security provided but may be redacted or unpriced insofar as relating to the total price payable by the Builder to the supplier. The notice of assignment shall expressly provide that prior to the exercise by the Buyer of the right to terminate in terms of Clause 39 of this Contract, the Builder has exclusive right to deal with, and make any claim under, such guarantee or other security.
- 50.4 On the completion of any Milestone Event as shown above in the construction of the Vessel the Builder shall prepare a certificate confirming the achievement of the relevant Milestone Event substantially in the form annexed hereto as Annex "F" (the "Milestone Certificate").
- 50.5 The Milestone Certificate shall be issued by the Builder for countersignature promptly by the Buyer declaring that the relevant stage of progress has been achieved. Upon such countersignature the Builder shall invoice the Purchaser for the amount due for that stage of construction as shown above.
- 50.6 Any disagreement between the Parties as to the due achievement of the relevant Milestone Event shall be referred to the attending surveyor of the Classification Society, whose decision shall be final and binding on the Parties.
- 50.7 For budgetary and cash-flow reasons, no Instalment shall be paid by the Buyer earlier than the Estimated Date shown in clause 50.1 above.

51. AUDIT

- 51.1 Without prejudice to Clause 23, the Builder shall provide the Buyer with such documentation, explanations and information as it may reasonably require to inspect and appraise progress and compliance with this Contract.

- 51.2 The Builder shall promptly and in any event within fourteen (14) calendar days of a request to do so, both during the term of the Contract and following any termination, make available to the Buyer and any Regulatory Authority such reasonable information relating to the progress of the construction of the Vessel to enable the Buyer fully and effectively to comply with the written requirements of any Regulatory Authority.

52. ACCESS AND SECURITY

- 52.1 The Builder shall comply with all security requirements of the Buyer as may be notified in writing from time to time.
- 52.2 The Buyer reserves the right to deny access to its premises to anyone not directly employed in connection with this Contract or for whom authorisation for access has not been obtained.
- 52.3 The Builder shall ensure that all employees, agents and representatives of the Builder behave in a manner that will not give offence to the Buyer, its building occupants or visitors.

53. ANTI-DISCRIMINATION

- 53.1 The Builder shall not unlawfully discriminate within the meaning of any relevant legislation or any statutory modification or re-enactment thereof relating to discrimination in employment or engagement by reason of any 'protected characteristic' as outlined in the Equality Act 2010. The Builder shall take all reasonable steps to ensure the observance of these provisions by all subcontractors, servants, employees and agents of the Builder involved in the execution of this Contract.
- 53.2 Without prejudice to its remedies set out above, the Buyer may terminate this Contract if written notice has been given to the Builder of a fundamental, substantial or persistent breach of this Clause 53 providing 28 days for the breach to be rectified and the Builder has failed to rectify such breach within that period.

54. ETHICAL & SOCIAL REQUIREMENTS

- 54.1 The Builder and any subcontractor of the Builder shall comply with any relevant statutory requirements in relation to the terms of employment and working conditions of their employees, workers and any other persons engaged to perform works and/or services on their behalf.
- 54.2 In the event that the Builder and/or any subcontractor of the Builder breach the terms of Clause 54.1 the Buyer will be entitled to terminate this Contract if written notice has been given to the Builder of a fundamental, substantial or persistent breach of Clause 54.1 providing 28 days for the breach to be rectified and the Builder has failed to rectify such breach within that period.
- 54.3 The Builder shall also give due regard to the Scottish Government guidance note "Community Benefits in Public Procurement", published in February 2008 with ISBN: 978-0-7559-5647-0, but failure to do so shall not entitle the Buyer to terminate this Contract.

55. NO BLACKLIST

The Builder must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause shall entitle the Buyer to terminate the Contract if written notice has been given to the Builder of a fundamental, substantial or persistent breach of this Clause 55 providing 28 days for the breach to be rectified and the Builder has failed to rectify such breach within that period.

