LEGAL ASPECTS ON SHIPBUILDING FINANCING

Legal evaluation of financial risks in the pre-delivery phase

Author: Ksenia Nikonova
Supervisor: Edvard Stang
Deadline for submission: 09/01/2009

Number of words: 17,735 (max. 18 000)

31.08.2009

UNIVERSITY OF OSLO
Faculty of Law
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ANNEX A
1 INTRODUCTION

1.1 Purpose
The main purpose of this thesis is to view the pre-delivery financing for construction of newbuildings from free different perspectives – buyer\(^1\), its financing bank and builder\(^2\) (with its financing bank) - and subsequently discuss a few legal problems connected with the financing security issues which can arise between the parties. Those problems to be discussed are following:

- mortgage of ships under construction;
- mortgage of hull;
- shipbuilding contract as a mortgage asset;
- assignment of the benefit of the shipbuilding contract;
- conflict between buyer and builder’s mortgage;
- contract price of the vessel;
- insurance of the construction;
- efficiency of refund guarantee.

However, when writing about legal aspects of pre-delivery financing, it is impossible to neglect the economic and even technical aspects and to some extent commercial side of the issue. Financing of new vessels is based on financial risk assessment and to leave this part outside would not do justice to this work.

1.2 Background and scope
For the shipbuilding market, the financing issue constitutes the main cornerstone – it is a starting point for every newbuilding. Generally, financing of new vessels can be divided into two phases,

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\(^1\) Buyer is a company which orders the vessel and classified as buyer under the shipbuilding contract.

\(^2\) Builder is the shipyard, which is responsible for the building and delivery. The builder is also a seller, since the shipbuilding contract is usually classified as a contract of sale.
pre-delivery finance and post-delivery finance. However, there is no clear-cut division between those phases and often the last phase is mere prolongation of the former one. Nevertheless, in cases, where the financing prior to respectively after delivery and acceptance of the vessel is obtained from different lenders, the usual procedure is to separate those two phases. When it concerns legal aspects of the shipbuilding financing, such as shipbuilding contract, its registration and mortgaging such division plays a significant role. The builder, who usually is a contractual owner of the vessel until delivery, bears the risk of loss or damage prior to delivery and acceptance thereof. It affects the buyer’s positions as a potential owner of the future vessel and as a borrower in relation to the bank financing the buyer’s purchase of newbuilding.

There is no set way for financing a ship and there is often more than one type of finance that is suitable. During the last 40 years debt finance by means of commercial bank loans has been the dominant source of capital used for newbuildings in particular, owing to its high grade of flexibility for the parties involved. It allows the borrower to retain full ownership of the financed ship and obtain financing at the same time.  

Thus the scope of this thesis intends to cover the pre-delivery financing by means of commercial bank loans. Some reference will be made to the post-delivery financing procedure but the topic as such will be left outside the scope of this work.

1.3 Structure of thesis
In order to facilitate the examination of the topic, the structure of the thesis follows the general structure of a shipbuilding financing procedure, starting with the obtaining of financing and ending with delivery of the vessel.

Chapters II and III deal with different models of financing available for the buyer and illustrates how the building process is connected to the financing.

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3 Goldrein (1998) p.278
Chapter IV discusses the relationship between the buyer and the bank financing the newbuilding, by discussing loan agreement and term sheet.

Chapters V and VI concentrate the discussion on the security arrangements and their legal advantages respectively disadvantages for the buyer and its financing bank.

Chapter VII brings up the shipbuilding contract and look at it in the light of the respective risks the financing bank and the shipyard have to face and the security arrangements, which are aimed to reduce those risks.

The final chapter contains concluding remarks.

1.4 Legal sources

The literature available on the financing of ships has a tendency to bring up the financing side in a much greater extent than the legal. Furthermore, the legal issues discussed there often concern ”second-hand” purchase of vessel and therefore, important legal points for discussion of pre-delivery risks are left outside. The amount of case law is limited because the most of the problems on pre-delivery phase the parties attempt to decide by means of negotiations.

Subsequently, the primer informative and legal sources of this work are the documents which are frequently used by the parties and legal statutes. The documents to be examined below are shipbuilding contract, term sheet, loan agreement, mortgage deed, refund guarantee, etc. Another important source is personal communication with laywers and bankers working with ship financing. Their experience and skills constitute an inestimable contribution to this thesis.

Since there is not room to deal with a lot of details here and there is a need for exemplifying, in order to make the understanding of the problems clearer, Norwegian Standard Form Shipbuilding
Contract 2000 will be used as the main contractual basis for the discussion. However, some other standard shipbuilding contracts may be briefly touched upon.
2  MAIN FEATURES OF SHIP FINANCING

2.1 Financing and security
Any consideration of newbuilding is closely connected with the issues of obtaining financing and providing a security for it. Almost every shipbuilding order requires additional finance, due to its capital intensive feature. A potential buyer – even a well-established company with continuous and stable cashflow - will often not be able to take liquidity out of the company’s turnover in order to pay for the newbuilding, because it can be very expensive for the company to take out such a high amount of money instead of using it for new profitable investments. Subsequently, to acquire financing for a new vessel the buyer will turn to a bank and ask for a loan. The builder might also need a financial assistance from its own bank in case of refund guarantee\(^4\) and other transactions related to the shipbuilding process.

Under the pre-delivery phase there is no vessel and the only ground for providing financing and foreseeing the economic life of the vessel-to-be and future incomes is the shipbuilding contract followed by drawings. The capital costs of a ship and the choice of financing are the crucial factors for success of the project. A huge part of the financing procedure is based on assumptions and future premises concerning the new building. This fact makes pre-delivery phase extremely risky as well as for the buyer and its financing bank as for the builder. Another risk factor is created by the amount of different agreements and documents enclosed to them that both the builder and the buyer have to sign.

The significant questions are who bears the risk and who has the right to the ship in case of the other party’s default. The answers on these questions are decisive for the financing bank, which will provide the shipbuilding loan for the buyer. The reason is that the ship under construction might be used as a security for the bank loan.\(^5\) The key issue here is the credit risk – the buyer’s

\(^4\) Cf. 6 below
\(^5\) Cf. 5 below
ability to meet all its financial obligations during the loan period by providing sufficient security for the bank. In order to reduce the level of financial risk, the banks are reluctant to provide a loan in case the vessel constitutes the last order in the shipyard’s orderbook. The reason is that the payments instalments to be paid under the building process might be used to cover previous orders. It can result in the yard becoming insolvent and the vessel to be either unfinished or delayed.

Today, in the middle of financial crisis, when few yards remain unaffected, shipyards in Turkey, China, South Korea and other countries have their orderbooks overloaded with orders at low prices. New orders reported fell from 22.2 million cgt\(^6\) in the last quarter 2007, and 12.3 million cgt in the last quarter 2008, to just over 1 million cgt in each of the last quarter of 2008 and the first quarter of 2009. It constitutes a fall of around 90\% from its peak.\(^7\) Smaller yards cannot stand the competitive market and go bankrupt. Others try to avoid such cardinal solution by finding another ways out. Yards demand additional payment from buyers on the basis that they are threatened with the bankruptcy and thus might be unable to complete the orders.\(^8\) At the same time there are situations where buyers are not able to purchase the ordered vessels due to insolvency or even bankruptcy. Subsequently, the need of sufficient security “package” seems to be even more important than usual.

### 2.2 Commercial bank loans

Commercial bank loans – accounting for up to 70\% of the market - constitute the most common way of debt financing of ships and shipping companies. The usual practice for structuring the loan is to establish a “one ship company” for each vessel financed and, if possible, assign the first

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\(^6\) *Compensated gross ton.* Measure of shipbuilding output based on the gross tonnage of the ship multiplied by a cgt coefficient reflecting its work content. See Stopford, p.xxxi

\(^7\) *Organisation for Economic Co-operation and Development:* Fall in shipbuilding set to continue for some time, says OECD Council Working Party on Shipbuilding (URL: http://www.oecd.org/document/16/0,3343,en_2649_34211_43319760_1_1_1_1,00.html)

\(^8\) *Nordisk Skibsrederforening:* Nordisk Medlemsblad (2009) p.6144 (URL: http://www.nordisk.no/arch/_img/9079384.pdf)
mortgage on the vessel under construction to the lender as security. Borrowing against individual ships can be inconvenient for large shipping companies because any change in the fleet involves a time-consuming loan transaction. Therefore, such companies will often choose to borrow as company, using their company guarantee as security.  

There are about twenty different banks offering loans in the shipping sector. For loans larger than $25-50 million the usual practice it to spread the risk by sharing the loan amongst a *syndication* of several banks. There is a lead bank which establishes the relationship with the borrower and organizes a syndicate of banks to provide the loan by contacting the other banks. In practice, the lead arranger stands for largest part of the percentage share of the loan amount, but it can also vary depending on the size of the loan. For example, Norwegian DnB NOR often takes a leading role in syndicated shipping loans. In 2008 the percentage share of the bank in syndication market amounted to about 10 %, while Nordea provided for 9,9 %. SEB’s part constituted only 2,2 %.  

The construction enables to split large parts of high risk loans into small packages that are distributed between many banks. At the same time, it gives banks without expertise in shipping loans to participate in the business under the guidance of an experienced lead bank. 

However, syndicated loans can be difficult to manage, especially if the borrower defaults or runs into other difficulties. The lead bank and management group may have difficulties in controlling a diverse group of participating banks, many of whom lack any kind of knowledge about the shipping market and its peculiarities. 

2.3 Traditional financing models

For a buyer wishing to finance purchase of a new construction by debt financing, there are two traditional finance models available – buyer’s credit and builder’s credit – and there is also a 

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10 Private communication
11 Goldrein (1998) p.271
governmental guarantee, so called working capital loan. The choice of financing model can affect the choice of security required by the creditor. In case of the buyer’s credit, for example, the financing bank might require assignment of the benefit of the shipbuilding contract\(^{12}\) or mortgage over the vessel under construction\(^{13}\). Since only the owner under the contract can mortgage the vessel, the buyer might try to negotiate with the builder to be registered as owner in the building contract. In low market, as we have seen under the recent year, when many shipyards have crossed the default line, the builder might agree to register the buyer as shipowner in the contract, if the latter offers a good price for the deal. However, by doing so the builder runs a risk to lose its rights in the vessel to the buyer’s financing bank in case of the buyer’s default.\(^{14}\)

2.3.1 Governmental Guarantee

In some countries there are systems whereby the government guarantees funds raised by the yards in order to build the ship. The guarantee recipient is normally the financing bank. It is often a part of government-funded subsidy programme aimed at assisting local shipbuilders. It can be illustrated by an example. A Norwegian buyer orders a vessel at a local shipyard. It gets a governmental credit guarantee covering part of the loan taken up at a bank for financing the construction costs, a working capital loan. GIEK,\(^ {15}\) in Norway may do this covering up to 50%\(^ {16}\) of the loan from the bank to the yard. The rest has to be financed by the yard and the buyer’s financing bank. The risk can be diminished by other means of security the buyer might provide, e.g. cash deposits, refund guarantees and assignment of the benefit of the shipbuilding contract.\(^ {17}\)

\(^{12}\) Cf. 6 below
\(^{13}\) Cf. 5 below
\(^{14}\) Cf. 7.2.5 below
\(^{15}\) The central governmental agency responsible for furnishing guarantees and insurance of export credits. The Institute's primary function is to promote export of Norwegian goods and services and Norwegian investment abroad (URL: [www.giek.no](http://www.giek.no))
\(^{16}\) Usually such credit guarantee constitutes 80 % but Norway has an exception of 50 %.
\(^{17}\) Cf. 6 below
Usually, the purchase consists of about four instalments per 20 % each over the duration of the contract and the final 20 % are paid upon delivery. However, there are some restrictions in this respect.

Due to the economic downturn some governments have extended credit guarantees to both yards and ship buyers. The aim is to prevent bankruptcies among enterprises unable to overcome the combined effects of tightening capital and liquidity and a collapsing orderbook. However, there is a risk that such governmental interventions can give an undesirable effect as well as in the shipping sector as in the trade market as such.\(^{18}\)

2.3.2 Buyer’s credit

The buyer obtains financing through a bank, which pays for the ship either in full upon delivery or, what is more common, by pre-delivery instalments, the so called “stage payments”. Normally, there are a few banks participating in the financing procedure because the risk is significant. It can be achieved by a usual collaboration between financing banks, where they have pro rata liability in relation to the share of the loan each of them provided. Alternatively, it can be syndication with a lead bank as the buyer’s bank.\(^{19}\)

The pattern of the payments is negotiable but the terms are constructed so that the buyer is expected to pay for the ship in full upon delivery.\(^{20}\) The number and size of the instalments are determined by and tailored to the shipbuilding process, which is shown in the table below. Generally, the bank requires buyer to finance about 20-30 % of the vessel from the buyer’s own equity. Thus the buyer, as a rule, makes first payment upon the signing shipbuilding contract. Then the yard can start the work and purchase the materials required for that. The payment from the

\(^{18}\) Organisation for Economic Co-operation and Development: Fall in shipbuilding set to continue for some time, says OECD Council Working Party on Shipbuilding (URL: [http://www.oecd.org/document/16/0,3343,en_2649_34211_43319760_1_1_1_1,00.html](http://www.oecd.org/document/16/0,3343,en_2649_34211_43319760_1_1_1_1,00.html))

\(^{19}\) Cf. 2.2 above

\(^{20}\) Cf. 7.2.2 below
buyer can be in a form of earnings of other ships the buyer owns or direct investment made by
close friends or family members. The rest of financing –70-80 % - is provided by the financing
bank against security. The last payment will usually be made upon delivery.²¹

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**Exhibit 1**

**Shipbuilding contract payment terms (Buyer’s credit):**

<table>
<thead>
<tr>
<th>Payment Event</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signing of Contract</td>
<td>15 %</td>
</tr>
<tr>
<td>Cutting of first steel plate</td>
<td>15 %</td>
</tr>
<tr>
<td>Beginning of keel laying</td>
<td>10 %</td>
</tr>
<tr>
<td>Launching</td>
<td>10 %</td>
</tr>
<tr>
<td>Delivery</td>
<td>50 %</td>
</tr>
<tr>
<td></td>
<td>100 %</td>
</tr>
</tbody>
</table>

Source: Report by Mr. Kevin Dingly from Dingli&Dingli Law Firm/Malta “Ship mortgages in the context of the

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2.3.3 Seller’s credit

If shipbuilder provides a seller’s credit, the buyer will normally be expected to finance the first 5-
20 % of the contract price from his own resources. The terms of the yard financing may be set out
in the shipbuilding contract itself or may be included in a separate credit agreement, and will
determine terms of repayment of the credit over a set period of time, usually at half-yearly
intervals. As any other commercial lender, the shipbuilder – commonly it will be the shipbuilder’s
bank - will require a security from the buyer for the repayment of the loan. There are several
possible ways to provide such a kind of security. The builder may take a mortgage over the ship.

²¹ Harwood, pp.47 et seq. See also Goldrein (1998) p.274
Alternatively, the yard may require a bank guarantee of the buyer’s obligation to be issued in the yard’s favour by the buyer’s bank. Sometimes, prior to the issuance of such a guarantee, the buyer’s bank will upon the yard’s request issue a Commitment Letter when the building contract is signed, in order to commit the future guarantee.²²

Furthermore, the yard may require a bank guarantee of future instalments of the purchase price. Yard will often require buyer to issue a series of Promissory Notes (negotiable) and the buyer’s bank to be a guarantor of payment of Promissory Notes, when they fall due. These security documents might put the bank in a vulnerable position, unless the buyer has other assets available to be provided as security. If the buyer goes bankrupt, the financing bank will still have to pay the instalments according to the guarantee.

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**Exhibit 2**

**Shipbuilding contract payment terms (Builder’s credit):**

<table>
<thead>
<tr>
<th>Event</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signing of Contract</td>
<td>5 %</td>
</tr>
<tr>
<td>6 months after contract</td>
<td>4 %</td>
</tr>
<tr>
<td>Beginning of keel laying</td>
<td>4 %</td>
</tr>
<tr>
<td>Launching</td>
<td>4 %</td>
</tr>
<tr>
<td>Delivery</td>
<td>3 %</td>
</tr>
<tr>
<td>Post-Delivery (Yard Credit)</td>
<td>80 %</td>
</tr>
<tr>
<td></td>
<td><strong>100 %</strong></td>
</tr>
</tbody>
</table>

Source: see Exhibit 1.

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However, the seller’s credit has become less popular due to a number of factors, such as the increasing number of banks willing to provide newbuilding finance, the greater flexibility of lending banks, the decreasing willingness of governments and commercial banks to provide funds

²² *Harwood*, pp.47-49
to enable builders to provide credit, and, undoubtedly, low US dollar interest rates which made the generally fixed-rate government subsidized programmes unattractive.\textsuperscript{23}

\textsuperscript{23} Harwood, p.49
3 SHIPBUILDING PRODUCTION AND COSTS

For the better understanding of the shipbuilding finance and its mechanisms, it is necessary to inquire into the technical part of the issue – the production process of a ship. As a rule, financing schedule is tailored to the production process by making payment instalments from the buyer or his financing bank match the costs and financial risks the shipyard must bear.

Normally, a ship will be built by sections, what involves several thousand separate purchase orders. First, the shipyard prepares an outline with design, cost estimates, building strategy and production plans. If the buyer approves it and sings the shipbuilding contract, the outline will be developed in greater details into working drawings and parts lists. Practically, on that stage design, quality and preliminary price of the future ship are decided. The shipyard has to make sure that all the orders are delivered in time because the production process is directly depending on the material supply. Thus any delay in delivery of any order may cause delay in the delivery of the ship under the shipbuilding contract. A substantive delay, e.g. 270 days or more, gives the buyer right to cancel the contact. It also means that the builder must have a certain amount of capital to purchase the orders. It can be achieved by mortgaging of the construction, provided the builder is registered as owner in the shipbuilding contract.

Since to build a ship can take between 12 months and 5 years, depending on the ship size and the length of the orderbook held by the shipbuilder, the final price may differ from the originally agreed. Generally, there are free main factors that can affect the cost of an ordered vessel:

- steel stands for about 13 %;
- the main engine constitutes 16 % and other material make 25-35 %;
- labour costs stand for about 40-50 %.

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25 Cf. Ship 2000, Article IV (1)
26 Cf. 7.2.5 below
27 Stopford, p.639
Discrepancy in labour costs and material costs results in shipyards facing competitive pressures in the market. Normally, all the additional costs will be presented by the builder in the last instalment the buyer has to pay upon delivery of the vessel. If the number is too high, the buyer might question it and delivery as a result will be postponed.\textsuperscript{28} The negotiations in such case might take several months. Under this period the buyer (and probably the builder) has to pay interest rate to its financing bank for the provided loan. If the contract is registered in the ship register it might prevent the builder to sell the vessel to another purchaser.\textsuperscript{29}

However, each yard tries to find its own solution how to survive in the competitive market and keep the costs down. For example, some Japanese shipyards have developed bulk carrier designs which are heavily engineered to facilitate the production process and in that way reduce man-hours. In contrast, the Italian shipyards have solved the problem by focusing on the cruise market and mastering the skills needed to bring together the production of the hull with the very different task of outfitting the ship as a seagoing hotel and leisure centre. The most of the Norwegian shipyards order hull abroad, where the labour costs are much lower and then towage the hull to the particular shipyard.\textsuperscript{30}

\textsuperscript{28} Cf. 7.2.1 and 7.2.2
\textsuperscript{29} Cf. 5.3 below
\textsuperscript{30} Stopford, p.647
4 TERM SHEET AND FINANCIAL SECURITY ISSUES

Prior to signing a shipbuilding contract with the shipyard, the buyer will normally negotiate and lay down a financing scheme with its financing bank. During the pre-contractual negotiations with the builder, the buyer will, as a rule, present the scheme for the yard. If the yard or its bank does not have any particular objections on that matter, the buyer enters into a loan agreement with its financing bank.31

4.1 Term sheet and its legal status

When a buyer negotiates with the lending bank concerning obtaining finance for a new construction, the key document is a term sheet32. This document is normally drafted by the bank in response to a financing request. After document has been agreed with the buyer, the bank will submit it to its credit committee, and after the committee’s approval, will issue a committed term sheet. By signing this committed term sheet, the buyer agrees to undertake costs incurred (especially legal costs) and both parties agree to complete the transaction outlined in the document. Thus a term sheet can, on one hand constitute a part of pre-contractual negotiations between the bank and the buyer and become replaced by a loan agreement made on the basis of the term sheet. On the other hand, it can be considered as an offer - after the credit bank committee has approved it - which the buyer accepts by signing the document.33

The term sheet stipulates the purpose the loan will be given for and conditions for obtaining the loan. By signing the document the buyer agrees to the conditions stipulated therein. The term sheet is subsequently an expression of the buyer’s intention to fulfill the mentioned conditions. The

31 In practice either the buyer or the builder will engage a shipbroker who will coordinate the negotiation process and help the parties to achieve a sufficient result. In such case the shipbroker is not a party under the shipbuilding contract but an independent agent on behalf of one of the parties. Cf. Meland (2006) p.26
32 Annex 1
33 Harwood, p.79
document can, therefore, be interpreted as a guarantee given by the buyer in return for the approved financing. If the latter fails to fulfill its obligations according to the terms sheet, the loan might not be provided or the conditions might be sharpened.

In the term sheet the security arrangements for the loan will be identified as a part of the conditions. If the loan embraces both pre-delivery and post delivery phases, a clear distinction will be made between the security arrangements under the building period and after-delivery period. The highest possible loan amount and currency will be agreed. Typically, a loan will constitute a fixed sum corresponding to a maximum percentage of ship market value. It has impact on the total value the vessel will be mortgage for. 34 This implies a certain element of risk on the buyer, who may have to provide additional equity to fund the vessel on delivery, if the values have fallen. 35 Since, there is no vessel at the time of signing the term sheet, the risk is even higher because the market value of the ship is a matter of speculation based on risk analysis criteria and material and labour costs. 36 However, the risk level will be decreasing in compliance with the building process course. The closer the process to the delivery phase, the lower the risk level.

It should be emphasized that form and structure of the document will vary from bank to bank and there is thus no universal form of the term sheet. Although many institutions use standard clauses, but all terms are tailored to the deal. A copy of the document will frequently be attached to the bank’s credit documentation and will constitute the basis for internal approval. In addition, any deviation from the approved terms will generally result in a need of a new approval. 37 Thus the content in the term sheet is of high importance because it draws up a frame for the buyer’s financial capacity. It has effect on the buyer’s negotiations with the shipyard, where a vessel is to be ordered, and consequently, has impact on the payment schedule and contractual price of the ship. 38

34 Cf. 5.4 below
35 Harwood, p. 81
36 Cf. 3 above
37 Harwood, pp.78-80
38 Cf. 7.2.1 below
Further, the parties’ obligations – in particular the debtor’s (buyer) obligations - and the consequences of not complying with the terms of the agreement will be included in the loan agreement based on the term sheet. A breach on the part of the debtor will entitle the creditor to demand additional security for the loan, to require a down payment of the loan or even immediate payment of the total amount outstanding.\(^{39}\)

4.2 Risk assessment and choice of security

Loan as such is merely an evidence of debt in a future conflict. An effective enforcement of repayment of the loan is usually achieved by security the debtor has provided to the creditor. When it concerns shipbuilding market, the security issue is rendered difficult by the capital intensity, vulnerability and volatility. Banks committed to ship financing often base their lending on their personal knowledge of the industry and relationship with owners based on many year’s cooperation. By providing a loan, the financing bank runs a certain economic and commercial risk, which has to be covered by means of security arrangements from the buyer’s side.

It is hardly possible to obtain a loan from a bank without providing a sufficient security for it. This is one of the main principles the banking world is based on. By taking a loan and signing a loan agreement the buyer (debtor) enters into a legal relationship with the bank (creditor). The bank undertakes to perform payment installments to a particular shipyard according to the payment terms under the shipbuilding contract - between the buyer and a shipyard - which may also be appointed in the term sheet or the loan agreement. By providing security for the loan the buyer gives the bank a guarantee for fulfilling the undertakings under the loan agreement which also secures the bank’s position in case of the buyer’s default. Thus security is an unconditional element of the loan structure.

\(^{39}\) Annex 1
Prior to deciding what kind of security will be satisfactory for the requested loan amount, the bank will perform a risk assessment. Inevitably, there is always a certain level of risk presented in every ship financing transaction. The bank evaluates whether this level is acceptable in relation to the loan amount, the security provided and the market situation.

Every bank has its own analytical department which makes that kind of evaluation by means of a special risk assessment program. Such a program is a unique product that could have been created by the bank’s own specialists or bought from external sources. However, there are also international general standards created by The Bank of International Settlements (BIS), based in Basel, Switzerland, that banks have to follow when working with risk assessments. These standards are called “Basel Accords” and constitute agreements between the world’s principal central banks on the capital requirements for banks.

There are a few types of security which are commonly used to secure newbuilding loans. Mortgage is the most controversial and at the same time effective security arrangement. Assignment of the benefit of the shipbuilding contract is also widely used for securing shipbuilding loans. There are also other types of security arrangements such as guarantee and indemnity, security over borrower’s bank accounts and share charges and pledges. However, there is no room to discuss all mentioned security arrangements within the frame of this thesis. Therefore, the discussion below will be limited to mortgage and assignment of the benefits of shipbuilding contract.

Security can be provided for the loan as an entire security “package”, consisting of different types of security or different security arrangements can be set up for each payment instalment in particular. This is a subject of negotiation between the borrower and the bank, where the terms and method of payment in the shipbuilding contract will be taken into consideration.

\[\text{40} \text{ Private communication}\]
\[\text{41} \text{ Harwood, pp.85 et seq.}\]
\[\text{42} \text{ Harwood, pp.241 et.seq}\]
\[\text{43} \text{ See 5 and 6 below}\]
\[\text{44} \text{ Cf. 7 below}\]
Nevertheless, it is significant to understand that security is a “secondary” guarantee for the loan. The bank will not provide a loan to a buyer, which is not able to pay but can secure the loan. The reason is that the bank’s intention is to earn money and not to file a law suit trying to enforce the drawdown of the loan by means of the provided security when the buyer is insolvent. It is an expensive and time-consuming procedure. Therefore, in the first place the bank will look at the vessel and shipbuilding contract and evaluate whether it may give sufficient profit in future. Of importance is also the buyer’s current business activity with its cash flow, which shows whether the buyer will be able to pay interest rate instalments to the bank when due. Such estimation is also a part of the risk assessment program and often based on the complex of different factors, e.g. the market situation, underlying charter parties and the vessel’s future earning capacity based on the drawings and other available data.45

45 Harwood, p.79
5 PRE-DELIVERY SHIP MORTGAGE

5.1 Introduction

Ship mortgage constitutes a significant security tool for the banks committed to ship financing. The fundamental rule in the most jurisdictions is that mortgage over a vessel can be taken only after the vessel has been entered into a ship register. Therefore, the mortgage will be determined by the legal system appropriate to the jurisdiction in which the vessel is registered.\textsuperscript{46} To take mortgage over a vessel under construction is a distinctive right, which is depending on availability of a special shipbuilding register in a particular jurisdiction. Otherwise, a construction must fulfill legal requirements for a ship in order to be registered in a usual ship registry. It is obviously an impossibility on the building stage before the vessel is completed and launched.\textsuperscript{47} It means that the owner under the shipbuilding contract is deprived the possibility to utilize the value of the vessel as an asset for obtaining financing till the construction will fulfill the requirements for classification as a ship.

However, the jurisdictions, where mortgage of vessels under construction is available\textsuperscript{48}, diligently use this type of security in ship financing transactions. Both buyers and shipyards utilize vessels under construction as a security for loans. The reason is the legal features of the ship mortgage which considered general for most countries’ legislations, namely:

- it gives the creditor (mortgagee) \textit{in rem}\textsuperscript{49} rights against the mortgaged vessel (that is, rights against the vessel itself and not just personal rights against the registered owner (mortgagor));
- it gives the mortgagee priority over unsecured creditors of the shipowner;

\textsuperscript{46} Cf. \textit{Harwood}, pp.127-128

\textsuperscript{47} Norwegian Maritime Code §§ 11-12 and \textit{Bull/Falkanger/Brautset} (2007) pp.43-46

\textsuperscript{48} There are only few countries that ratified \textit{International Convention Relating to Registration of Rights in Respect of Vessels Under Construction, 1967}, e.g. Norway, Greece, Croatia, Sweden, and Syrian Arab Republic.

\textsuperscript{49} The term means that the lender has rights directly against the vessel. \textit{Schelin/Tiberg} (2008), p.13. See also \textit{Bull/Falkanger/Brautset}, p.118
• it enables the mortgagee to take a possession of the ship in the event of the registered mortgagor’s default; and
• it allows the mortgagee to sell the ship to realize the funds to satisfy its debt.50

Generally, the mortgage is divided into two types. The first one is *statutory mortgage*, which is made out in a form prescribed by law and typical for the countries with English law systems, e.g. Bahamas, Bermuda, Cyprus, Malta, Cyprus, Hong Kong, Singapore, etc. The second type is called *preferred mortgage*. It does not take any prescribed form but is a subject to certain mandatory requirements (e.g. amount of mortgage, maturity date), thereby the parties are allowed to stipulate their own form of mortgage or use an adopted standard form.51

5.2 English Law

Under English Law, a mortgage can only be taken over a registered ship. To be eligible for the registration, a ship must “be used in navigation”52 and, as a precondition to registration, a builder’s certificate must be produced53. Furthermore, there are particular set forms of registered ship mortgage prescribed by law as for the statutory mortgage.54

Consequently, the buyer has to obtain security elsewhere, for example, by mortgaging other vessels existing in its fleet. Alternatively, the owner can try to register the construction under another jurisdiction, which has a shipbuilding registry. The question is then whether the financing bank will accept such registration and mortgage as a satisfactory guarantee for the provided loan. It will, in the first place, depend on the priority rules for registered mortgage rights in the particular

50 *Harwood*, p.125
51 Annex 2 and 3
52 Merchant Shipping Act 1995, § 313 (1). Cf. *UN Convention on Conditions for Registration of Ships, 1986* (not yet in force): “ship” means any self-propelled sea going vessel used in international seaborne trade for the transport of goods, passengers, or both with the exception of vessels less than 500 GRT.
53 The Merchant Shipping (Registration of Ships) Regulations 1993, regulation 28. Cf. 7.2.8 below
54 Cf. regulation 57
country. The bank has to be sure that in case of the owner’s default their claim will have priority over the owner’s other mortgagees. It important to underline that only registered right will give the described protection in case of default on the part of the mortgagor. However, in case of the mortgagor’s default, the right might first have to be accepted by the bankruptcy estate. Therefore, prior to accepting a mortgage registered abroad, the financing bank should obtain legal advice from local lawyers in the country of registration.

5.3 Norwegian Law

Norwegian Law has a different approach. Vessels under construction in Norway and contracts for the construction of ships in Norway can upon application be registered in a separate chapter of the Ship Register (The Shipbuilding Register). Such request can be made by the owner in the case of the ship under construction and by the purchaser in the case of a building contract. The precondition for such registration is that the overall length of the vessel to be constructed is 10 metres or more. If a vessel under construction or the shipbuilding contract is registered in the Shipbuilding Register, a mortgage can be registered over that vessel and regulations for ordinary mortgage registration will apply correspondingly. The original mortgage document, together with a copy has to be sent to the register and the fees have to be paid in advance of the registration. The document will be registered in the daily journal with a note of date and minute of receipt and entered in the register.

There are two different registers, The Norwegian Ordinary Register (NOR) and Norwegian International Register (NIS). A ship fulfilling the nationality requirements stated in The Norwegian

55 Cf. 5.4.1
56 NMC, § 31(1)
57 § 31(2)
58 § 41second par.(3)
59 In 2009 the fee for registration of a new mortgage is NOK 1.750, both in NOR and NIS (URL: http://www.nis-nor.no/NIS/Gebyr.aspx)
60 Falkanger, Credit based upon security in ships, p.52
Maritime Code (NMC) must be registered in one of those two registers unless she is registered in
the register of a foreign country. After the registration the vessel is entitle to a building number,
e.g. “421”, that is also an identification number.

When it concerns registration of the vessels under construction, there are three registration
alternatives according to the registration form for NIS/NOR, namely:

- ship under construction;
- contract for building of ship; and
- ship to be built (in Norway) by Norwegian shipyards for its own account.

The first two alternatives have given rise to a legal discussion, pointing out two questions:

1. Does the registration of the shipbuilding in the Ship Register (Shipbuilding Register)
   protect the buyer’s right in the vessel automatically?
2. Does the registration of a vessel under construction (not the contract) give the buyer
   protection of its right in the vessel?

Shipbuilding contract

The MNC in § 31 expressly states that “when a contract is entered in the Register, registration
thereof also protects the rights of the purchaser in respect of the ship as from the commencement
of its construction”. Subsequently, it can be interpreted as the registration of the shipbuilding
contract, which has to be enclosed to the registration form, will automatically protect the buyer’s
rights in the ship, in spite of whether the buyer is registered as owner or not. Thus, if the builder,
as a contractual owner, mortgages the vessel to its financing bank, the buyer’s right will be protected.
Furthermore, the builder cannot sell the newbuilding to third parties.

According to Mr. Øystein Meland, one of the leading maritime lawyers in Norway, the mere fact
that the shipbuilding contract is signed by both the builder and the buyer, does not protect the

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61 NMC § 1 first paragraph
62 Annex 4
buyer’s right in the vessel in case of the builder’s default. The contract has to be registered in the Ship Register to give the buyer legal protection of its right.\textsuperscript{63} In other words, his standpoint supports the interpretation above. Moreover, in the so called \textit{Bomek}-case\textsuperscript{64} was inter alia stated that in case of the builder’s default, the buyer cannot obtain legal protection of its right in the ship without registration in the shipbuilding register.

In contrast, there are other legal opinions, according to which the registration of the shipbuilding contract must be done separately and consequently, should be seen as a distinctive legal procedure, which does not affect the registration procedure as such. Therefore, legal protection for the part of the buyer will only be obtained provided that the buyer is registered as owner in the shipbuilding contract and, as a consequence, in the Register.\textsuperscript{65}

The legitimacy of the second standpoint should be questioned here, because the registration form for NIS/NOR presents these two registration opportunities as equal alternatives. It corresponds with the wording of § 31, which the registration form expressly refers to. Furthermore, the standpoint conflicts with § 31, since the provision does not use the term “owner” but the “purchaser”. It is also contrary to the common practice in the industry, where the builder is usually registered as owner under the shipbuilding contract up to delivery and acceptance of the vessel. Subsequently, the buyer will be in a risky situation, if the builder goes bankrupt and there is a mortgage taken over the vessel. The payment instalments, made by the buyer’s financing bank under the terms of the shipbuilding contract, might be lost.\textsuperscript{66} If the installments have not been registered – what can be achieved by registration of the contract - they will not be protected in relation to the estate. As a result, the buyer will have to pay again before he can be entitled to the ship delivered by the estate.\textsuperscript{67} Subsequently, a possible refund guarantee might not provide

\textsuperscript{63} Meland, pp.74 et seq.
\textsuperscript{64} ND 1982.264 NCC and the NMC § 41
\textsuperscript{65} Private source
\textsuperscript{66} Cf. 7.2.2
\textsuperscript{67} Bull/Falkanger/Brautset (2007) p.100
sufficient protection if the builder has mortgaged the vessel to his financing bank.68 By giving the buyer opportunity to request registration of the shipbuilding contract, the legislator expressly stated that the buyer’s right is protected. To interpret the wording of § 31 differently, seems illogical and irrational in relation to the existing law.

**Vessel under construction**

The NMC does not give a clear answer on the question whether the registration of a vessel gives the buyer similar legal protection of its right. However, § 31 says “when a contract is entered in the Register” without mentioning registration of vessel as such. In the registration form, there is also a clear distinction between registration of the vessel and registration of the shipbuilding contract. When a vessel is registered upon the builder’s request and the builder is the owner according to the shipbuilding contract, the builder will be noted as the title holder in the registration form.69 The shipbuilding contract is not to be enclosed to the registration form. Thus the buyer’s right in the vessel is not registered and, as a result, not protected.70 Consequently, the only way for the buyer to obtain legal protection for its right in the ship in such case is to be registered as owner under the building contract, which will also be reflected in the ship register.

5.3.1 Right to mortgage

The buyer will be in a position to encumber the newbuilding provided the buyer is registered as owner under the shipbuilding contract. Such registration gives the buyer and its financing bank protection against third parties, the shipyard’s creditors.71 If the builder is a registered owner, then the buyer will not be able to mortgage the construction.72 Furthermore, the buyer’s financing bank will not be able to obtain an execution lien in the newbuilding in case of the builder’s default but

68 Cf. 7.2.3

69 Annex 4

70 The NMC § 41. Cf. ND 1982.264 NCC

71 The Norwegian Mortgage Act § 3-11 fourth paragraph

72 Cf. 7.2.5 below
will have to seek security in the buyer’s right according to the shipbuilding contract. The starting point for further discussion below is the buyer as a registered owner.