56. STATUS OF THE PARTIES

- 56.1 Nothing contained in this Contract shall be construed or have effect as constituting any relationship of an agent or joint venture or partner or employer and employee between the Buyer and (a) the Builder and/or (b) any employee or agent or subcontractor of the Builder. The Buyer shall not be liable for any tax, national insurance or other contributions arising out of or in connection with the employment of individuals by the Builder or its subcontractors.
- 56.2 Nothing contained in this Contract shall be construed or have effect as constituting the Builder or any of its personnel as an agent of the Buyer. The Builder and its personnel shall not have any right or power whatsoever to contract on behalf of the Buyer nor bind it in any way in relation to third parties unless specifically authorised to do so. Nothing in the Contract shall constitute a partnership or joint venture between the Buyer and the Builder.
- 56.3 The Builder shall be entitled to engage, hire or retain such persons as it deems appropriate to assist it in the construction of the Vessel, subject to other provisions of the Contract. Such persons, however, shall be employees of the Builder or its subcontractors and shall not be considered employees of the Buyer. The Builder shall be responsible for the payment of any wages, employees' national insurance contributions and other contributions required by law to be paid by it as employer to its employees and shall make all appropriate deductions from such persons' wages in respect of income tax (PAYE) and employee's national insurance contributions.
- 56.4 If, for any reason, the Buyer shall become liable to pay, or shall pay, any such taxes as are referred to in sub-clauses 56.1 or 56.3 above, the Buyer shall be entitled to deduct from any amounts payable to the Builder all amounts so paid or required to be paid by it and, to the extent that any amount of taxes paid or required to be paid by the Buyer shall exceed the amount payable by the Buyer to the Builder, the Builder shall, upon demand, forthwith reimburse the Buyer such excess.
- 56.5 The Parties acknowledge that the Builder and/or its subcontractors may, from time to time, engage temporary workers in the performance of the Contract. Such temporary workers may be engaged directly or through an agency. For the avoidance of doubt, the parties confirm their understanding that the Agency Workers Regulations 2010 (the "Agency Regulations") shall not apply to this Contract nor to the construction of the Vessel by the Builder or any subcontractor of the Builder such that the Buyer would become a 'hirer' under the Agency Regulations. The Builder shall indemnify the Buyer in respect of any costs incurred by the Buyer were it to be determined by a court or tribunal that the Agency Regulations apply in such a way.

57. FREEDOM OF INFORMATION

- 57.1 In this clause 57:
- 57.1.1 "FOISA" means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner in relation to such legislation;
- 57.1.2 "Environmental Information Regulations" means the Environmental Information Regulations (Scotland) 2004;
- 57.1.3 "Information" has the meaning given under section 73 of FOISA; and
- 57.1.4 "Requests for Information" shall have the meaning set out in FOISA or any apparent request for information under the FOISA or the Environmental Information Regulations.
- 57.2 The Builder acknowledges that the Buyer is subject to the requirements of FOISA and the Environmental Information Regulations and the Builder shall provide reasonable assistance to and cooperation with the Buyer (at the Builder's expense) to enable the Buyer to comply with these Information disclosure requirements.
- 57.3 The Builder shall:

- 57.3.1 provide all necessary assistance as reasonably requested by the Buyer to enable the Buyer to respond to a Request for Information within the time for compliance set out in section 10 of the FOISA or regulation 5 of the Environmental Information Regulations; and
- 57.3.2 provide the Buyer with a copy of all Information in its possession or power in the form that the Buyer requires within five business days (or such other period as the Buyer may specify) of the Buyer requesting that Information.
- 57.4 The Buyer shall be responsible for determining at its absolute discretion whether Information:
 - 57.4.1 is exempt from disclosure in accordance with the provisions of the FOISA or the Environmental Information Regulations; and
 - 57.4.2 is to be disclosed in response to a Request for Information.
- 57.5 In no event shall the Builder respond directly to a Request for Information unless expressly authorised to do so by the Buyer.
- 57.6 The Builder acknowledges that the Buyer may, acting in accordance with the Scottish Ministers' Code of Practice on the Discharge of Functions of Public Authorities under Section 60(5) of the FOISA, be obliged under FOISA or the Environmental Information Regulations to disclose Information:
 - 57.6.1 without consulting with the Builder; or
 - 57.6.2 following consultation with the Builder and having taken its views into account.
- 57.7 The Builder shall ensure that all Information produced in the course of this Contract or relating to this Contract is retained for disclosure and shall permit the Buyer to inspect such records as requested from time to time.
- 57.8 The Builder agrees that notwithstanding the terms of this Contract any disclosure of Information by the Buyer in response to a Request for Information will not breach any confidentiality obligations imposed on the Buyer by the Builder whether in this Contract or otherwise.
- 57.9 All information related to the Contract which is held by the Builder on behalf of the Buyer shall be regarded as being held by the Buyer and is subject to the provisions of the Legislation referred to in Clause 57.1 above and the Buyer's Freedom of Information policy at <http://www.cmassets.co.uk>.
- 57.10 Any disclosure by the Buyer under freedom of information laws of information received from the Builder shall be subject to the Builder having first been given an opportunity to make representations to the Buyer as to whether the information in question might be exempt from disclosure. The Buyer undertakes to take reasonable cognisance of the Builder's comments and comply with the Scottish Ministers' section 60 code of practice.

58. ANTI-CORRUPTION AND ANTI-BRIBERY

- 58.1 For the purpose of this Clause 58 "Applicable Laws" shall mean the Bribery Act 2010, "Prohibited Act" shall mean any act which is prohibited by the Applicable Laws and "Relevant Policies" shall mean the Buyer's policies in relation to anti-corruption and anti-bribery as may be notified to the Builder from time to time.
- 58.2 The Builder acknowledges and agrees that it is not expected by the Buyer nor been authorised by the Buyer to take any action on behalf of the Buyer which would violate any Applicable Laws.
- 58.3 The Builder further acknowledges and agrees that it shall comply with all Applicable Laws and Relevant Policies.
- 58.4 The Builder declares and undertakes that in relation to the performance of its obligations under this Contract:

- (a) it has not offered or given, and will not offer or give, directly or indirectly, any bribe or other improper benefit or advantage, financial or otherwise, (including without limitation any facilitation payment) (each an "Improper Payment") to any individual or organisation for the purpose of influencing or rewarding the improper performance of any function or activity by such individual or organisation or, without limitation to the foregoing, otherwise has not bribed and will not bribe another person in connection with the performance or proposed performance of any function or activity;
- (b) it has not demanded or accepted, and will not demand or accept, directly or indirectly, any Improper Payment for itself or any individual or organisation intending as a consequence to perform or procure the performance improperly of any function or activity or, without limitation to the foregoing, otherwise has not been and will not be bribed in connection with the performance or proposed performance of any function or activity;
- (c) it has not offered or given and will not offer or give any Improper Payment or other advantage to any Public Official wherever located with the intention of obtaining or retaining business or an advantage in the conduct of business; and
- (d) it has not committed or omitted to commit any act that will cause or lead the Buyer to be in breach of any of the Applicable Laws or Relevant Policies.

58.5 The Builder shall:

- (a) if requested, provide the Buyer with reasonable assistance, at the Buyer's reasonable cost, to enable the Buyer to perform any activity required by any relevant government agency for the purpose of compliance with any of the Applicable Laws or Relevant Policies; and
- (b) within seven (7) calendar days of the date of this Contract, and annually thereafter, certify to the Buyer in writing signed by an officer of the Builder compliance with this clause by the Builder and all Builder Associated Persons (as defined below) or other persons who are performing services for the Builder or the Buyer in connection with this Contract. The Builder shall provide such supporting evidence of compliance as the Buyer may reasonably request.