5.4 Standard forms of mortgage deed

There is no set form prescribed by law but there are some general requirements concerning the contents of the mortgage deed stated in The Mortgage and Lien Act and The NMC. It is stated there that the mortgage document must identify the mortgagor, the mortgagee and the mortgaged construction. The mortgage deed must also state the maximum amount of the mortgaged debt, indicated in Norwegian Kroner or any foreign currency that is customarily quoted in Norway.\(^{73}\) Thereby, a “maximum amount” is not necessarily a real debt but it shows that the ship is secured for a fixed amount. It also follows from a general principle of mortgage law that the mortgage has to comprise the mortgagor’s total interest in the security object. Therefore, the registered owner of a vessel cannot mortgage e.g. 70 % of his interest but has to mortgage the vessel up to the total value.\(^{74}\)

However, there is a standard ship mortgage deed form, prepared by the Norwegian commercial banks, which is customarily used in the field.\(^{75}\) The form fulfills the main requirements stated in the law and is applicable on both completed vessels and vessels under construction. Some banks use their own forms of ship mortgage deed, e.g. DnB NOR Bank ASA (DnB),\(^{76}\) which are similar to the standard form.

The security object – vessel under construction – is identified in the forms by the building number, signal letters, name of main shipyard, building year and the register the vessel or the shipbuilding contract has been entered into. Other builders, e.g. the yard where the hull is produced, can be entered into the register as well. Further it is stated what existing and future parts and

\(^{73}\) The Norwegian Mortgage Act § 1-4 first paragraph

\(^{74}\) § 1-3 paragraph three and § 2-1 paragraph two. See also *Falkanger*, pp. 44-45 regarding part mortgage

\(^{75}\) Annex 2

\(^{76}\) Annex 3
appurtenances of the ship the mortgage agreement comprises. In this respect, references are made to § 45 and § 43 of the NMC. Thus any further details, concerning materials and equipment included in the mortgage, have to be specified in the document. If there are no further specifications in the document, the mortgage also attaches to materials brought to the shipyard site, e.g. steel plates. However, the materials should be distinctly marked or otherwise identified for incorporation in the ship, main engine or a section. The mortgage will cease to attach to any materials or equipment which are sold or removed from the yard unless the purchaser new or ought to have known that the sale was unauthorized according to the terms of the mortgage. This extends the range of protection the buyer and its financing bank can get for the mortgaged asset.

The mortgagor is also obliged to take out insurance as required at any time by the mortgagee. The full value of the mortgage must be covered. As a rule, the mortgagee will require to be co-insured under the insurance policy in order to secure its interest by obtaining insurance cover direct from the insurance company in case of damage or total loss of the mortgaged construction. Furthermore, the mortgagee has to take an active role in the insurance process by approving the insurance terms, choice of currency, brokers and underwriters. The mortgagee has even right to obtain insurance cover if the mortgagor fails to fulfill its obligations at this point. By doing so, the mortgagee secures his future recourse claim. The required insurance contract is to be attached to the mortgage deed. All insurance sums for the ship constitute a part of the mortgage itself and can thus be considered as an additional mandatory security for the credit arrangement.

Moreover, the mortgagor is under obligation to provide specified information to the mortgagee regarding its financial status. The mortgagee has “at any time” and “at the expense of the

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77 NMC § 43 second paragraph
78 Cf. 7.2.6. See Annex 3, DnB’s form under ”CONDITIONS” Clause 2 and the standard form under “The mortgagor undertakes”, (b)
79 However, under the NMIP § 7-1 the mortgagee will be co-insured automatically.
80 E.g. the Mortgage Act § 1-5 (d) contains a presumption in favour of the mortgagee when he has paid the premium for the fire insurance and other customary property insurance for the owner.
mortgagor” the right to inspect the vessel and conduct its evaluation. Thus if the value is materially diminished the mortgagee is entitled to demand “extraordinary repayment of the debt”. 81

5.4.1 Registration and priority

Under “Agreed priority” in the standard form it is stated that the mortgage has right of priority advancement. This means that the mortgagee has a better priority position. 82 For the mortgagee (financing bank) it is, nevertheless significant to realize that effect of registration of a mortgage will be much stricter in case of bankruptcy of the mortgagor (buyer). The question is whether the mortgage will be respected by the bankruptcy estate. The NMC provides a main rule that in order to be protected against bankruptcy, a voluntarily established right – which comprises the mortgage – must have been entered in the register journal no later than the day before the commencement of such bankruptcy proceedings. 83 Acquisitions of rights that are registered rights rank in priority before those that are not registered. 84 Thus a mortgage signed in May 2009 but not registered will rank after a mortgage registered in July 2009. However, there are a few exceptions to this rule and one of them is to be discussed here.

An older right ranks prior to a newer right if the latter is voluntarily acquired and the acquiring party new or ought to have known about the earlier right at the time when its right was entered in the journal. 85 The exception might appear redundant in relation to vessels under construction, because mortgage, as a rule, will be registered in connection with the registration in the ship

81 See clause 4 in DnB’s form and letter a in the standard form
82 NMC §§ 23 to 27. In DnB’s form it is also stipulated that the mortgage has a right of succession as and when claims of equal or prior rank are paid off or redeemed. Usually, when the debt is paid and the registered mortgage is deleted from the register, the mortgages with lower priority will take the place. Thus payment of the debt does not create “a free space” which the owner can dispose of or his creditors can attach if there are more encumbrances registered on the vessel. Generally, it does not directly concern newbuildings. For more detailed information, see Falkanger, p.54
83 See § 25
84 See § 23(1), (2)
85 See § 31 third paragraph and § 24 first paragraph. Cf. § 41
register. Nevertheless, it is worth paying attention to the rule, since it embraces non-registered rights. So, if the registered owner signed a mortgage without following registration and its financing bank new or ought to have known about it at the time of registration of the current mortgage but failed to control it, it can give rise to a significant problem in case of the owner’s default. A holder of the non-registered mortgage can thereby get priority for its claim and the bank will be forced to seek legal protection for its investment on other basis.

5.4.2 Negative pledge
The mortgage deed forms are also provided with a clause concerning negative pledge. This kind of pledge implies that the vessel may not be sold or further encumbered without the mortgagee’s (financing bank) consent unless especially agreed. A note will be made in the register concerning negative pledge, what will protect the financing bank against claims based on so called second priority mortgages which otherwise could be registered after the current mortgage document has been entered in the register.

5.4.3 Enforcement of the mortgage
The forms contain also provisions concerning enforcement of the mortgage by forced sale or by taking possession of the ship in order to receive the repayment of the debt. In cases with vessels under construction, the buyer as a registered owner may sell the mortgaged construction but this, however, does not free the latter from his personal liability as against the financing bank. In practice, the vessel will be sold “free of encumbrances” which will be achieved through an agreement between the buyer and its financing bank that the debt is to be paid now. Consequently, the mortgage can be removed from the register with the written consent of the holder of the right – the bank.

86 The Norwegian Enforcement Act. See e.g. Clause 6 in DnB’s form
87 The Mortgage Act § 1-11 and Clause 5 in DnB’s form
88 NMC § 32 (5) and § 29. Cf. § 32 (1), (2) and (3)
The bank is put in the situation where it does not have any other choice but to take over the vessel. After giving the consent, it loses its security for the debt. If the buyer has not provided any other substantial guarantee, the bank runs a risk to suffer an economic loss. The buyer is not able to pay the debt till the vessel is sold. Thus, in order to take control over the process, the bank will usually take over the uncompleted vessel, pay the contractual instalments and upon delivery sell it to a new buyer. In case of an auspicious market situation, it can be a profitable deal for the bank. After taking over the vessel, the bank must be cautious and register its right immediately in order to avoid any priority conflicts with the buyer’s other mortgagees, whose rights were registered earlier.  

5.5 Hull mortgage under the NMC

Recently, important changes in The Norwegian Maritime Code have been carried out regarding registration of hull mortgages for hulls delivered from a foreign yard. The proposal was prepared by the Norwegian Ministry of Trade and Industry. The changes are to be effective at 1 July 2009.

5.5.1 Current legislation

According to the statistics, presented by The Ministry in the proposal, of total 280 vessels built in the Norwegian shipyards in 2007, 219 had their hulls imported from foreign shipyards in the Baltic States, Poland, Kina, Portugal, Turkey, Ukraine and Sweden. The value of a medium-sized hull is about NOK 30-50 million. Thus the hulls built abroad need to be transported to Norway for the final installation. Under current Norwegian legislation an imported hull can, only upon delivery to Norway, be registered in the Shipbuilding Register and after that it can be mortgaged. Further,

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89 Cf. 5.4.1. See also RG 2003.514 NCA
90 Ot.prp.nr.85 (2008-2009). See also Innst.O.nr.91(2008-2009)
91 NMC §§ 31 and 43
there is no requirement to present any documentation that shows that the hull is removed from the foreign register – if there is any - and free from encumbrances.⁹²

All these circumstances create an inconvenient and risky, from economic point of view, situation for the Norwegian buyer and its financing bank. Until arrival to Norway the hull can be registered in the building country’s Shipbuilding Register – if there is any – and the bank finds itself in a situation where it has to accept mortgage registered in that Register as a sufficient security. During towage, which may take up to several weeks, the hull can, however, be removed from the Register – in accordance with the national legislation - after it left the country of registration. The question is whether the mortgage registered in the building country has any legal effect after the registration has been deleted and until the hull is registered in Norway upon arrival.⁹³ If the hull becomes damage under towage or if the main builder – a Norwegian shipyard – goes bankrupt, the buyer might be uncovered for the loss. As a result, the financing bank loses its financial security for the provided shipbuilding credit. The situation also forces the financing bank to increase its requirements on the financial security the buyer has to place at the bank’s disposal till the hull is delivered and registered in Norway. As a consequence, all this factors affect the shipbuilding industry by making it more risky and thus more costly.

5.5.2 New amendments

Proposed amended Section 31, first paragraph, first and second sentence:

‘Vessel under construction in [Norway] may, upon request be registered in a separate department of the Ship Register (Shipbuilding register). Such registration of vessel will include, hull, large hull

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⁹² This fact enables to avoid some private international law issues connected to legislation regarding registration of ships. See § 13, 3rd paragraph, cf. § 31, 3rd paragraph. As regards new buildings (ships) from a foreign country that are about to be registered directly in the NOR/NIS, ownership and deletion certificates from foreign ship building register still need to be documented in accordance with The NMC § 13, cf. § 15. Cf. 5.4.2 below

⁹³ Meland, pp.175-176
sections or main engine built by foreign yard outside [Norway] if delivery from the foreign yard has to be taken place.’

Thus the proposed amendment will enable registration of hulls built by foreign shipyards from the time of delivery of the hull from the foreign shipyard.

Proposed amended Section 43, first paragraph:
‘Unless otherwise agreed, the vessel mortgage against a vessel built or to be built in Norway will include main engine for the vessel and large hull sections if the main engine or sections are built at, or delivered to the main yard’s area. If built by another yard in Norway, it may be agreed that it shall be included in the mortgage. This shall also apply if the hull, large hull sections or main engine are built at a foreign yard, and delivery from the foreign yard has taken place.’

Consequently, registration of hull will also include large hull sections and the main engine from time of delivery from the foreign shipyard. The same can thus be included in the vessel mortgage from this time (if separate agreement is entered into).

However, according to the practice established at some Norwegian banks, mortgage is registered over the hull as such and does not embrace hull sections or main engine. The reason is that the procedure concerns to be expensive and time-consuming and also difficult to accomplish in practice. It implies that if the hull built abroad contains the main engine and large sections during towage to Norway, the latter parts might not constitute a proper security asset for the financing bank. It can be either the builder’s bank or the buyer’s bank, depending on how the payment

For Norwegian version, see Ot.prp.nr.85
95 See note 98 above
instalments are arranged under the shipbuilding contract. The result is that the builder or the buyer has to provide additional security for the payment in respect of the hull sections and main engine. This fact may also conduce to higher premiums under the Builder’s risk insurance.

Since neither the current legislation nor the new one require any documentation that shows that the hull is removed from the foreign register and free from encumbrances, the question is whether it might give rise to priority conflicts between the foreign shipyard’s creditors and the Norwegian yard that ordered the hull.

When ordering a hull, the yard enters into a contract agreement with the builder. The agreement form is similar to a shipbuilding contract. It usually contains provisions concerning documentation that should be placed at the buyer’s disposal upon delivery. Normally, protocol of delivery, signed by both parties, and “Bill of Sale” or “Builder’s certificate” will be issued. The contract always contains a requirement to deliver the hull free of encumbrances. It usually implies that the builder does not have any further rights to the hull. A “Certificate of absence of debt” or a note in the “Bill of Sale”, concerning possession of the title to the hull, might be also demanded by the buyers financing bank. In practice, the bank will, in order to protect itself against possible priority conflicts, wish to obtain documentation, conforming that the hull is removed from the foreign register and free from encumbrances. Such documentation must often be executed under seal and witnessed. It is the buyer’s responsibility to control the legitimacy of such documentation. Contractual delivery also presupposes that the buyer takes physical possession over the hull.

Nevertheless, obtaining the required documentation from the relevant register in the building country might be time-consuming. As a result, the major building process might take longer time.

97 Cf. 3 and 7.2.2
98 Cf. 5.4.1 above
99 Cf. 7.2.8 below
It means that the builder’s risk insurance will need to be prolonged, interest rates to the financing bank need to be paid for fewer amount of months than the Norwegian yard originally expected. All this factors can affect the final contract price for the buyer of the vessel. The question here is whether the described increased costs are proportionate in relation to the banks’ requirement of the documentation. If the answer is no, then there is a clear indication of a need for more changes. However, this discussion falls outside the scope of this work.

Although, the discussion shows that there are some unsolved issues left, these amendments constitute an important step forward in the Norwegian shipbuilding industry. They enable establishment of financial security for the hull under the towage period. It will stimulate banks and other financial institutes to be willing to finance shipbuilding projects on competition-based conditions by giving them secured, by means of mortgage, priority against other creditors of the mortgagor (third parties) in the case of the Norwegian yard’s default. It can in its turn result in decreasing interest rates for shipbuilding credits and increasing shipbuilding orders for Norwegian yards. Indirectly, it will also affect foreign shipyards which produce hulls for Norwegian yards by increasing amount of hull orders. Probably, Norwegian example will stimulate other countries to adapt their rules to the existing needs of the domestic and, consequently, to some extent international shipbuilding market.

101 Cf. 7.2.1 and 7.2.2 below. See also 3 above
Assignment of the benefit of the building contract constitutes another type of security tool that the buyer might use for the shipbuilding loan. It will give the financing bank, in the event of the buyer’s default, opportunity to fulfill the building process, take delivery, and then sell the vessel in order to cover the outstanding debt. In the first place, this security arrangement is of importance when the buyer is not a contractual owner of the vessel and thus cannot mortgage it. Secondly, it plays a significant role in situations where the same bank has also taken the long-term financing after delivery.

Nevertheless, this type of security is not entirely satisfactory. First of all, the assignment itself does not make the bank liable for the buyer’s unpaid instalments of the contract price. However, in the event of buyer’s failure to pay, the bank will have little option but to continue to pay those instalments from its own resources to complete the construction of the vessel. The bank may be able to negotiate a price reduction with the builder but it will still be binding itself to the ongoing commitment. The result is almost unpredictable, since the bank will have to rely on the market for the type of the vessel concerned and in the end it may not be able to sell the vessel for a sufficient amount to satisfy the outstanding debt.

The second disadvantage is that after the buyer’s default the cooperation with the builder is likely to be limited or non-existent. The lender will thus have to take over all administrative and operational work connected to the construction, what normally is supervised by the buyer and its representatives. It creates problems because normally the bank will not have sufficient technical expertise to supervise the construction and will have to engage – and pay for – outside advisers. The reasonable solution for the bank in such a situation is to find a third party prepared to take over the contract – to sell the contract. However, it cannot be performed without the consent from

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102 Harwood, pp.49-51
the shipyard. In practice, the yard will give its consent unless it has received a better offer from somewhere else.

Due to its weakness, the assignment of the shipbuilding contract is usually completed by another form of security available to a bank during the construction period, assignment of refund guarantees. By assigning the shipbuilding contract to the financing bank, the buyer automatically assigns its rights under this contract to the bank. It implies that if the builder has to secure the contractual instalments paid by the buyer by means of refund guarantee, the buyer’s bank will have right to the payment according to such guarantee. Nevertheless, the financing bank position will be secured provided that the guarantee is directly issued in the buyer’s bank favour or it is expressly stated in the guarantee that the buyer’s bank is the beneficiary.

It seems that this security arrangement cannot be used as an independent tool but has to be completed by other security arrangements. Generally, the assignment puts the bank in the same position as the buyer under the shipbuilding contract in question of benefits. In reality, there is no real benefit up to the moment the vessel is delivered. Prior to that moment, payment instalments still need to be paid and secured. Although, it is the buyer’s obligation to pay the instalments, the bank pays them. If the bank stops making payments, the delivery might never take place or be considerably delayed and furthermore, the shipbuilding contract might, as a result, be terminated by the builder. In other words, there is no material security as such for the part of the financing bank.

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103 Cf. Ship 2000, Article XIII
104 Cf. 7.2.4 below
7 SHIPBUILDING CONTRACT

7.1 Shipbuilding contracts
In general, shipbuilding contracts are standard contract forms made and agreed by either shipbuilder’s associations or shipyards. One major drawback of such contracts can be the fact that shipowner’s were left outside the negotiation process, which resulted in the contracts being too “yard friendly”. The European yard standard (AWES form) is, for example, considere to be one of such contracts and therefore, it is rarely used. The Shipbuilders’ Association of Japan Form (SAJ form) is the most common standard shipbuilding contract which has been widely accepted and used by shipyards all over the world. The Baltic and International Maritime Council (BIMCO) has recently – in 2008 - issued a completely new standard shipbuilding contract, ”Newbuildcon”. Generally, the shipbuilding contract, as negotiated between the parties, will regulate such issues as terms of payment, registration, title and risk, delivery, and proper law and jurisdiction.

7.2 The Standard Form Norwegian Shipbuilding Contract 2000
The Standard Form Norwegian Shipbuilding Contract 2000 (Ship 2000) is a first Norwegian standard shipbuilding contract written in English. It constitutes “an agreed document”, as it has been negotiated and agreed between the Norwegian Shipowners' Association on the one side and the Norwegian Shipbuilders' Sales and Marketing Organization and the Norwegian Shipbuilders' Association on the other side. As a product of negotiations between the relevant associations, Ship 2000 is considered to be the most balanced contract amongst other standard shipbuilding contracts. The Contract is diligently used within Norway as well as outside its borders.

105 See for more information about AWES and SAJ forms Curtis, The Law of Shipbuilding Contracts (2002)
106 Annex 5
107 Bull/Falkanger/Brautset (2007), p.84
Ship 2000 is the final document which constitutes a contract of sale between two parties – “Builder” and “Buyer” - which are identified under “Preamble”. The main obligations of both parties are also clearly stated in the “Preamble” as following:

“In consideration of the mutual covenants herein contained, the Builder agrees to design, build, launch, equip, complete, sell and deliver to the Buyer at the Builder’s shipyard the “Vessel” as hereinafter described; and the Buyer agrees to purchase the “Vessel”, take delivery and pay for it; all in accordance with the terms hereinafter set forth.”

Practically, all the following articles in the Contract contain detailed specification of the parties’ main obligations. Further, references are made to additional documents incorporated into the contract, such as drawings, specifications and certificates, what makes the structure follow English contract traditions.

The standard governing law is Norwegian law – with arbitration in Norway – since the Norwegian shipbuilding contract is a Norwegian document per se. However, the contract is aimed to be used as an international standard contract. It has even been quality checked by UK-qualified lawyers. Thus, if both parties acknowledge, English law or any other country’s law may also be used as the governing law.

7.2.1 Contract price

Article III (1) regulates the “original contract price” – the price agreed at the time of signing the contract – which is determined by the technical and practical conditions agreed between builder and buyer prior to the signing of contract. Generally, the final price will differ from the original contract price and thereby, might give rise to disputes. However, the terms of the contract set forth a frame within which the original contract price is to be adjusted.

108 Article I definition of “Contract” and also Article II (5)
109 Meland, p.33
110 Article XIX and Meland, pp.223-224
When the buyer makes inquiry to a particular shipyard concerning ordering a new ship, the builder bases its offer on the specifications provided by the buyer or made by the yard especially for the buyer. Specifications can be classified as a package of documents which constitute a part of the contract and are aimed namely to give:

- a detailed description of the ship, her machinery and equipment;
- the materials and methods to be used and qualification requirements for the latter;
- classification standards for the ship and certificate requirements for the subcontractors;
- public requirements of the Flag State and international conventions, e.g. SOLAS and IMO rules.\textsuperscript{111}

Those specifications can later be upgraded in accordance with the buyer’s request. It is stipulated in the contract that the final contract price will be determined by modifications and changes in the Specifications, provided that the parties will “first agree to possible adjustment in Contract Price”. Furthermore, it is also stated that such agreement has to be effected “either by way of exchanges of letters duly signed by authorized representatives of the parties, or by signed change order form”, which will constitute the necessary amendments to the Contract. In practice, the builder will send a variation request to the buyer about particular changes the latter has earlier requested. Upon the buyer’s reply, the request becomes a variation order and thus considered as a part of the contract. Consequently, the frame of the room for price adjustment is determined by the Specifications. As long as the ship corresponds to the detailed descriptions made in the Specifications, all the costs the yard has to bear in this connection will be included in the contract price. At the same time, it does not give the yard a right to demand extra payment for making the ship correspond to the contractual description, since it is not to be considered as any change or modification but mere a performance of existing contractual obligations.\textsuperscript{112} In contrast, if the shipyard refuses to perform the work without an agreement to treat it as an extra, it runs the risk of a substantial damage award for non performance being awarded against it, if it turns out it was

\textsuperscript{111} Meland, pp.42-44
\textsuperscript{112} Article VI
wrong in treating the work as an extra. Accordingly, from a shipyard’s perspective, it is important to have a clause in its contract which allows disputes over whether or not an item is an extra, to be resolved by way of arbitration after completion of the project. However, this does not give any solution to the problem of price determination as such concerning modifications and changes.

A rule to the calculations of the contract price - as a result of the variation order – is given under Article VI. Such calculations have to be done “in accordance with unit prices (inclusive of administration costs) or budget prices if those are available”, otherwise “the builder’s customary price for such work” will be used as a starting point.

Nevertheless, it might be difficult for a shipyard to estimate the price of certain parts of the ship and its equipment and give the buyer more or less concrete price offer in advance. There are a few different reasons behind it; e.g. the buyer requests special equipment to be installed which the yard has never ordered before; it can be a part of the ship that has to be manufactured and the yard has to make a research among different producers before giving the final price for it.

What obstructs the problem even more is the absence of escalation clause in Ship 2000. Today, however, it is a normal practice in the shipbuilding market in contrast to other types of offshore standard contracts. Therefore, payment for modifications and changes is to be made upon delivery and acceptance of the vessel, namely, in the last instalment. Subsequently, the shipyard has to finance all the agreed modifications and changes by itself and afterwards place the calculations at

\[ \text{equation} \]

\[ \text{source} \]

114 Article VI (1), last sentence
115 Meland, pp.58-59
116 Article III (3) (f). The solution resembles SAJ’s solution (Article II(3) (d)) and differs from the procedure under AWES, where the buyer pays 50 % of the price for modification on the date the parties agreed the price for the work and the rest - 50 % - is paid upon delivery (Article 7(d) (II)).
Article III (3) (f) in Ship 2000 also regulates decrease of the contract price due to adjustments stipulated under Article IV, such as late delivery and deficiency in fuel consumption. For more information see Ship 2000 Article IV and Meland, pp.73-89
the buyer’s disposal and include the costs in the price. Has the buyer any protection under the contract in case the contract price has resulted in a higher amount than the buyer had a reasonable ground to expect? Are there any remedies available for the buyer?

If the modifications, which caused the increase of the contract price, have been performed with the buyer’s consent and in accordance with all the specifications, the buyer will often have no other choice than to pay the price given by the builder in the last instalment. The principal rule is that the builder has a retention right on the vessel until full payment has been made in accordance with the agreed payment terms.\textsuperscript{117} However, the buyer may pay the demanded amount but require the builder to provide a bank guarantee or other security satisfactory for the disputed amount. The builder cannot in such case refuse to deliver the vessel. It can also go the opposite way, where the buyer takes delivery against payment of the undisputed amount and issues a bank guarantee or other satisfactory security for the outstanding amount. Such security issued by any of the parties will terminate automatically unless the other party has brought legal action within 3 months from date of issue of the security.\textsuperscript{118}

7.2.2 Payment instalments

When it comes to the payment instalments, the contract is drawn up so that the parties themselves settle the structure of the purchase schedule spread over the duration of the contract. As known, the building plan will be decisive in that situation. First payment is to be made at the time of signing of the contract and can vary from 5 \% up to 50 \%, depending on the other terms of the contract, the buyer’s and the builder’s agreements with their respective financing institutes and following agreements with sub-contractors.\textsuperscript{119}

\begin{flushleft}
\textsuperscript{117} Ship 2000, Article III, sub-clause (4)
\textsuperscript{118} Sub-clause (5)
\textsuperscript{119} Harwood, pp.60-62
\end{flushleft}
There is, further, no requirement for the buyer to supply the builder with guarantee for payment of the contractual instalments.\textsuperscript{120} It involves an economic risk on the part of the builder, especially when the buyer is a new established company without strong financial base, and the largest part of the contract price is to be paid upon delivery of the vessel. However, the contract contains a requirement for the buyer to provide ”\textit{all information necessary to enable the builder to reasonably satisfy himself that the buyer has financial arrangements or recourses to pay the instalments when due}”\textsuperscript{121}.

Thus the builder can at any time – before or after the contract is signed – request neccessary information from the buyer. The question which automatically needs to be raised here is what happens if the buyer fails to provide the information within a reasonable time. There is no unambiguous answer on this question, because it is not regulated within the frame of the Ship 2000. Possible solution on the part of the builder might be to stop fulfilling its own contractual obligations till the required information has been provided unless the buyer has placed a sufficient security at the builder’s disposal.\textsuperscript{122}

Another alternative for the builder is to argue an anticipated breach of the contract from the buyer’s part. As the buyer has not placed the required information at the builder’s disposal, there is a risk that the buyer will not fulfill its main contractual obligation – to pay for the vessel. On that stage the builder will need to go outside the frame of the contract and search legal guidance in the

\textsuperscript{120} The situation is similar in e.g. SAJ Form and Korean Standard Contracts. Cf. AWES Form Article 7(b), where the situation is different and ”bank guarantees for the different instalments have to be provided by the PURCHASER [buyer] before the active date of the Contract”. See also BIMCO’s Newbuildcon, Box 19 (a) in Part I which refers to Cl.14(a) and (b) in Part II and obliges the buyer ”after the signing of this Contract, deliver to the Builder an irrevocable and unconditional guarantee” – in the form stipulated in the Annex to the Contract - in order ”to secure the buyer’s obligation to pay the instalments of the Contract Price”.

\textsuperscript{121} Article III (3), third par

\textsuperscript{122} Article XII (2)(b) third par
background law. Meanwhile, the builder might already have had to bear some costs in connection with the newbuilding that he included in the future payment instalments.

In case of cancellation of the contract, the builder will not receive any further payment he would otherwise be entitled to under the contract. Therefore, the builder must consider what he wants to achieve in such situation, whether it is a cancellation of the contract or a resumed co-operation between the parties. A good negotiation strategy might be a first step for finding a compromise. The builder can also consider alternative security arrangements such as letters of credit or comfort letters.

7.2.3 Refund guarantee

In contrast to the unsecured position of the builder, the buyer is entitled to receive security for its payment instalments in the form of refund guarantee or other satisfactory security, issued by the builder’s bank. In general, this form of security is very often required by both the buyer and his financier. The refund guarantee will secure the repayment obligation of the builder, including interest, if the contract is lawfully cancelled or the builder becomes insolvent. However, in order to have legal effect as a repayment guarantee issued in connection with shipbuilding contract, a refund guarantee must be signed by the issuing bank’s employees with full authority. This is one of the fundamental conditions what is clearly illustrated by a case law under the following chapter.

There are no officially accepted forms of the refund guarantee, therefore, prior to accepting the form offered by the yard, the buyer should ensure that the form of the refund guarantee and the identity of the guarantor will be accepted by the financing bank. The exact wording of a refund guarantee is a matter of negotiation between the parties. The issuing bank might have its own form of such guarantee – “Letter of Guarantee” but the final guarantee form will, as a rule, need to be

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123 Meland, pp.63-64. Cf. Article XII (3)
124 Goldrein (2008), pp.264 et seq.
125 Goldrein (2008), pp.267 et seq.
126 Cf.7.2.4
agreed by all the parties concerned in order to correspond to the requirements of the shipbuilding contract.\footnote{Goldrein (2008) pp. 262-263 for general discussion on preparation of financial guarantees in respect of ship financing}

Where the vessel is built on the basis of the buyer’s credit terms, it is also important for the buyer to ensure that the building contract and refund guarantee are freely assignable. Otherwise it can cause difficulties in putting together an eligible security package during the construction period. The buyer will not be able to assign the guarantee or the shipbuilding contract to the financing bank, and they thus will not have any value as a security. The validity period should have an automatic extension in the event of the builder’s default or other complications, e.g. litigation. Otherwise, the financing bank runs a risk to be uncovered for the instalments paid to the yard. Last but not least, buyers and their financiers will need to ensure that payments can be made abroad by refund guarantors and all requisite consents, licences and approvals are obtained.

\subsection*{7.2.4 Authority of the guarantor}

The last year decision in Sea Emerald S.A. v Prominvestbank [2008] EWHC 1979 illustrates the importance of full and proper authority of the person or persons signing the document. One of the legal issues namely was whether the bank could be held liable on the basis of the refund guarantee signed by one of its employees – the head of a regional branch of the bank.

In this case the buyer was a Panamanian company that was part of a group of companies (the "Group") with extensive shipping interests and a fleet of about 80 vessels. The shipyard was placed in Ukraine. In the 1990s, the Group entered several contracts with the yard, ordering a total of 19 ships for over US$200 million. Each ship was the subject of a separate shipbuilding contract, entered into by a different company in the Group that was intended to own and operate the ship. All the contracts contained a provision obliging the yard to provide a refund guarantee to the purchasing company.
The contract that gave rise to the dispute was for the construction and purchase of a refrigerated cargo vessel. The contract was governed by English law and was a subject of English arbitration. Further, the contract provided for the yard to furnish a refund guarantee to be issued by the yard’s bank, ”the State Commercial Industrial Bank, - Nikolaev Branch” within 30 days from the signing of the contract. In case the yard failed to provide the guarantee in question, the buyer had the option to declare the contract null and void. It was also stated that ”the furnishing of this Guarantee is to form an integral part of this Contract”.

The guarantee was issued and signed by S, head of the Nikolaev regional branch of the bank, and the General Director of the yard. The document provided that in consideration of the payment of the instalments under the shipbuilding contract, the Nikolaev branch of the bank would ”at the request of the Builder, hereby irrevocably and unconditionally guarantee the payment to you [the buyer] by the Builder” the total maximum amount of US$9.9 million or any amount to be paid to the yard as the instalments under the contract. The bank’s liability under the guarantee was ”limited to the total sum of the instalments or any lesser amount mutually agreed” between the buyer and the yard and actually paid by the buyer. The guarantee was stated to be governed by English law.

The bank subsequently extended substantial amounts of credit to the yard, including credit for the purpose of building the vessels for the Group. Later on, S left the bank but the bank continued to provide loans to the yard for building of the vessels. Eventually, the yard found itself in a difficult financial situation and went into receivership. As a result, the ship connected to this particular contract was not completed or delivered. The buyer resigned the contract and set up a claim against the bank under the refund guarantee. The bank argued the guarantee was a fraud and sought to have it declared invalid and thus not binding.

The Commercial Court [England and Wales High Court] found that the buyer was not able to claim under the refund guarantee because the bank had not given the head of the regional branch actual or apparent authority - which the parties agreed was governed by Ukranian law - to issue the
guarantee\textsuperscript{128}, and had not ratified\textsuperscript{129} it. The bank’s Articles of Association contained a provision empowering the latter “to effect settlements connected with clients’ export and import operations in foreign currencies in the form of documentary letter of credit, collection of payments or bank transfer, and in other formats used in international banking practice. Mr. Justice Andrew Smith interpreted the expression as being restricted to letters of credit, collection of payments and bank transfers. A refund guarantee was not a method of making payment but a collateral contractual commitment. The provision was, therefore, not considered to be broad enough to expressly or impliedly empower the head of department to issue a refund guarantee. Furthermore, it was not usual for departments of the bank to issue guarantees of any kind at the relevant time. Neither was it within the scope of the usual authority for a head of department to enter into a contingent commitment as large as that given by the refund guarantee without the bank giving authority to do so. The buyer also failed to establish that the bank had ratified the guarantee by showing that it was adopted by the Chairman of the bank, or by its management board.\textsuperscript{130} The claim was dismissed and the buyer had to bear all the costs by its own.

After studying all the details of the case, the court’s decision might seem too strict for the part of the buyer. It can have a negative effect for refund guarantee as a security tool, the confidence of such guarantee might become undermined amongst shipowners. However, the conclusion that can be drawn out of the court decision is not only the significance of ensuring that refund guarantees are signed with proper authority, but also a necessity of undertaking a careful review of the issuing bank’s Memorandum and Articles of Association. It is also important to consider obtaining a consultation from a corporate lawyer in the relevant country before accepting a refund guarantee. Moreover, the wording of a refund guarantee should be properly examined. It can be constructed in the way that the guarantee will only cover the instalments due under the shipbuilding contract in respect of the progress in the building process. Thus it will not extend to advance payments of such instalments when the latter are not contractually due. If the buyer makes an advance payment, it

\textsuperscript{128} Fragments 62-99 in the case
\textsuperscript{129} Fragments 100-105 in the case
\textsuperscript{130} Fragments 67 et seq. in the case
will in such case be unsecured in the event of termination unless the buyer negotiates the refund guarantee to comprise such payment.

7.2.5 Ownership and registration

The starting point under Ship 2000 is that the builder has ownership over the vessel under construction. In accordance with Article XI (1) “the builder shall become the owner of the vessel upon delivery and acceptance thereof”. It gives the builder, as a contractual owner, a right to mortgage the vessel in question and its materials as a security for the construction financing. The buyer in its turn will be interested to utilize the value of the shipbuilding contract as a part of its financing scheme under the construction period. The most effective way of doing it is to mortgage the shipbuilding contract. However, it gives rise to several legal issues:

- whether it is legally possible to mortgage a shipbuilding contract;
- whether the shipbuilding contract has any value;
- whether it constitutes sufficient and enforceable security for the financing party.

Norwegian Law

Under § 1-2 of the Mortgage (and Lien) Act, statutory authority is required to mortgage an asset. For shipbuilding contracts statutory authority is established in § 3-3. Further, § 1-3 requires the asset to be transferable. This implies that the buyer must be entitled to sell the shipbuilding contract in order to mortgage it. Article XIII of Ship 2000 entitles the buyer to assign contract to a third party, under consideration that the builder has given its consent in writing. Such consent should not be unreasonably withheld. Consequently, a shipbuilding contract based on this form can be mortgaged.

A shipbuilding contract for the construction of ships in Norway can upon application from the buyer be entered in a separate chapter of the Ship Register (The Shipbuilding Register). Such
registration automatically includes the rights of the buyer in respect of the ship “as from the commencement of its construction”.  

Shipbuilding contract as mortgaged asset
A fundamental principle under English and Norwegian law is that the mortgagee has the same rights and obligations in relation to the mortgaged asset as the mortgagor if the security is enforced. Thus the mortgagee has right to take delivery of the vessel against payment of the outstanding instalments under the shipbuilding contract. However, since the mortgaged asset consists of the buyer’s right under the contract and not the vessel under construction, the mortgaged shipbuilding contract as such will have little value if it is breached by the buyer. In other words, the mortgagee will not be able to remedy the breach as he would be in case the mortgage was taken over the vessel, e.g. by forced sale.

Priority conflict between buyer and builder’s mortgage
If the builder mortgages the vessel and its material as a security for financing of the construction, such mortgage should be cancelled and deleted from the register at the latest on delivery and acceptance. It might cause a priority problem between the builder and the buyer’s mortgagee, if the builder has not paid the entire mortgage loan and the outstanding instalments under the shipbuilding contract are not sufficient to cover the rest of the builder’s mortgage loan. In practice, the buyer will, however, register the shipbuilding contract in the register before the builder is able to mortgage the vessel. It means that the buyer’s right to take delivery of the vessel will take priority over the rights of the builder’s mortgagee in the described situation, according to the principle of ‘first come first served’ under § 23 of the NMC. However, the situation with mortgaging of shipbuilding contracts is unclear for today and thus should be taken with caution. In order to protect its right and secure the delivery of the vessel, the buyer can demand to limit the builder’s right to mortgage the vessel to the purchase price by amending the contract form accordingly.