58.6 The Builder shall put in place adequate procedures designed to prevent (including, without limitation, within the meaning of section 7 of the Bribery Act) any person associated with the Builder within the meaning of section 8 of the Bribery Act (being any person providing services of any kind to the Builder) ("Builder Associated Person") committing a Prohibited Act.

58.7 If the Builder or any Builder Associated Person commits any Prohibited Act, then:

- (a) the Buyer may terminate this Contract with immediate effect by giving written notice to the Builder; or
- (b) if the Prohibited Act is committed by a Builder Associated Person acting independently of the Builder, then, the Buyer may at its absolute discretion either:
 - (i) terminate this Contract in accordance with sub-clause (a) above; or
 - (ii) give written notice to the Builder of termination and this Contract will terminate, unless within twenty eight (28) Business Days of receipt of such notice the Builder terminates such association (and if the relevant Builder Associated Person is an employee terminates the employee's employment), providing such evidence as the Buyer may require of such termination and (if necessary) procures the performance of the relevant subcontract by another person.

58.8 Any notice of termination under this Clause shall specify:

- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Buyer believes has committed the Prohibited Act;
- and

(c) the date on which this Contract will terminate in accordance with the applicable provisions of this Clause.

- 58.9 The Builder shall at all times, during and after the term of this Contract, on written demand indemnify the Buyer and its officers, staff, employees and students (“**Relevant Persons**”) and keep the Buyer and all Relevant Persons indemnified against all losses, damages, costs or expenses and other liabilities (including, but not limited to, legal fees) incurred by, awarded against or agreed to be paid by the Buyer or any Relevant Persons as a consequence of the Builder or any Builder Associated Person committing a Prohibited Act.
- 58.10 Any termination of this Contract or other actions of the Builder pursuant to this Clause shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the Buyer.
- 58.11 If the Buyer terminates this Contract for breach of this Clause shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before such termination.
- 58.12 Regardless of any other provision in this Contract, the Buyer shall not be obliged to do, or omit to do, any act which would, in its reasonable opinion, put it in breach of any of the Applicable Laws.

59. MISCELLANEOUS

59.1 Invalidity

If any provision of this Contract is or becomes invalid or unenforceable, in whole or in part, the validity and enforceability of the other provisions of this Contract and its validity and enforceability shall not be affected and the parties shall enter into good faith discussions to find a suitable replacement provision of equivalent effect.

59.2 Costs

Save to the extent otherwise set out in this Contract, the Buyer and the Builder shall each pay their own costs, charges and expenses in relation to the negotiation, preparation, execution and implementation of this Contract and all other documents in their agreed form referred to in this Contract.

59.3 Waiver

59.3.1 Failure by the Buyer to exercise any of its rights under this Contract shall not constitute or be deemed a waiver or forfeiture of such rights. No such waiver shall constitute a continuing waiver nor shall it prevent the Buyer from acting upon that or any subsequent breach or default or from enforcing any term or condition of this Contract.

59.3.2 Failure by the Builder to exercise any of its rights under this Contract shall not constitute or be deemed a waiver or forfeiture of such rights. Any express or implied waiver by the Builder of any provisions of this Contract or of any breach by the Buyer may be terminated by the Builder at any time. No such waiver shall constitute a continuing waiver nor shall it prevent the Builder from acting upon that or any subsequent breach or default or from enforcing any term or condition of this Contract.

59.4 Severability

Each provision of this Contract shall be construed separately and notwithstanding that any such provision may prove to be illegal or unenforceable the remaining provisions of this Contract shall continue in full force and effect.