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131 The NMC § 31
132 Article VIII (1)
**Builder’s default**

In the event the builder is declared bankrupt, the bankruptcy estate of the latter has the right to assume the rights and obligations of the builder under the shipbuilding contract.\(^{133}\) However, the insolvent estate is not obliged to do so. If the insolvent estate decides not to accede to the contract, the buyer is entitled to cancel the contract and receive the sums already paid in accordance with the refund guarantee.\(^{134}\)

The buyer will be entitled to the vessel in its existing state at the time the builder is declared bankrupt on condition that the buyer possesses the title to the vessel during construction according to the shipbuilding contract. Furthermore, the buyer must also have registered the same right in the shipbuilding registry. On the contrary, if the builder possesses the title – as in Ship 2000 – the buyer’s right to take a possession of the vessel is not secured to the same extend. However, in practice this should be feasible, subject to the payment of an amount equal to the value of the vessel minus prepaid instalments.

A possible way avoid this situation would be to make amendments in the shipbuilding contract so that the buyer is entitled to take possession of the vessel in case of the builder’s default.

**Buyer’s default**

In case of the buyer’s default, the bankruptcy estate and the buyer’s mortgagee may agree to sell the shipbuilding contract privately or to let the mortgagee assume the responsibilities and obligations under the contract. However, such agreement will be invalid if entered into before the buyer is in breach of the loan agreement. If such agreement is not achieved, the mortgagee may make a formal request to the execution and enforcement commissioner either to force the sale of the shipbuilding contract or transfer it to the mortgagee.

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\(^{133}\) the Norwegian Creditors Seizure Act, § 7-3

\(^{134}\) Article XII (1), cf. 7.2.3
7.2.6 Risk and Insurance

As the contractual owner of the vessel under construction, the builder bears the risk of loss or damage to the vessel until delivery and acceptance. The builder is thus obliged to obtain building insurance (which is to include the buyer’s supplies) “with underwrites acceptable to the buyer on customary “All Risk” terms”, which comprises necessary fire and transport insurance of material and equipment which the builder procures from subcontractors. It does not, however, comprise the builder’s guarantee rectifications and repairs. The insured amount should as a minimum cover the total sum of the instalments paid by the buyer according to the shipbuilding contract including the interest thereon and the value of the buyer’s supplies. By paying extra insurance premiums, the buyer may also obtain an increased insurance protection which would also cover the rebuilding value at any time.

Ships under construction in Norway can be insured in accordance with the provisions of Chapter 19 of the Norwegian Marine Insurance Plan of 1996 (NMIP). The buyer will be co-insured automatically thereto. Ships under construction at foreign shipyards can also be insured on the basis of the NMIP-conditions. In such situation it is of importance that the information concerning the buyer to be co-insured under the shipbuilding contract and his right to recover under the shipbuilding contract – in case of total loss - direct from the insurance company an amount equal to the instalments paid together with interest are included in the insurance policy. It shows that the interest of both the builder and the buyer are taking into consideration.

135 Article XI (2)(a). Devision of liability between the buyer and the builder is regulated under Articl V (5)
136 With respect to the buyer’s supplies, it should be emphasized that those are covered by the insurance after arrival to the yard. It means that prior to delivery to the yard, the buyer bears responsibility for its supplies and if necessary, should obtain its own insurance cover. See Meland (2006) p.177. Cf. § 19-9 and § 10-1 subparagraph 2
137 The NMIP § 19-1 and § 2-8, “all risks principle”, i.e. the insurance covers all risks that are not specially excluded. Cf. § 2-9 “named perils principle”. See also Wilhelmsen/Bull (2007) pp. 80-81
138 Cf. Article X
139 Article XI (2) (b) subparagraph 3
140 The NMIP § 19-3 and § 8-1 and Article XI (2) (c) (i)
141 Meland, pp.176-177
Underinsurance

Article XI contains detailed regulations on insurance cover payment divisions between the buyer and the builder in case of damage or total loss which are in accordance with the NMIP. However, the NMIP does not regulate the issue of how the total loss insurance cover would be divided between the builder’s mortgagee and the buyer under consideration the vessel under construction is underinsured. In the Commentary\(^ {142}\) to § 19-3 of the NMIP it is stated that under such circumstances the buyer will have right to claim directly from the insurer. The Commentary also makes a reference to Chapter 7 of the NMIP, according to which the mortgagee’s interest will automatically be co-insured under the builder’s insurance. At the same time the Commentary does not make any special reference to § 7-4, which, in the event of total loss, gives the mortgagee’s interests priority over other assured parties’ interests.

If the buyer has not received a refund guarantee for its payment instalments from the builder and the vessel, which has been mortgaged to and thereupon registered on the builder’s financing bank, becomes a total loss, there can be a difficult situation. As the ship was underinsured, the insurance cover will not suffice to satisfy both the mortgagee’s claim on the one hand and the buyer’s claim on the other hand.

The starting point is that the mortgagee has the same rights in relation to the mortgaged asset as the mortgagor. The buyer’s right to obtain insurance cover directly from the insurance company is secured under the shipbuilding contract. Thus the buyer’s claim has priority over the mortgagee’s. However, the buyer might have given its consent for the builder to mortgage the vessel,\(^ {143}\) what can be interpreted in the way as the buyer has accepted the priority of the mortgagee’s interest in the vessel over its own. Consequently, the buyer will run a risk to lose his insurance cover partly or in total.

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\(^{142}\) Commentary to Norwegian Marine Insurance Plan 1996 Version 2002

\(^{143}\) Article XI (1) subparagraph 2, second sentence
The described situation illustrates one more possible conflict between buyer and builder’s mortgage, which is actually quite similar to the conflict described above under Section 5.4. In order to prevent such situation and to protect its interests, the buyer should, when giving its consent for mortgage, make an additional clause in the contract, which would give his contractual rights priority over the mortgagee’s interests. Another way is to search solution within the frame of the ordinary rules on underinsurance and make a pro-rata reduction between those different interests engaged.

7.2.7 An example on bankruptcy of shipyard
The case described below questions inter alia the legal status of the term sheet. It also shows how the financing banks create and adopt their strategy to such critical, from financial point of view, situations in order to protect their interest by renegotiating the contract with the buyers and making them interested in entering into new, probably less profitable, agreements.

Solstad Offshore ASA (SOFF) had entered into an agreement with Karmsund Maritime AS (KMS), owner of the Karmsund shipyard in western Norway, concerning a construction of a large anchor-handling vessel by the Karmsund shipyard with cost price around NOK 500 mill. As a result of the financial crisis the yard experienced cost overruns and was unable to obtain financing for further operations. It resulted in considerable delay in SOFF’s shipbuilding order and the yard was not able to stand by their contractual obligations.

A few attempts had been taken in order to renegotiate the contract, loan agreement and security arrangements. At the beginning of 2009 KMSs and Sparebank 1 SR Bank negotiated and signed a new term sheet concerning guarantees the bank would provide for subcontractors in order to facilitate the restructure of the shipyard. According to a clause in the term sheet, KMS was obliged to provide security to reduce the financial risk the bank was exposed to. The bank interpreted it as a clear intention on the part of KMS to provide the mentioned security and started subsequently

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144 Meland, pp.177-178
fulfilling its obligations under the term sheet prior to signing of the main agreement. However, this clause was not included in the contract draft presented later by KMS. The question which was raised is how the clause should be interpreted – whether KMS was obliged to provide security according to the terms of the term sheet or not.

However, in March 2009 the Karmsund shipyard was filed for bankruptcy and taken over by the bankruptcy estate. On the basis of the builder’s default SOFF cancelled the shipbuilding contract. At that moment, the hull of the vessel was completed up to about 60 % and refund guarantees had been issued by the yard’s financing bank (Sparebank 1 SR Bank) to the buyer (SOFF) for the paid contractual instalments. Question concerning protection of the buyer’s right under the shipbuilding contract came up as a result of the legal discussion whether the contract had been registered in the Shipbuilding Register or the vessel as such. However, the rights of the buyer secured by the refund guarantee were assumed by the bankruptcy estate.

SOFF entered into a new agreement with Skrog 30 AS, owned by Sparebank 1 SR Bank in cooperation with GIEK, for the purchase of the ordered vessel. According to the new agreement, the vessel is to be commissioned at Ulstein Verft and delivered in the completed state at the end of March 2010 at a cost of NOK 680 million.

Moreover, a new contract has been entered for the financing of the vessel with Sparebank 1 SR-Bank as agents. The financing will constitute about 90 % of the vessel’s cost price and will at drawdown consist of two loans of respectively 80 % and 10 % (top financing) of the final contract price.145

The situation raises a question whether the term sheet should be interpreted as a reflection of the parties’ intentions and thus enforce obligations of the parties signed the document or should it be seen as a part of pre-contractual negotiations without any binding effect for the parties. Answer should be based on the circumstances in each particular case interpreted in the light of the

145 URL: http://www.solstad.no/frontpage/agreement-on-new-build-article262-6.html
background law. Another question concerns registration of the buyer’s rights according to the contract. In this case the buyer’s right was secured by the refund guarantee and the bankruptcy estate was not insolvent. All this led to the acceptance of the right by the estate.

7.2.8 Delivery – ”Closing”

The delivery date under Ship 2000 is to be strictly stipulated by the parties without any ”grace period”.146 It implies that the builder is obliged to deliver the ship on the specified date and by failing to do so, he is in breach of the contract. The builder and the buyer concurrently issue and sign a Protocol of Delivery and Acceptance, which identifies the legal and physical delivery of the vessel. Thus it implies that the builder has delivered the vessel in accordance with the shipbuilding contract and the buyer has accepted the delivered vessel in accordance with the contract.147

The form of the protocol the parties will decide themselves. The document is also of importance for the buyer’s financing bank, because the last payment instalment is usually made against issuing and signing of the protocol. However, in the standard form it is stated that the protocol is to be delivered provided that the buyer has fulfilled all of its obligations under the shipbuilding contract. Subsequently, the last payment must have already been made when the document is delivered by the parties. Sometimes, the last payment can also be secured by a letter of credit issued in favour of the builder or its financing bank. In practice, the last payment is inserted in a separate bank account prior to the delivery procedure and released upon issuing of the protocol by the parties. The protocol is further sent to the shipbuilding registry for registration of the title on the buyer. Normally, the refund guarantees have reference to the delivery protocol and become void upon signing of the document by the parties.148

146 Article VIII (1). Cf. SAJ Form Article II (1) (a) and AWES Form Article 6 (c)
147 Article VIII (2) and Meland, p.131
148 Meland pp.131-133
Amongst the list of documents to be delivered to the buyer together with the Protocol of Delivery and Acceptance, there is the Builder’s certificate including all certificates for the vessel. The certificate is required for registration of the vessel as a newbuild vessel in the ship register.\textsuperscript{149} Bill of Sale or other relevant document should be issued in order to certify that the title of the vessel passes to the buyer.\textsuperscript{150} As a result of the possession of the ownership, the buyer shall take possession of the vessel immediately upon delivery and acceptance thereof and shall remove the vessel from the premises of the builder within three days.\textsuperscript{151}

Consequently, the delivery can be classified as a closing procedure for the pre-delivery financing phase. After the ship has been delivered and registered in the ship register as a ship, it will constitute a new asset which can be used as a security for the already existed loan or for obtaining a new financing. On this stage the buyer must obtain a new insurance cover to secure the asset because the builder’s insurance expires upon delivery and acceptance.\textsuperscript{152} As a rule, the vessel will be chartered on a charter party and the chartering agreement might be used as a security for further financing.

\footnotesize{\textsuperscript{149} Meland, pp.135-136 and Article VIII (3) (e) \\
\textsuperscript{150} Article VIII (3) (h) \\
\textsuperscript{151} Article VIII (5) \\
\textsuperscript{152} Article XI (2) and the NMIP § 19-2}
8 CONCLUDING REMARKS

The analysis of the issues presented in the introduction shows that all the above mentioned parties are exposed to financial and legal risks during the shipbuilding process. This risk is a natural part of pre-delivery ship financing transactions with respect to volatility and vulnerability of the shipbuilding market which is dependent upon fluctuations and rising steel prices. It is, however, impossible to eliminate such risks but it is possible to control them by keeping at an acceptable level.

The buyer has opportunity to protect himself by registering the building contract in a shipbuilding register or acquiring the ownership to the vessel under the contract. The prime security of the builder is its ownership under the building contract. The financing bank’s security “package” is determined by the buyer’s available assets and the legislation of the country of registration.

However, neither the clauses of the shipbuilding contract nor the discussed security arrangements provide sufficient protection for the counter party in case the buyer or the builder is in financial distress. The bank ends up in the most vulnerable position in such situation and has to look for solution that would protect the investments made into the vessel. Therefore, it is important to have a good negotiations strategy that can bring the parties to the round table in order to find an optimal solution which would be more or less satisfactory for all involved. It can be a renegotiation of conditions in the shipbuilding contract, e.g. price reduction or delayed delivery, or restructuring of security package due to increased financial risk. In certain situations the negotiations may result in cancellation and choice of a new shipyard, as in the case with the Karmsund shipyard.

When loan agreement and security arrangement documents do not bound by any statutory forms, this provides the parties with the opportunity to tailor those to the deal and thereby steer and control the shipbuilding process. This flexibility is a shield against fluctuations of the market but unfortunately not a sword. It deprives the ship financing legal transparency and predictability. Consequently, when starting a shipbuilding project the buyer, the bank and the shipyard should be
aware of unexpected financial and legal risks that can arise before the ship is delivered. This awareness should be balanced by the security arrangements creating a financial base for the shipbuilding order, and strengthened by the shipbuilding contract identifying the legal frame of the deal.
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ANNEX

The following documents, in chronological order, have been analysed in this thesis:

Term Sheet (Annex 1)
Ship Mortgage – Norwegian standard form (Annex 2)
Ship Mortgage Deed, DnB NOR and Mortgage Declaration, DnB NOR (Annex 3)
Notification to the Norwegian Shipbuilding Register (Annex 4)
Standard Form Shipbuilding Contract 2000 (Annex 5)
LMA TERM SHEET FOR USE WITH:
(A) LMA MANDATE LETTER; AND
(B) MULTICURRENCY TERM AND/OR REVOLVING FACILITIES
AGREEMENT INCLUDING ADDITIONAL OPTIONS

TERM SHEET

[Insert base currency and total amount of facilities] MULTICURRENCY FACILITY[IES] FOR
[Insert name of principal company]

[Please note that the terms set out in this term sheet are indicative only and do not constitute an offer to arrange or finance the Facility/ies. The provision of the Facility/ies is subject to due diligence, credit committee approval[, the terms and conditions of the Mandate Letter] and satisfactory documentation.]

[DATE]

[NAME OF MANDATED LEAD ARRANGER[S]]

PARTIES

Company: [Insert name of principal company].

Borrowers: [The Company]
[List subsidiaries of the Company that are to be original borrowers]
[If subsidiaries not known, list criteria (for example, material subsidiaries/jurisdiction)].

Guarantors: [The Company]
[List subsidiaries of the Company that are to be original guarantors]
[If subsidiaries not known, list criteria (for example, material subsidiaries)].

Mandated Lead Arranger[s]: [ ] [and [ ]].

Lenders: As selected by the Mandated Lead Arranger[s] [in consultation with the Company].

Agent: [ ].

LMA. TermSheet.05 April 2009
Obligors: The Borrowers and the Guarantors.

Additional Obligors: A mechanism will be included in the Agreement to enable any [wholly owned] Subsidiary of the Company which has been approved by [all the Lenders]/[the Majority Lenders] to accede as borrower and/or guarantor. A mechanism will also be included to enable Borrowers and Guarantors to resign.

Group: [The Company and all its Subsidiaries].

[Issuing Bank: [ ]]

[Swingline Lenders: The swingline lenders will be [certain of] the Lenders under [the] Facility [B] or an affiliate of each such Lender.]

[USS Swingline Agent: [Insert branch/affiliate of Agent in New York].]

[EUR Swingline Agent: [ ]]

[Insert base currency and amount of term facility] MULTICURRENCY TERM LOAN FACILITY (the "Facility"/["Facility A")]

Facility: Term Loan Facility.

Amount: [Insert base currency and amount of term facility] [to be drawn in [insert base currency] and any currency (each an "Optional Currency") which is readily available and freely convertible into [insert base currency] in the London interbank market [and, in relation to the euro, the European interbank market]¹ and which has either been approved by all the Lenders or is one of the following currencies:

[list agreed currencies].

Termination Date: [ ].

Purpose: [ ].

Availability Period: From [the date of the Agreement] to [ ].

Minimum Amount of each Loan: [insert base currency and minimum amount for term loans] or appropriate equivalent minimum amounts for Optional Currencies.

Maximum Number of Loans: No more than [ ] Loans may be outstanding.

Repayment: [ ].

¹ Only include the second option if the interest rate for the euro is set by reference to EURIBOR.
Voluntary Prepayment: Loans may be prepaid after the last day of the Availability Period in whole or in part on [ ] Business Days' prior notice (but, if in part, by a minimum of [insert base currency and minimum amount]). Any prepayment shall be made with accrued interest on the amount prepaid and, subject to breakage costs, without premium or penalty.

Any amount prepaid may not be redrawn [and shall be applied against scheduled repayments in [ ] order].

[Insert base currency and amount of revolving facility] MULTICURRENCY REVOLVING [LOAN/CREDIT] FACILITY ([the "Facility"]/["Facility B"])

Facility: Revolving [Loan/Credit] Facility [which may be utilised by way of:

(a) drawing of loans; [and]
(b) [issue of letters of credit.]]

Amount: [Insert base currency and amount of revolving facility] to be drawn [as follows:

(a) in the case of Loans [and Letters of Credit] in [insert base currency] and any other Optional Currency[;/]
(b) [in the case of Letters of Credit in [insert currency if not multicurrency].]

Termination Date: [ ].

Purpose: [ ].

Availability Period: From [the date of the Agreement] to [ ].

Minimum Amount of each Loan: [insert base currency and minimum amount for revolving loans] or appropriate equivalent minimum amounts for Optional Currencies.

[Letters of Credit: Each Letter of Credit will be:

(a) in an agreed form;
(b) a minimum of [insert base currency and minimum amount for Letters of Credit] [or equivalent minimum amounts for Optional Currencies];

2 Insert second option if any of the additional options apply.
(c) issued by the Issuing Bank;

(d) issued in favour of [insert name of beneficiary] or any other beneficiary approved by [all the Lenders/the Majority Lenders]; and

(e) if denominated in an Optional Currency, revalued by the Agent [at six monthly intervals from the date of the Agreement] [at six monthly intervals from the date of the Letter of Credit] [other].

Maximum Number of [Loans/Utilisations]³:

No more than [ ] [Loans/Utilisations] may be outstanding.

Repayment:

Each Loan shall be repaid on the last day of its Interest Period.

[Reduction of Facility:

[ ]]

Voluntary Prepayment:

[Loans/Utilisations] may be prepaid in whole or in part on [ ] Business Days’ prior notice (but, if in part, by a minimum of [insert base currency and minimum amount]. Any prepayment shall be made with accrued interest on the amount prepaid and, subject to breakage costs, without premium or penalty.

U.S.$[insert amount] SWINGLINE LOAN FACILITY

Facility:

U.S.$ swingline loan facility.

Amount:

U.S.$[ ]. The swingline facility operates as a sub limit within [the] Facility [B].

Termination Date:

As for [the] Facility [B].

Purpose:

[Refinancing any note or other instrument maturing under a U.S.$ commercial paper programme [of a member of the Group]]. A Swingline Loan may not be applied in repayment or prepayment of another Swingline Loan.

Availability Period:

As for [the] Facility [B].

Minimum Amount of each Swingline Loan:

Each Swingline Loan must be in a minimum amount of U.S.$[ ].

Repayment:

Each Swingline Loan shall be repaid on the last day of its Interest Period.

³ Insert second option if any of the additional options apply.
Voluntary Prepayment: Swingline Loans may be prepaid in whole at any time. Any prepayment shall be made with accrued interest and without premium or penalty.

EUR [insert amount] SWINGLINE LOAN FACILITY

Facility: EUR swingline loan facility.

Amount: EUR [ ]. The swingline facility operates as a sub limit within [the] Facility [B].

Termination Date: As for [the] Facility [B].

Purpose: [Refinancing any note or other instrument maturing under a EUR commercial paper programme [of a member of the Group]]. A Swingline Loan may not be applied in repayment or prepayment of another Swingline Loan.

Availability Period: As for [the] Facility [B].

Minimum Amount of each Swingline Loan: Each Swingline Loan must be in a minimum amount of EUR [ ].

Repayment: Each Swingline Loan shall be repaid on the last day of its Interest Period.

Voluntary Prepayment: Swingline Loans may be prepaid in whole at any time. Any prepayment shall be made with accrued interest and, subject to break costs, without premium or penalty.

PRICING

Arrangement Fee: [ ] payable [ ].

Agency Fee: [ ] payable [ ].

Commitment Fee: [Facility A:] [ ] per cent. per annum[;]

[Facility B:] [ ] per cent. per annum,[

[in each case] on the unused and uncancelled amount of [the] [applicable] Facility for the [applicable] Availability Period. Accrued commitment fee is payable quarterly in arrear during the [relevant] Availability Period, on the last day of the [relevant] Availability Period and on the cancelled amount of [the]/[any] Facility at the time a full cancellation is effective.

[Other Fees:] [Any other fees to be inserted, for example, utilisation fees]
Margin: [ ] per cent. per annum.

Interest Periods for Loans: [ ] or [ ] months or any other period agreed between the Borrower (or the Company) and the Lenders (in relation to the relevant Loan).

Interest on Loans: The aggregate of the applicable:

(a) Margin;

(b) LIBOR [or, in relation to any Loan in euro, EURIBOR, in each case]¹ (set by reference to Reuters or, if not available, on the basis of rates provided by agreed Reference Banks); and

(c) Mandatory Cost, if any.

Payment of Interest on Loans: Interest is payable on the last day of each Interest Period (and, in the case of Interest Periods of longer than six months, on the dates falling at six-monthly intervals after the first day of the Interest Period).

[Letter of Credit Fee: [ ] per cent. per annum payable quarterly in arrear/advance] (or such shorter period ending on the relevant Expiry Date). Accrued letter of credit fee is also payable on the cancelled amount of any Lender's [Facility B] Commitment at the time a cancellation in full is effective.]

[Term of Letters of Credit: Any period requested by the Borrower ending on or before the Termination Date applicable to [the] Facility [B].]

[Issuing Bank Fee: [ ] payable [ ].]

[Interest Periods for US$ Swingline Loans: Not more than 5 New York business days.]

[Interest Period for EUR Swingline Loans: Not more than 5 [TARGET Days] / [Business Days].]

[Interest on US$ Swingline Loans: The higher of:

(a) the prime commercial lending rate in US Dollars announced by the US$ Swingline Agent; and

¹ Only include if interest rate for euro is set by reference to EURIBOR
[Interest on EUR Swingline Loans:  The aggregate of the applicable:

(a)  margin;

(b)  the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the EUR Swingline Agent at its request by the Reference Banks to leading banks in the European Interbank market as of 11.00 am [Brussels/London/other] time on the Utilisation Date for that Euro Swingline Loan for the offering of deposits in euro for a period comparable to the Interest Period for the relevant Euro Swingline Loan and for settlement on that day; and

(c)  the Mandatory Cost (if any).

[USS Swingline Agency Fee:  [ ] payable [ ].]

[EUR Swingline Agency Fee:  [ ] payable [ ].]
OTHER TERMS

Documentation:

The Facility/ies will be made available under a facility/ies agreement based on the current recommended form of multicurrency syndicated facility agreement of the LMA and otherwise in form and substance satisfactory to the [Mandated Lead Arranger[s][and Lenders]].

Prepayment and Cancellation:

(a) Illegality

A Lender may cancel its Commitment and/or require prepayment of its share of the [Utilisations/Loans].

(b) Change of Control

If [[ ] ceases to control the Company] [any person or group of persons acting in concert gains control of the Company]:

1. a Lender shall not be obliged to fund a Utilisation (except for a Rollover Loan); and

2. [a Lender may by not less than [ ] days' notice cancel its Commitment and require repayment of all its share of the [Utilisations/Loans]/[the Majority Lenders may by not less than [ ] days' notice cancel the Facility/ies and require repayment of all [Utilisations / Loans]].

(c) Increased Costs, Tax Gross Up and Tax Indemnity

The Company may cancel the Commitment of and prepay any Lender that makes a claim under these provisions.

(d) Voluntary Cancellation

The Company may, on not less than [ ] Business Days' prior notice, cancel the whole or any part (being a minimum of [insert base currency and minimum amount]) of [an/the] Available Facility.
Representations:

Each Obligor will make each of the following representations on the date of the Agreement and [in the case of ( ) to ( )] on the date of each Utilisation Request and the first day of each Interest Period:\(^5\)

(a) status
(b) binding obligations
(c) non conflict with other obligations
(d) power and authority
(e) validity and admissibility in evidence
(f) governing law and enforcement
(g) no deduction of tax
(h) no filing or stamp taxes
(i) no default
(j) no misleading information
(k) financial statements
(l) pari passu ranking
(m) no proceedings pending or threatened
(n) [others.]

Information Undertakings:

The Company shall supply each of the following:

(a) as soon as they become available, but in any event within \[ \] days of the end of its financial years its audited consolidated financial statements together with those of each Obligor

(b) as soon as they become available, but in any event within \[ \] days of the end of its financial half years its consolidated financial statements [together with those of each Obligor]

(c) [with each set of consolidated financial statements, a compliance certificate signed by two directors of the Company [and, in the case of the audited consolidated financial statements [reported on by the Company’s auditors in the form agreed by the Company and the Lenders prior to the date of the

\(^5\) Consider if this list should be exhaustive or if it should be expressed to be without limitation.
Agreement) [by the Company's auditors]

(d) all documents dispatched by the Company to its shareholders (or any class of them) or its creditors generally

(e) details of any material litigation, arbitration or administrative proceedings

(f) such other information regarding the financial condition, business and operations of any member of the Group as any Finance Party may reasonably request

(g) [others].

On the introduction of or any change in law, a change in the status of an Obligor\(^6\) or a proposed assignment or transfer by a Lender, each Obligor shall promptly upon the request of the Agent or any Lender supply such documentation and other evidence as is reasonably requested by the Agent (for itself and on behalf of any Lender) or any Lender (or prospective new Lender) in order for the Agent or such Lender (or prospective new Lender) to carry out and be satisfied with the results of all necessary "know your customer" or other checks in relation to the transactions contemplated in the Finance Documents.

[The Company may satisfy its obligations to deliver information to those Lenders who agree by posting such information onto an electronic website.]

**Financial Covenants:**

[ ]

**General Undertakings:**

The following undertakings will be included in the Agreement in respect of each Obligor [and, where applicable, in relation to the Group] :\(^7\)

(a) authorisations

(b) compliance with laws

(c) negative pledge subject to agreed exceptions

(d) restriction on disposals subject to agreed exceptions

(e) restriction on merger

(f) no change of business

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\(^6\) If the Company is not listed consider inclusion of changes in the composition of the shareholders of an Obligor.

\(^7\) Consider if this list should be exhaustive or if it should be expressed to be without limitation.
(g) [others].

Events of Default:

Each of the following will be included in the Agreement in respect of each Obligor and, if appropriate, any member of the Group:

(a) non-payment unless failure to pay is caused by administrative or technical error and payment is made within [ ] Business Days of its due date

(b) any financial covenant not satisfied

(c) failure to comply with any other obligations subject to agreed remedy periods if capable of remedy

(d) misrepresentation

(e) cross default, subject to an agreed minimum amount

(f) insolvency

(g) insolvency proceedings

(h) creditors' process

(i) ownership by Company of other Obligors

(j) unlawfulness

(k) repudiation

(l) material adverse change

(m) [others].

Majority Lenders:

[66\(\frac{2}{3}\)]\% of Total Commitments or if [Loans/Utilisations] outstanding, [66\(\frac{2}{3}\)]\% of [Loans/Utilisations].

Assignments and Transfers by Lenders:

A Lender may assign any of its rights or transfer by novation any of its rights and obligations to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets.

The consent of the Company will be required (not to be unreasonably withheld or delayed) unless the transfer or assignment is to another Lender or an Affiliate of a Lender. The Company will be deemed to have given its consent if no express refusal is received within 5 Business Days.

\(^8\) Consider if this list should be exhaustive or if it should be expressed to be without limitation.
Conditions Precedent: [These will include the following in relation to each Obligor in form and substance satisfactory to the Agent:

(a) constitutional documents
(b) resolution of board of directors
(c) specimen signatures
(d) [shareholder resolutions in relation to each Guarantor]9
(e) borrowing/guaranteeing certificate
(f) certification of copy documents
(g) legal opinion[s] of [__________]
(h) [evidence of process agent]10
(i) a copy of any other document, authorisation, opinion or assurance specified by the Agent
(j) financial statements relating to the Company and each Obligor
(k) evidence of payment of all fees, costs and expenses then due from the Company under the Agreement.

Miscellaneous Provisions: The Agreement will contain provisions relating to, among other things, default interest, market disruption, breakage costs, tax gross up and indemnities, increased costs, set-off and administration.

Costs and Expenses: All costs and expenses (including legal fees) reasonably incurred by the Agent and the Mandated Lead Arranger[s] in connection with the preparation, negotiation, printing, execution and syndication of the Agreement and any other document referred to in it shall be paid by the Company promptly on demand whether or not the Agreement is signed.


9 To be included if a shareholder resolution is required to address the issue of corporate benefit, particularly if an upstream guarantee is included.

10 Only relevant if have overseas Obligors and need to appoint an agent in England to accept service of process.
Definitions:

Terms defined in the current recommended form of multicurrency syndicated facility agreement of the LMA have the same meaning in this Term Sheet unless given a different meaning in this Term Sheet.
Appendix

Additional Items to consider if there is no Mandate Letter\textsuperscript{11}

**Clear Market:** During the period from the date of [the Term Sheet/Mandate Letter] and [the date of the Agreement/close of syndication], the Company shall not and shall ensure that no other member of the Group shall raise or attempt to raise finance in the international or domestic loan or capital markets [without the prior written consent of the Mandated Lead Arranger[s]].

** Syndication:** The Company [and the other Obligors] shall give such assistance as the Mandated Lead Arranger[s] may reasonably require in relation to the syndication of the Facility/ies including giving of presentations by members of their management and assisting in relation to the preparation of an information memorandum.

**Market Flex:** The Mandated Lead Arranger[s] shall be entitled [after consultation with the Company] to change the pricing, terms and/or structure of the Facility/ies if the Mandated Lead Arranger[s] determines that such changes are advisable in order to ensure a successful syndication of the Facility/ies.

**Market Conditions:** The terms set out in the Term Sheet are subject to there being no material adverse change in either (a) the business or financial condition of [any Obligor/the Group] or (b) the international or any relevant domestic syndicated loan market, up to the time of [launch of the Facility/ies]/[close of syndication of the Facility/ies].

**Publicity:** Any publicity regarding the Facility/ies to be agreed in advance by the Mandated Lead Arranger[s].

**Confidentiality:** The Term Sheet and its content are intended for the exclusive use of the Company and shall not be disclosed by the Company to any person other than the Company's legal and financial advisors for the purposes of the proposed transaction unless the prior written consent of the Mandated Lead Arranger[s] is obtained.

**Expiry:** The terms set out in the Term Sheet are available for acceptance by the Company until 5.00 pm [London time] on [ ] after which time they will expire.

\textsuperscript{11} These items are included in the LMA Mandate Letter. Therefore, they may be deleted if the Term Sheet is used with the LMA Mandate Letter.
## Ship mortgage

### To be registered in the ship registers

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<tr>
<th>Mortgagor(s)</th>
<th>Mortgagor(s)</th>
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<td>Name</td>
<td>Corp. ID No./Nat. ID. No.</td>
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<td>Corp. ID No./Nat. ID. No.</td>
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### Mortgage amount

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<th>Currency</th>
<th>Amount</th>
<th>Amount in words</th>
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### Mortgaged vessel

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<th>Name of the ship (alternatively, hull number)</th>
<th>with</th>
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<tr>
<th>Call sign.</th>
<th>Entered in ship register</th>
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<tr>
<th>Year of construction</th>
<th>Home port (alternatively, name of main shipyard)</th>
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The mortgage shall attach to the vessel and all of her separate parts and appurtenances of whatever kind, including parts and appurtenances which shall be acquired in the future, cf. the Norwegian Maritime Code, Section 45.

The mortgage shall also attach to all insurance proceeds receivable in respect of the vessel. If the vessel is registered in the Shipbuilding Register, the mortgage shall attach to her main engine and the larger sections of the hull irrespective of whether these are built at locations or sites other than the site of the main shipyard. The mortgagor undertakes to ensure that all materials and equipment stored at the main shipyard, or at the site of any other yard where the main engine or larger sections of the hull are being built, are marked or otherwise properly identified for incorporation into the vessel under construction, cf. the Norwegian Maritime Code, Section 43. The mortgage shall also attach to all insurance proceeds receivable in respect of a vessel under construction.

### Agreed priority

The mortgage has right of priority advancement.

### Negative pledge

The vessel may not be sold or further encumbered without the mortgagee’s consent unless specified in the following:

### The following condition(s) shall not be registered

**Declaration of debt liability**

The more detailed terms and conditions applicable between the mortgagor and the mortgagee, including the due date of maturity of the mortgaged claim and provisions concerning enforcement of the mortgage, are set out in the relevant loan agreement, and/or in any specific declaration of mortgage or pledge, or in any specific guarantee agreement. Upon the occurrence of an event of default the mortgagee may instruct the mortgagor to bring the vessel immediately to any port designated by the mortgagee. Alternatively, the mortgagee may, at the expense and risk of the mortgagor, take possession of the vessel and bring the vessel to any port he may find expedient.

### The mortgagor undertakes:

a) to allow the mortgagee or his representative, at any time and at the expense of the mortgagor, to inspect and conduct an evaluation of the vessel. If, following any such evaluation of the vessel, the mortgagee, in his sole discretion, shall find that the value of the vessel is materially diminished, the mortgagee may make a demand for extraordinary down payment of the debt which is secured by the mortgage.

Conditions continue overleaf.
b) to maintain adequate insurance cover in respect of the vessel against such risks and on such conditions as the mortga-
gee may require,

c) to notify the mortgagee immediately if a salvage claim shall be made by any party, or if any party takes legal action for
the purpose of obtaining any right to or possession of the vessel. The same applies in the event that the vessel shall
become subject to a major accident or hijacking, or if the mortgagor for any other reason shall lose, in whole or in
part, his possession and quiet enjoyment of the vessel, or if the mortgagor shall decide to lay up the vessel,

d) not, without the prior consent of the mortgagee, to let the vessel to any charterer on bareboat charter terms, or to let
the vessel to any charterer on time charter terms for a period of longer duration than 12 months,

e) not, without the prior consent of the mortgagee, to break up the vessel or make major modifications or expenditures in
respect thereof.

In the event of conflict between the above provisions and those set out in the relevant loan agreement, and/or in any specific
declaration of mortgage or pledge, or in any specific guarantee agreement, the latter shall prevail.

---

**Signatures and confirmation**

I/We hereby grant to the mortgagee such rights as set forth above.

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<th>Place, date</th>
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**Signature(s) of the mortgagor(s)** | **Name(s) in typed or printed letters**

---

I/We confirm that the above signatory(ies) is(are) over the age of 18, has/have signed or acknowledged
his/her/their signature(s) on this document in my/our presence. I am/We are of age and domiciled in Norway.

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<th>1. Signature</th>
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**Address (in typed or printed letters)**

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<tr>
<td></td>
</tr>
</tbody>
</table>
SHIP MORTGAGE DEED

Hull and war risk insurances shall cover full value, on full terms. Other insurances shall cover the amounts customary for the type of ship concerned and shall comprise those risks which it is customary to cover in connection with the use of the mortgaged ship and its trading area or as the creditor deems necessary to protect its interest as mortgagee. The insurance terms, choice of currency, brokers and the underwriters providing the insurance cover are subject to the approval of the creditor. The debtor shall ensure that the creditor receives insurance documents which contain the insurance terms and which confirm that the creditor's interests as mortgagee are co-insured or noted. Notification or assignment of the insurances shall be effected in the manner required by the creditor. If the debtor does not fulfill its obligation to insure, the creditor has the right to obtain suitable insurance cover for the debtor's account.

Furthermore, the mortgage is subject to the following CONDITIONS:

Clause 1
Without the written consent of the creditor the mortgaged ship shall not be chartered for a continuous period exceeding 12 months or on bareboat terms. The creditor's consent in writing shall be obtained in advance if it is intended to break up the mortgaged ship, to alter its nature or to incur major costs on it.

The mortgaged ship shall not be employed in defiance of current laws, rules, international conventions or insurance terms, which have been accepted by the creditor.

Clause 2
The debtor undertakes to take out such insurances as required at any time by the creditor.

As security for payment of:
All Principal, interest, charges etc. and costs incurred to safeguard the mortgaged ship and other costs to safeguard the security together with all other claims which may arise under the loan on the following conditions.

I/We hereby mortgage

Name of the ship:
Signal letters: entered in the Register of ships.

Built in the year: Home port:
The mortgage comprises the ship's various parts and appurtenances of whatever kind including future acquisitions, cf. the Maritime Act (Norway) Section 45.