NEWBUILDCON - Standard Newbuilding Contract – PART II

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

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.~~

NEWBUILDCON - Standard Newbuilding Contract – PART II

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 may be necessary in order that the amount received by you after such deductions or withholdings shall be equal to the amount which would have been received had no such deduction or withholding been made.
7. All payments to be made under this Guarantee shall be made in [here insert currency].
8. Notwithstanding any provision in the Contract, this Guarantee shall be freely assignable by you and by any assignee. Upon assignment, all references in this Guarantee to "you" shall be read as references to the assignee or subsequent assignees.
9. This Guarantee is governed by the laws of [here state applicable law. In the absence of any statement the law of England and Wales shall apply] and we hereby submit to the exclusive jurisdiction of [here state place of dispute resolution. In the absence of any statement the High Court of England and Wales shall apply]. [We hereby authorise and nominate the following agent to accept service of any court proceedings on our behalf: [here insert name and address.]]
10. Any notice, claim or Demand to be given or made by you under this Guarantee shall be in writing signed by one of your officers and may be served on us either by post or by tested telex/authorised SWIFT or equivalent, and if sent by post to [here insert address] (or such other address as we may notify to you in writing) and if by tested telex at [here insert number] or if by SWIFT or equivalent at [here insert number] via your bank and shall be effective only upon actual receipt.
11. To the extent that we may be or may hereafter become entitled, in any jurisdiction, to claim for ourselves or our property, assets or revenue immunity (whether by reason of sovereignty or otherwise) in respect of our obligations under this Guarantee from service of process, suit, jurisdiction, judgment, order, award, attachment (before or after judgment or award), set off, execution of a judgment or other legal process and to the extent that in any such jurisdiction there may be attributed to us or any of our property, assets or revenue such an immunity (whether or not claimed) we hereby irrevocably agree not to claim and hereby irrevocably waive such immunity to the fullest extent permitted by the laws of such jurisdiction.
12. We hereby warrant that we are permitted by any relevant law to which we are subject (including, where relevant, the laws of the place or places of each of our incorporation, establishment, regulation, registration and residence) to:
 - 12.1 issue a guarantee in this form;
 - 12.2 make payment under this Guarantee in a currency other than that of the place of (where relevant) each of our incorporation, establishment, regulation, registration and residence in case of a Demand for payment under this Guarantee; and
 - 12.3 designate the place stated in paragraph 9 above as the forum and the place of jurisdiction to which we irrevocably submit.
13. We hereby warrant that this Guarantee has been, or will be, duly registered with the relevant State authority in any legal jurisdiction in which such registration is required for any reason.
14. We hereby warrant that we have obtained all necessary approvals and authorisations to issue this Guarantee.

Dated the _____ day of _____ 2

..... (signature)

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

NEWBUILDCON - Standard Newbuilding Contract – PART II

ANNEX A(ii)

IRREVOCABLE LETTER OF GUARANTEE FOR PERFORMANCE OF BUYER'S OBLIGATIONS

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

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

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

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

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

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

3. This Guarantee is governed by the laws of [here state applicable law. In the absence of any statement the law of England and Wales shall apply] and we hereby submit to the exclusive jurisdiction of [here state place of dispute resolution. In the absence of any statement the High Court of England and Wales shall apply]. [We hereby authorise and nominate the following agent to accept service of any court proceedings on our behalf: [here insert name and address.]]

Dated the day of 2

..... (signature)

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

NEWBUILDCON - Standard Newbuilding Contract – PART II

ANNEX A(iii)

REFUND GUARANTEE

(see attached)

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

NEWBUILDCON - Standard Newbuilding Contract – PART II

~~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 may be necessary in order that the amount received by you after such deductions or withholdings shall be equal to the amount which would have been received had no such deduction or withholding been made.~~
- ~~7. All payments to be made under this Guarantee shall be made in [here insert currency].~~
- ~~8. Notwithstanding any provision in the Contract, this Guarantee shall be freely assignable by you and by any assignee. Upon assignment, all references in this Guarantee to "you" shall be read as references to the assignee or subsequent assignees.~~
- ~~9. This Guarantee is governed by the laws of [here state applicable law. In the absence of any statement the 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]

REFUND GUARANTEE

To:

**CALEDONIAN MARITIME ASSETS LIMITED
MUNICIPAL BUILDINGS
FORE STREET
PORT GLASGOW
PA14 5EQ**

Date: 2015

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

'Contract' means the contract dated 16 October 2015 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 in the form of Schedule 2 to this Guarantee.

'Expiry Date' means 31 December 2018.

'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.

'Lender' means Investec Bank plc or Investec Bank Limited or any of their successors, permitted assignees or transferees.

'Maximum Liability' means the maximum liability of the Lenders under this Guarantee, including Contractual Interest which shall be £12,125,000.

'Relevant Proportion' means in relation to a Lender, the proportion (expressed as a percentage) to be paid by each Lender under this Guarantee as set out in Schedule 1.

'Builder' means Ferguson Marine Engineering [REDACTED]

'Vessel' means a Euro Class B Dual Fuel Passenger Ferry with Builder's Hull Number 801.

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 each Lender irrevocably and unconditionally guarantees (but as a primary obligor and not by way of secondary liability only) on a several basis in accordance with its Relevant Proportion that if the Builder becomes liable under the Contract to repay any part of any Instalment each Lender shall, upon receipt by Investec Bank plc from you of a written Demand for the same by no later than 1 pm (London time) on the Expiry Date, pay to you in an amount equal to its Relevant Proportion or to your order upon the expiry of thirty (30) days from receipt of such Demand the sum demanded by you together with Contractual Interest (if any) in respect thereof provided that the total amount to be paid by both Lenders 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. We will not be obliged to make any payment under this Guarantee if as a result the aggregate of all payments made by us under this Guarantee would exceed the Maximum Liability.

3. Subject to paragraphs 8 and 9 below, 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 12 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) the Expiry Date.
5. All payments to be made under this Guarantee shall be made by each Lender on a several basis only in accordance with its Relevant Proportion and without any set off or counterclaim and without deduction or withholding for or on account of any taxes, duties or charges whatsoever unless we are compelled by law to deduct or withhold the same in which case we shall make the minimum deduction or withholding permitted and will pay such additional amounts as may be necessary in order that the amount received by you after such deductions or withholdings shall be equal to the amount which would have been received had no such deduction or withholding been made.
6. All payments to be made under this Guarantee shall be made in sterling and for value on the due date to your account as specified in the Demand.
7. We confirm that the Builder irrevocably and unconditionally authorises us to pay any Demand made under the Guarantee and which appears on its face to be in order.
8. We:
 - 8.1. are not obliged to carry out any investigation or seek any confirmation from any other person before paying a Demand; and
 - 8.2. deal in documents only and will not be concerned with the legality or validity of a Demand or any underlying transaction or any available set-off, counterclaim or other defence of any person.
9. If it becomes unlawful for us to issue or leave outstanding the Guarantee, then:
 - 9.1. we shall not be obliged to issue the Guarantee; and
 - 9.2. you will release the Guarantee issued by us and outstanding at such time.
10. Any amount outstanding under the Guarantee following the initial Demand made under the Guarantee will be cancelled.
11. No party will be entitled to any right of contribution or indemnity from us in respect of any payment we may make under this Guarantee.
12. At 1 p.m.(London time) on the Expiry Date our obligations under this Guarantee will cease with no further liability on our part except for any Demand validly presented under this Guarantee that remains unpaid.
13. When we are no longer under any further obligations under this Guarantee, you must return the original of this Guarantee to us.
14. Notwithstanding any provision in the Contract, our consent is required for the assignment or transfer by you and by any assignee of this Guarantee (such consent not to be unreasonably withheld by us). Upon such assignment or transfer, all references in this Guarantee to "you" shall be read as references to the assignee or subsequent assignees.
15. This Guarantee is governed by the laws of England and Wales and we hereby submit to the exclusive jurisdiction of the High Court of England and Wales.
16. Any notice, claim or Demand to be given or made by you under this Guarantee shall be in writing to be received in a legible form signed by two of your authorised directors and shall be served on us either by post and copied to the Builder in accordance with the Contract, and if sent by post to Investec Bank plc, 2 Gresham Street, London EC2V 7 QP marked for the attention of Slade Spalding, Helen Griffiths and Simon Hamilton (or such other address as we may notify to you in writing) and shall be effective only upon actual receipt.