If the ship has been entered in the Shipbuilding Register, this mortgage also comprises the main engines and major sections of the hull whether or not they are being built outside the principal builder's yard. It is the responsibility of the debtor to provide for the necessary marking or other identification of materials and equipment in the possession of the principal builder's yard, or in the possession of other builders who are building the main engines or major sections of the hull, cf. the Maritime Act (Norway) Section 43.

Other builders are:

The mortgage also comprises the proceeds of all insurance sums for the ship.

This mortgage has a right of succession as and when claims of equal or prior rank are paid off or redeemed. This mortgage currently ranks with: (First priority)

The mortgaged ship shall not be sold or further encumbered without the consent of the mortgagor.

In addition to disposing of the mortgaged ship by forced sale or by taking possession of the ship, the repayment of the debt together with interest and all costs expenses incurred may be enforced without prior legal proceedings, according to the Enforcement Act (Norway) section 7-2, letter a.

Debtor

Name of mortgagor/ debtor Company registration no

<table>
<thead>
<tr>
<th>Mortgagee/Creditor</th>
<th>Company registration no</th>
</tr>
</thead>
<tbody>
<tr>
<td>DnB NOR Bank ASA</td>
<td>984 851 006</td>
</tr>
</tbody>
</table>

Amount /currency Amount in words
NOK 00/100

Annex 3

Corporate customers Amount:

Bl. no. 109232/ 11.2001 Page 1 of 2
Clause 3
In the event of any salvage claim or if anyone takes legal steps to obtain any right in or disposal of the mortgaged ship, the debtor shall promptly notify the creditor thereof. The same applies in the event of major damage or capture or if for any other reason the debtor's control of the mortgaged ship is lost or restricted, or if he resolves to lay up the mortgaged ship.

The debtor shall promptly send to the creditor, the annual Financial statement, annual report and auditor's report as soon as they are available.

Clause 4
The creditor or its representative may at any time inspect the ship and obtain a valuation of the ship at the debtor's expense.

If the valuation of the mortgaged ship indicates, in the judgement of the creditor that the security has diminished substantially, the creditor may require extraordinary repayment of the debt.

Clause 5
The debt is deemed to be in default if:

a) The debtor substantially defaults on its obligations under this ship mortgage deed,
b) The management of the mortgaged ship is changed or there is any partial or complete change in the ownership of this ship through the assignment transfer or other disposal of stocks, shares,
c) The mortgaged ship is lost or broken up.

d) The security is substantially diminished as a consequence of damage to the mortgaged ship,
e) The mortgaged ship loses its flag,
f) The mortgaged ship is subject to a court order, restraint, enforcement proceedings, is impounded, requisitioned, captured or if the debtor, for any other reason, wholly or partially loses control of or the right of disposition over the mortgaged ship,
g) The mortgaged ship is sold by forced sale, is encumbered by any distraint, or if any claim secured by maritime lien is not paid when due.

In the event of such default the creditor may require the whole debt to be paid immediately without notice.

Clause 6
In the event of default the creditor may require the debtor promptly to bring the mortgaged ship to any port designated by the creditor or may take possession of the mortgaged ship and bring it to any port he may find expedient, at the debtor's expense and risk.

Clause 7
For any legal proceedings the undersigned and subsequent owners of the mortgaged ship accept as venue.

Clause 8
The debtor shall pay all costs and expenses arising in connection with the loan.

Clause 9
This document is governed by Norwegian law and is subject to the jurisdiction of the Norwegian courts.

---

**Signatures and Confirmations**

Place, Date

<table>
<thead>
<tr>
<th>Authorised signature for and on behalf of debtor</th>
<th>Repeated in type or block letters</th>
</tr>
</thead>
</table>

We confirm that the signatory (s) being over 18 years of age, has/has signed this document or acknowledged his/her/their signature(s) hereto as authorised signatories on behalf of the debtor in my/our presence. I am/We are of age and resident in Norway.

<table>
<thead>
<tr>
<th>1st signature</th>
<th>Repeated in type or block letters</th>
</tr>
</thead>
</table>

Address (typed or in block letters)

<table>
<thead>
<tr>
<th>2nd signature</th>
<th>Repeated in type or block letters</th>
</tr>
</thead>
</table>

Address (typed or in block letters)
Mortgage Declaration
Business Loan - own security

This declaration shall not be used for business loans if the borrower is a physical person, and the loan is secured by the mortgage of a capital asset that belongs to the borrower, where the said asset is not primarily connected with the borrower’s business, cf. the Financial Contracts Act section 2.

The bank’s counterpart

| Registration no. |

<table>
<thead>
<tr>
<th>Mortgagor (borrower)</th>
<th>Address</th>
<th>Org. no./ Personal ID no.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Specification of the mortgage asset(s)</th>
<th>Face value / Amount</th>
</tr>
</thead>
</table>

Interest earned and dividends from the above-mentioned mortgage asset are included

The mortgage asset shall serve as security for the obligations (together with interest, commission and costs) that the borrower has or may acquire vis-à-vis DnB NOR Bank ASA (the bank/enterprise) pursuant to:

Where the principal loan has a fixed interest rate, potential compensation for loss of interest (fixed interest premium) shall also be covered by the mortgage.
The mortgage also covers any renewal or extension of credit, with or without a repayment schedule.

The bank/enterprise is entitled to demand that its mortgage claim be enforced if:

a) the loan is prematurely terminated under the loan agreement, or in the case of material default of the loan agreement by the borrower (mortgagor),
b) the mortgage asset is the subject of a legal action for enforcement,
c) the mortgagor significantly misuses his control of the mortgage asset or otherwise neglects his obligations to use, maintain and insure the mortgage asset cf. the Mortgages and Pledges Act sections 1-7,
d) the mortgage asset is lost or damaged by an accidental occurrence that results in a significant reduction in the value of the mortgage asset,
e) the debtor provides incorrect or incomplete information to the bank/enterprise,
f) the mortgage asset is encumbered with a further mortgage or collateral lien that could diminish the value of the bank’s/enterprise’s cover,
g) a leasehold with attendant machinery and plant has been furnished as security, and the lease is terminated or changes of particular significance for the bank/enterprise are implemented.

Before repayment can be demanded pursuant to c) or d) above, the bank/enterprise shall, provided no risk is incurred by delay, give the mortgagor notice to rectify matters within a reasonable period of time.

In situations such as those mentioned above, the bank/enterprise is entitled to realise the mortgage asset through a forced sale in accordance with the provisions of the Legal Enforcement Act, or by a pre-agreed method for refund of claims against receivables, listed securities and stocks and shares, or for other forms of security agreed in some other way with the mortgagor subsequent to the situation arising.

In the event of incomplete cover, the bank/enterprise will decide which of the claims, including interest and costs, are to be covered first.
The mortgage will not be deleted upon repayment of the loan, unless the borrower so requests.

This document is governed by Norwegian law and is subject to the jurisdiction of the Norwegian courts.

Receipt of a counterpart of this declaration is acknowledged.

Place, date

Signature of the mortgagor

BL no 110969 / 05/2003
# Annex 4

**NOTIFICATION TO THE NORWEGIAN SHIPBUILDING REGISTER**

**(Fill only in I, II or III)**

### I.  □ SHIP/DEVICE UNDER CONSTRUCTION IN NORWAY

- Built to order
- For own account

(Description: The Norwegian Maritime Code § 31, sub-section 1/§39/§507)

### II.  □ CONTRACT FOR BUILDING OF SHIP/DEVICE IN NORWAY

(Description: The Norwegian Maritime Code § 31, sub-section 2/§39/§507)

### III.  □ SHIP/DEVICE RESOLVED TO BE BUILT (IN NORWAY), FOR OWN ACCOUNT, BY NORWEGIAN SHIPYARD

(Description: The Norwegian Maritime Code § 31, sub-section 3/§33)

### SHIPBUILDING YARD

Principal yard, in Norway, where the construction is taking place

<table>
<thead>
<tr>
<th>Yard. No.</th>
<th>Name</th>
<th>Org.no</th>
</tr>
</thead>
</table>

### CONTRACTING YARD

Name of yard which has entered into the contract with the party placing the order

<table>
<thead>
<tr>
<th>Yard. No.</th>
<th>Name</th>
<th>Org.no</th>
</tr>
</thead>
</table>

### DATE OF CONTRACT

### BUILDING PERIOD (in Norway)

From | To

### PLACE OF BUILD

### TYPE OF VESSEL

### STATUTORY AUTHORITY FOR REGISTRATION

The Norwegian Maritime Act

<table>
<thead>
<tr>
<th>Product license No.</th>
<th>Name of the Product/device</th>
</tr>
</thead>
</table>

### BUILDING MATERIAL

- Aluminium
- Concrete
- Ferro concrete
- Other
- Iron
- Composite
- Plastic
- Rubber canvas
- Steel
- Wood
- No means of propulsion

### PROPULSION

- Engine
- Sails
- No means of propulsion
- Steam
- Turbine
- Other

### ESTIMATED MEASUREMENTS IN METRES

<table>
<thead>
<tr>
<th>Length</th>
<th>Breadth</th>
<th>Depth</th>
<th>Max length</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross tonnage</td>
<td>Net tonnage</td>
<td>Deadweight (if available)</td>
<td></td>
</tr>
</tbody>
</table>

### HULL BUILT BY

(if other than the shipbuilding yard)

<table>
<thead>
<tr>
<th>Name</th>
<th>Org.no</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>Yard No.</td>
</tr>
</tbody>
</table>

KR-0013E September 2007 – Electronic version
<table>
<thead>
<tr>
<th>TO BE REGISTERED AS OWNER/TITLE HOLDER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
</tr>
<tr>
<td>Org.no</td>
</tr>
<tr>
<td>Personal Id.No. (11 digits)</td>
</tr>
<tr>
<td>Phone</td>
</tr>
<tr>
<td>Fax</td>
</tr>
<tr>
<td>E-mail</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NAME OF PARTY PLACING THE ORDER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
</tr>
<tr>
<td>Org.no</td>
</tr>
<tr>
<td>Personal Id.No. (11 digits)</td>
</tr>
<tr>
<td>Phone</td>
</tr>
<tr>
<td>Fax</td>
</tr>
<tr>
<td>E-mail</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OTHER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
</tr>
<tr>
<td>Address</td>
</tr>
<tr>
<td>E-mail</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SIGNATURE</th>
</tr>
</thead>
</table>

It is hereby confirmed that the ship/device under construction or the contract for construction in Norway has not been registered/will not be registered in the Norwegian Shipbuilding Register with another shipyard.

<table>
<thead>
<tr>
<th>For the yard</th>
<th>For the party placing the order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Place and date</td>
<td>Place and date</td>
</tr>
</tbody>
</table>

Binding signature pursuant to the Certificate of Company Registration
- to be repeated in capital letters -

Binding signature pursuant to the Certificate of Company Registration
- to be repeated in capital letters -

KR-0013E
STANDARD FORM
SHIPBUILDING CONTRACT 2000

BETWEEN

..........................................................
(AS "BUILDER")

AND

..........................................................
(AS "BUYER")

FOR

ONE ..........................................................
(TYPE OF VESSEL)

BUILDER'S HULL NO:......................

Norwegian Shipowners Association

Norwegian Shipbuilders Sales &
Marketing Organization

Norwegian Shipbuilders Association
CONTENTS:

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PREAMBLE

THIS CONTRACT is made this ........................................... day of ..........................................., 20........
by and between:
...............................................................................................................................

a company organised and existing under the laws of Norway, having its principal office at
...............................................................................................................................
Norway, (hereinafter called the "Builder")

and

...............................................................................................................................
a company organised and existing under the laws of ..............................

having its principal office at
...............................................................................................................................
(hereinafter called the "Buyer").

WHEREBY

In consideration of the mutual covenants herein contained, the Builder agrees to design, build,
launch, equip, complete, sell and deliver to the Buyer at the Builder’s shipyard the "Vessel" as
hereinafter described; and the Buyer agrees to purchase the "Vessel", take delivery and pay for
it; all in accordance with the terms hereinafter set forth.
ARTICLE I  DEFINITIONS

In this CONTRACT the following words shall have the meaning set out hereinbelow:

"Banking Days" days where banks are open for business in: Norway and the country where the BUYER has its principal office and the country where the bank set out in Article III clause 3 is situated and the country of the currency set out in Article III clause 2

"Builder" the company referred to as "Builder" in the preamble, inclusive of its servants and employees

"Buyer" the company referred to as "Buyer" in the preamble, inclusive of its servants and employees

"Buyer’s Supplies" any item, equipment, stores or services ordered directly by the Buyer from the manufacturer or supplier, which shall not be supplied and/or paid for by the Builder in accordance with the terms of the Contract

"Classification Society" or "Class" the Classification Society referred to in Article II clause 3

"Contract" this Standard Form Shipbuilding Contract with its Appendices and Exhibits including Specifications and Drawings, and any amendments thereto

"Contract Delivery Date" the date set out in Article VIII clause 1

"Contract Price" the Original Contract Price, as adjusted in accordance with the terms of the Contract

"Date of Contract" the date specified in the preamble to this Contract, regardless of whether the contract actually is signed on this date or whether the contract is signed with subject

"Delivery and Acceptance" the physical delivery of the Vessel from the Builder to the Buyer

"Delivery Date" Contract Delivery Date, as adjusted for Permissible Delay

"Drawings" the plans and drawings listed in Appendix I hereto

"Flag State" the State referred to in Article II clause 5
"Force Majeure" any one or more of the events set out in Article IX clause 1

"Force Majeure Delay" a delay caused by Force Majeure, which according to Article IX constitutes Permissible Delay

"Guarantee Period" a period of 12 months from the Delivery and Acceptance of the Vessel, or such other period as may be mutually agreed between the Buyer and the Builder

"Maker's List" an agreed list of suppliers approved for delivery of equipment, machinery or services which shall be included in the Specifications

"Original Contract Price" the price stipulated in Article III clause 1

"Permissible Delay" all delays, inclusive of Force Majeure Delay, causing delay in delivery of the Vessel which according to the terms of the Contract permit postponement of the Delivery Date

"Regulatory Bodies" the relevant authorities imposing rules and regulations with which the construction and delivery of the Vessel must comply, which shall include the authorities of the Flag State together with other authorities set out in the Specifications

"Representative" a person or persons authorised by the Buyer as set forth in Article V clause 2

"Specifications" the specifications referred to in Appendix I hereto

"Subcontractor" 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

"Vessel" the vessel described in Article II.

"Working Day" a day when work is normally performed in the country of the Builder's yard as referred to in Article II clause 1
ARTICLE II THE VESSEL, DESCRIPTION AND CLASS

1. Description and Standard
The Vessel shall be built at the Builder's yard at ..........................................................
and shall have the Builder's Hull No ......................, and be designed, constructed, equipped,
completed and delivered by the Builder in accordance with the provisions of the Contract.

In the event of inconsistency between this Standard Form Shipbuilding Contract and the
Specifications and/or the Drawings, this Standard Form Shipbuilding Contract shall prevail. In
the event of inconsistency between the Specifications and the Drawings, the Specifications shall
prevail. In case of inconsistency between any of the Drawings, the later in date shall prevail.

The Vessel shall be designed and built in accordance with first class shipbuilding practice in
Western Europe for new vessels of similar type and characteristics as the Vessel.

2. Main Dimensions and Characteristics
Dimensions:
Overall length:
Length between P.P.:
Breadth moulded:
Depth moulded to uppermost deck:

Cargo capacity:
The Vessel's deadweight shall be ....................... tons (of 1000 kg each) on international
summer freeboard, corresponding to a mean draft in saltwater (specific gravity 1.025) of
......................... . The specified deadweight shall include fuel, provisions, stores, freshwater,
crew and passengers in addition to spare parts in excess of the requirements of Class.

Cubic capacity:
The Vessel's cubic capacity shall be .................................................. cubic meter/cbft,
and as otherwise set out in the Specification.

Propulsion machinery:
Type:
Max. continuous power ....................... kW ( .......................Brake/
Shaft HP) at ................................. revs./min.

Speed:
The Vessel's average speed on a sea trial undertaken in both directions over a measured distance,
with clean hull, in calm weather, wind and sea not exceeding Beaufort 3 and 2 respectively and
with draft .................................. shall be at least ............................. knots at ............................. kW
( .............................Brake/ Shaft HP), corresponding to .............................% of max.
continuous power at approx. ........................ revolutions per minute.
Fuel consumption:
The fuel consumption of the main engine on test bed shall not exceed .................. grams per kW per hour ( ............................................ Brake/Shaft HP per hour) when the engine develops .................................. kW ( ............................................ Brake/Shaft HP) using .................................. with an effective calorific value of at least .................................. kcal. per kilogram.

The further details of the above main particulars, as well as definitions and methods of measurements and calculation shall be as described in the Specification.

3. Classification, Rules and Regulations
The Vessel, including its machinery, equipment and outfellings shall be designed and constructed in accordance with the rules and regulations of ......................................................... (the Classification Society), with the following Class notation: ..........................................................
The Vessel shall further comply with the applicable rules, regulations and requirements of the Regulatory Bodies. All such rules, regulations and requirements shall be complied with without conditions/recommendations.

All fees and charges incidental to and in respect of compliance with Class and the rules, regulation and requirements of the Class or Regulatory Bodies referred to above shall be for the account of the Builder.

4. Subcontracting
The hull and major sections thereof are to be built by the Builder at the Yard set out in Article II, clause 1, unless the Buyer consents otherwise, such consent not to be unreasonably withheld.
Save as aforesaid, the Builder may, at its sole discretion and responsibility, subcontract any portion of the construction of the Vessel. The Builder shall remain fully liable for the due performance of such work as if done by the Builder at the Builder's yard.

Except as otherwise stipulated in the Specifications and the "Maker's List" or agreed in writing, the Builder may, without interference from the Buyer, freely choose its Subcontractors, but the Builder shall in ample time notify the Buyer in writing before placing major orders for equipment or services with Subcontractors, and shall give reasonable consideration to Buyer's request. Any opinions or requests made by the Buyer entail no alteration of the Builder's obligation and liability under the Contract.

5. Certificates and Registration
The Builder shall provide, deliver and pay for all certificates necessary for the approval of the Vessel, as further set out in the Contract, together with all documents reasonably required by the Buyer necessary for the registration of the Vessel in ......................................................... (Flag State).

The Vessel shall be registered by the Buyer at its own cost and expense.
ARTICLE III  PRICE AND PAYMENT TERMS

1. Original Contract Price
The Original Contract Price is .................................................................