17. 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.
18. 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:
- 18.1. issue a guarantee in this form,
 - 18.2. 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
 - 18.3. designate the place stated in paragraph 16 above as the forum and the place of jurisdiction to which we irrevocably submit.
19. We hereby warrant that we have obtained all necessary approvals and authorisations to issue this Guarantee.

Dated the day of 2015

.....(signature)
For and on behalf of [REDACTED]

.....(signature)
For and on behalf of [REDACTED]

.....(signature)
For and on behalf of [REDACTED]

.....(signature)
For and on behalf of [REDACTED]

SCHEDULE 1

LENDERS' RELEVANT PROPORTIONS

Lender	Relevant Proportion
[REDACTED]	£5,000,000 (41.237%)
[REDACTED]	£7,125,000 (58.763%)

**SCHEDULE 2
FORM OF DEMAND**

To: [REDACTED]

[Date]

Dear Sirs

**Guarantee dated [] 2015 issued in favour of Caledonian Maritime Assets Limited
(the "Guarantee")**

We refer to the Guarantee. Terms defined in the Guarantee have the same meaning when used in this Demand.

1. We certify that the sum of [] is due [and has remained unpaid for at least [] Business Days] [under [set out underlying contract or agreement]]. We therefore demand payment of the sum of [] under the Guarantee.

Payment should be made to the following account:

Name:

Account Number:

Bank:

The date of this Demand is not later than the Expiry Date.

Yours faithfully

(Authorised Signatory)

(Authorised Signatory)

Caledonian Maritime Assets Limited

Copy to:

Ferguson Marine Engineering Limited

NEWBUILDCON - Standard Newbuilding Contract – PART II

ANNEX A(iiiv)

IRREVOCABLE LETTER OF GUARANTEE FOR BUILDER'S OBLIGATIONS UNDER CLAUSE 27

To: ~~[here insert name and address of the Buyer]~~
CALEDONIAN MARITIME ASSETS LIMITED
MUNICIPAL BUILDINGS
FORE STREET
PORT GLASGOW
PA14 5EQ

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 may be amended at any time.

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

'Maximum Liability' means our maximum liability under this Guarantee, including Award Interest which shall be lower of the Buyer's reasonably estimated cost of remedy of the Delivery Defects or 5% of the Contract price ~~[here insert amount]~~.

'Builder' means Ferguson Marine Engineering Limited, ~~[here insert name and address of shipbuilder]~~

'Vessel' means one 100 metre Euro Class B Dual Fuel Ro-Ro Passenger Ferry having Builder's hull no.801 ~~[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(d)(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 the Court of Session ~~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 may be necessary in order that the amount received by you after such deductions or withholdings shall be equal to the amount which would have been received had no such deduction or withholding been made.
7. All payments to be made under this Guarantee shall be made in Pounds Sterling ~~[here insert currency]~~.

NEWBUILDCON - Standard Newbuilding Contract – PART II

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 Scotland ~~[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 Session in Edinburgh, 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.]]~~

14.9. 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.

~~12.10.~~ 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.

~~13.11.~~ 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.

~~14.12.~~ 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.

~~15.13.~~ 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 FERGUSON MARINE ENGINEERING (HOLDINGS) LIMITED ~~[here insert name of Guarantor]~~

NEWBUILDCON - Standard Newbuilding Contract – PART II

C

C

C

C