2. Currency
All payments by the Buyer to the Builder under the Contract shall be made in .................

3. Terms and Method of Payment
The Original Contract Price shall - subject to notices being given under this Article III clause 3 - be paid in instalments as follows:

(a) 1st Instalment:
The sum of .................................................................
shall be paid three (3) Banking Days after the Date of the Contract.

(b) 2nd Instalment:
The sum of .................................................................
shall be paid within .................. Banking Days after ....................

(c) 3rd Instalment:
The sum of .................................................................
shall be paid within .................. Banking Days after ....................

(d) 4th Instalment:
The sum of .................................................................
shall be paid within .................. Banking Days after ....................

(e) 5th Instalment:
The sum of .................................................................
shall be paid within .................. Banking Days after ....................

(f) Instalment on Delivery and Acceptance:
The sum of .................................................................,
plus any increase or minus any decrease due to adjustments of the Contract Price hereunder, shall, subject to the other provisions of the Contract, be paid upon Delivery and Acceptance of the Vessel.

All instalments shall be remitted to ........................................................., to an account specified by Builders.
The instalments under 3 (b) to 3 (f) (both inclusive) unless payable on specific dates, shall under no circumstances fall due until 14 days from receipt of written notice from the Builder. Notice of the instalment payable on Delivery and Acceptance shall include notice of adjustments, if any.

On Builder's request, the Buyer shall provide to the Builder all information necessary to enable the Builder to reasonably satisfy himself that the Buyer has financial arrangements or resources to pay the instalments when due.

The Buyer's obligation to pay the first and subsequent instalments, excluding the instalment payable on Delivery and Acceptance, shall be subject to the Builder providing the Buyer with refund guarantee(s) from a bank or other security, satisfactory to the Buyer, securing the repayment obligation of the Builder if the contract is lawfully cancelled.

The Builder may retain the Vessel until full payment has been made in accordance with the agreed payment terms. If the Builder is unable to present a final account at delivery, the Buyer may require the Vessel to be delivered in return for a bank guarantee or other security, satisfactory to the Builder, for the reasonably estimated balance owed to the Builder. Costs of such guarantee to be for Builder's account.

In the event of any dispute concerning the payment on delivery of the Vessel, including the question of the Buyer's right to offset any claim it may have, the Buyer may by paying the entire amount demanded by the Builder require the Builder to provide a bank guarantee or other security satisfactory to the Buyer for the disputed amount. The Builder cannot in such case refuse to deliver the Vessel. If the Builder does not wish to issue security for the disputed part of the claim, the Buyer is entitled to take delivery of the Vessel against payment of the undisputed amount and provide a bank guarantee or other security satisfactory to the Builder for the disputed part of the claim. Security which has been issued by a party pursuant to this sub-clause terminates automatically unless the other party has brought legal action pursuant to Article XIX below within 3 months from date of issue of the security. The costs of security shall be shared proportionately between the parties according to the final outcome of the dispute.

If on or before Delivery and Acceptance of the Vessel the Builder is declared bankrupt, proposes or enters into a fund or a formal composition arrangement or moratorium or otherwise proves to be in such financial position that it is likely to be unable during the Guarantee Period to perform its guarantee obligations, the Buyer may demand that the Builder shall provide satisfactory security for the performance by the Builder of such guarantee obligations, limited to ............ % of the Original Contract Price, or failing such guarantee, the Buyer is entitled to deposit the equivalent amount in an escrow account in the joint name of the Builder and the Buyer and to deduct this amount from the instalment to be paid on Delivery and Acceptance.

Failure by the Buyer to pay on time any part of the Contract Price shall entitle the Builder to charge interest at the rate of ............ % (per cent) per annum thereon.
ARTICLE IV  ADJUSTMENT OF CONTRACT PRICE – CANCELLATION BY THE BUYER

The Contract Price shall be subject to adjustments, as hereinafter set forth, in any of the events set out in this Article IV (it being understood by both parties that any reduction of Contract Price is by way of liquidated damages and not by way of penalty) and the Builder shall not in any way be responsible or liable for any other consequences by way of damages or otherwise as a consequence of any of the matters hereinafter set forth in this Article IV, except for the Buyer's right to cancel in accordance with the provisions of the Contract.

1. Late Delivery
   (a) If the delivery of the Vessel is delayed beyond the Delivery Date, the Contract Price shall be reduced by deducting therefrom as follows:

<table>
<thead>
<tr>
<th>Day Range</th>
<th>Reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st - 30th day</td>
<td>No reduction/alternatively</td>
</tr>
<tr>
<td>31st - 60th day</td>
<td>.................. per day</td>
</tr>
<tr>
<td>61st - 180th day</td>
<td>.................. per day</td>
</tr>
</tbody>
</table>

   The maximum reduction in the Contract Price for delayed delivery shall not exceed the total of the above liquidated damages for 180 days of delay.

   (b) If the delay in delivery of the Vessel shall continue for a period in excess of 180 days after Delivery Date, the Buyer may at its option cancel the Contract.

   Provided the Buyer has not sent notice of cancellation as provided for in Article XII hereof within 185 days of delay having elapsed after the Delivery Date, the Builder may demand in writing that the Buyer shall make an election either to cancel the Contract, or to consent to the acceptance of the delivery at a specific future date reasonably estimated by the Builder to be the date when the Vessel will be ready for delivery; in which case the Buyer shall, within 15 days after such demand is received by Buyer, notify the Builder of its choice it being understood that, if the Buyer elects not to cancel and the Vessel is not delivered by such future date, the Buyer shall have the right to cancel the Contract.

   (c) If the total accumulated delay of non Permissible Delay and of Force Majeure Delay, but excluding other Permissible Delay, amounts to 270 days or more, then in such event the Buyer may cancel the Contract. The Builder may, at any time thereafter, demand in writing that the Buyer shall make an election either to cancel the Contract or to consent to the acceptance of the delivery at a specific future date reasonably estimated by the Builder to be the date when the Vessel will be ready for delivery, in which case the Buyer shall, within 15 days after such demand is received by Buyer, notify the Builder of its choice; it being understood that, if the Buyer elects not to cancel and the Vessel is not delivered by such future date, the Buyer shall have the right to cancel the Contract.

   (d) If it can be established beyond any reasonable doubt that the Vessel will be delayed for more than 180 days as per paragraph (b) above, or be delayed for more than 270 days as per paragraph (c) above, the Buyer shall have a right forthwith to cancel the Contract.
2. Speed deficiency
If the speed as stipulated in Article II clause 2 (as adjusted pursuant to Article II clause 3 and/or Article VI as the case may be) is not achieved, the Contract Price shall be reduced as follows:

(a) For each full tenth (1/10) knots reduction up to .......... knots no reduction shall be made or alternatively a reduction of ..........................................

* (fill in either a specific amount or a percentage of Original Contract price).

(b) For each full tenth (1/10) knots reduction in the speed thereafter up to .......... knots reduction in the speed ..........................................

For every full tenth (1/10) knots further reduction in speed .........................

The total reduction pursuant to this Article IV, clause 2 shall in any event not exceed ..................................................................

(c) If the deficiency in speed is more than .......... knots, the Buyer may cancel the Contract.

3. Deficiency in Fuel Consumption
If the fuel consumption on the test bed exceeds the figure stipulated in Article II, the Contract Price shall be reduced by ........................................................ for each full percentage per gram KW/BHP per hour by which the fuel consumption on the test bed exceeds the consumption (increased by .......... %) stipulated in Article II, provided that such reduction shall never exceed ..........................................

If the fuel consumption on the test bed exceeds the figure stipulated in Article II by more than .......... %, the Buyer may, at its option, (1) reject the main engine or (2) accept the main engine at a reduction in the Contract Price of the Vessel corresponding to the maximum amount referred to above. If the Buyer rejects the main engine and the Builder as a consequence is unable to deliver the Vessel within the time referred to in Article IV clause 1, the Buyer may cancel the Contract.

4. Deficiency in Deadweight
If the deadweight ( ................. tons) stipulated in Article II, is not attained and the reduction exceeds .......... % of the stipulated deadweight, the Contract Price shall be reduced by ........................................................ for each ton of the reduction in excess of the said .......... %, but always limited to a maximum of ............................................................

If the reduction in deadweight is more than .......... % of the stipulated deadweight Buyer may cancel the Contract.
5. Deficiency in Cubic capacity
If the cubic capacity (.................. m³/cbft) stipulated in the Contract with pertaining specifications is not attained, and the reduction exceeds ........... % of the stipulated cubic capacity, the Contract Price shall be reduced by ..................................... for each m³/cbft of the reduction in excess of the said per cent.

If the reduction in cubic capacity is more than............ % of the stipulated capacity, the Buyer may cancel this Contract.

* * *

If the Contract is cancelled pursuant to this Article IV, the instalments paid by the Buyer shall be repaid forthwith in accordance with Article XII clause 1.

Insofar as items 1 to 5 inclusive above are not filled in, the provisions of Article X of the Contract shall apply.

If Article II clause 2 includes figures with the qualification "about", such qualification shall be disregarded for the purposes of calculation of liquidated damages and the right of cancellation pursuant to this Article IV.

ARTICLE V  APPROVAL OF PLANS AND DRAWINGS AND INSPECTION DURING CONSTRUCTION

1. Approval of Plans and Drawings
As soon as possible after the Date of Contract the Builder shall put forward a proposed detailed building schedule, including a schedule for testing. The Buyer shall make its comment on the schedule as soon as possible and at the latest within 7 days. The schedules shall be issued by the Builder in writing not later than 30 days after the Date of Contract.

(a) In accordance with the construction schedule of the Vessel and provisions in the Specifications, the Builder shall submit to the Buyer 3 copies of the plans and drawings for its approval at the address set forth in Article XVII hereof. The Builder shall send a notice by telefax (or by such other electronic means as the parties may agree) to the Buyer giving the date of despatch of such plans and drawings, and the Buyer shall confirm receipt of such plans and drawings. The Buyer shall within 14 Working Days after receipt thereof, send to the Builder 1 copy of such plans and/or drawings with Buyer's approval or comments (if any) written thereon. Such comments shall be as complete as possible.

(b) If Buyer's comments on the plans and drawings are unclear or unspecified, the Builder may by fax notice to the Buyer request a clarification, and failure by the Buyer or its Representative to respond to this request within 3 Working Days of receipt of such notice shall entitle the Builder to place its own reasonable interpretation on such remarks, comments or amendments when implementing the same.
(c) If the Builder and the Buyer fail to agree whether such comments or remarks are of such a nature or extent as to constitute modification or change under Article VI hereof, the Builder shall nevertheless proceed with the construction based on the Buyer's comments if so requested by the Buyer. If it is established by mutual agreement or by arbitration as per Article XIX, that the comments, remarks or amendments constitute a modification or change under Article VI, the Builder shall be entitled to an appropriate adjustment of the Contract Price, Delivery Date and/or the characteristics of the Vessel. Article VI clause 1, first paragraph to apply.

(d) In the event that the Buyer fails to return the plans and drawings to the Builder within the time limit specified in (a) above, the Builder shall by fax to the Buyer request the return of same within 3 days, failing which the Builder shall have the right to consider such plans and drawings as approved by the Buyer.

(e) The Buyer's approval or non approval of drawings shall not affect any of the Builder's obligations hereunder, including the Builder's obligation to deliver the Vessel fully approved by the Regulatory Bodies, or the Builder's responsibility under Article X hereof.

2. Appointment of Buyer's Representative
The Buyer may send to and maintain at the Builder's yard, at the Buyer's own cost and expense, one or more representatives, of whom only one shall be duly authorised in writing by the Buyer (herein called the "Representative") to act on behalf of the Buyer in attending the tests and inspections relating to the Vessel, its machinery, equipment and outfitting, and in any other matters for which he is specifically authorised by the Buyer. Unless otherwise advised by the Buyer in writing, the Representative shall have no general authority to change the Contract or to approve plans and drawings. The Representative shall, however, be authorised to sign Change Order Forms (Article VI clause 1) on behalf of Buyer, unless otherwise advised by Buyer in writing. The Representative shall have as many assistants as he may require, but any and all approvals must be given by the Representative and be in writing.

3. Inspection by Representative
The inspection of the Vessel, its machinery, equipment and out fittings shall be carried out by the Classification Society, Regulatory Bodies and the Representative and/or his assistants throughout the entire period of construction, in order to ensure that the Vessel is duly constructed in accordance with the Contract.

Whilst the Vessel is under construction and until Delivery and Acceptance, the Representative and his assistants shall during all working hours be given free access to the Vessel, its engines and accessories, and to any other place where work is being done, or materials are being processed or stored in connection with the construction of the Vessel, including the yards, workshops and offices of the Builder, and the premises of the Subcontractors of the Builder who are doing work or storing materials in connection with the Vessel's construction.
The Representative and his assistants shall, during the construction of the Vessel, have the right to attend all tests, trials and inspections undertaken in respect of the Vessel, its machinery, equipment and outboardings. The Builder shall give reasonably notice in advance of any such tests and inspections to the Representative to enable him or any of his assistants to attend. Failure of the Representative or his assistant(s) to be present at such tests and inspections after due notice to him as above provided shall be deemed to be a waiver of his right to be present.

The Builder shall seek to arrange with its Subcontractors that the Representative or his assistants have a similar right of inspection and supervision in respect of the work performed by the Subcontractors.

In the event that the Representative discovers any design, construction or material or workmanship which in his opinion does not conform to the requirements of the Contract, the Representative shall as soon as possible advise the Builder of such non-conformity. Unless the Builder agrees to rectify the matter, a notice thereof (which may be included in minutes of meeting or similar) shall be given to the Builder.

Inspection as described in this clause shall not constitute any changes in the Builder's obligation under the Contract.

4. Facilities
The Builder shall furnish the Representative and his assistant(s) with adequate office space, and such other reasonable facilities according to the Builder's practice at, or in the immediate vicinity of, the shipyard as may be necessary to enable them to effectively carry out their duties.

5. Representative - Division of Liability
The Representative and his assistant(s) shall at all times be deemed to be the employees of the Buyer and not of the Builder. The Builder shall be under no liability whatsoever to the Buyer, the Representative or his assistant(s), and the Buyer shall keep the Builder harmless, for personal injuries, including death, suffered during the time when the Representative or his assistant(s) are on the Vessel, or within the premises of either the Builder or its Subcontractors or are otherwise engaged in or about the construction of the Vessel, unless, however, such personal injuries, including death, were caused by gross negligence of the Builder, or any of its employees or agents or Subcontractors. Nor shall the Builder be under any liability whatsoever to the Buyer, the Representative or his assistant(s) for damage to, or loss or destruction of property of the Representative or his assistant(s) unless such damage, loss or destruction is caused by gross negligence of the Builder, or any of its employees or agents or Subcontractors.

The Buyer, the Representative and his assistant(s) shall be under no liability whatsoever to the Builder, the Builder's employees or Subcontractors, and the Builder shall keep the Buyer, the Representative or his assistant(s) harmless, for personal injuries, including death, unless such personal injuries including death were caused by gross negligence of the Representative or his assistant(s). Nor shall the Buyer be under any liability whatsoever to the Builder, the Builder's employees or Subcontractors for damage to, or loss or destruction of property of the Builder, its employees or Subcontractors unless such damage, loss or destruction were caused by gross negligence of the Representative or his assistant(s).
6. Responsibility of Buyer
The Buyer shall undertake and assure that the Representative and his assistant(s) shall carry out their duties hereunder in accordance with normal shipbuilding practice and in such a way as to avoid any unnecessary increase in building cost, delay in the construction of the Vessel, and/or any disturbance to the construction schedule of the Builder.

The Builder has the right to request the Buyer to replace the Representative or any of his assistant(s) who is deemed by the Builder to be unsuitable and unsatisfactory for the proper progress of the Vessel's construction. The Buyer shall investigate the situation by sending its representative(s) to the Shipyards if necessary, and if the Buyer considers that such Builder's request is justified, the Buyer shall effect such replacement as soon as convenient.

ARTICLE VI MODIFICATIONS AND CHANGES

1. Modification of Specifications
The work to be performed by the Builder under the Contract can be modified or changed by request from the Buyer provided that such modifications or changes will not adversely affect the Builder's other commitments, and provided further that the parties shall first agree to possible adjustment in Contract Price, the Delivery Date and such other terms and conditions occasioned by or resulting from such modification or change. Such agreement shall be effected either by way of exchanges of letters duly signed by authorised representatives of the parties, or by signed change order form, or by minutes of meeting or similar signed by authorised representatives of the parties, which shall constitute the necessary amendments to the Contract. Possible increase or decrease in the Contract Price shall be calculated in accordance with unit prices (exclusive of administration costs) or budget prices if such prices are available, otherwise as per the Builder's customary price for such work.

If modifications or changes are made without such written agreement as aforesaid, or if the Builder fails to notify the Buyer in writing without undue delay that there are modifications or changes which will require an increase in the Contract Price, delayed delivery, changes in the Vessel's characteristics or other changes in the Contract, the Builder will not be entitled to any increase in the Contract Price, adjustment of Delivery Date or other adjustments, and the Contract will remain unchanged.

The Builder is entitled to make minor modifications or changes to the Specifications, if found necessary to suit the Builder's local conditions or facilities, the availability of materials and equipment, the introduction of improvement methods or otherwise, provided that the Builder shall first obtain the Buyer's approval, which shall not be unreasonably withheld or delayed.

2. Change in Rules and Regulations
If, after the Date of Contract, there are any changes in the rules, regulations and requirements (including official changed application of the rules) of Class or Regulatory Bodies, the following shall apply:
(a) The Builder shall as soon as possible notify the Buyer thereof, and the Builder shall be obliged - except as otherwise agreed - to carry out the required changes in accordance with the provisions set out below, provided always that any changes in such rules, regulations or requirements which are published on or before the Date of Contract, and which apply mandatory to the Vessel on or before the Contract Delivery Date shall not give to the Builder a right to claim any adjustments of the price, delivery date or other contract terms.

(b) If such change is or will be compulsory for the Vessel, the Builder shall incorporate such alteration or change into the construction of the Vessel, unless otherwise instructed by the Buyer. The parties shall endeavour to agree on such adjustments to the Contract as set out in clause 1 above, failing which, the changes to the Contract shall be decided by arbitration in accordance with Article XIX.

(c) If such change is not or will not be compulsory for the Vessel, but the Buyer nevertheless desires to incorporate such change, this shall be considered a change or modification, as provided for in clause 1 of this Article VI.

3. Substitution of Materials
If any of the materials required by the Specifications or the Maker's List cannot be procured in time or are in short supply, the Builder may, in order to maintain the Delivery Date and subject to the Buyer's approval, which shall not unreasonably be withheld and which shall be provided without undue delay, supply other materials capable of meeting the requirements of the Classification Society or Regulatory Bodies. No extra charges shall be made to the Buyer and, except that any savings shall be credited to the Buyer, the Contract shall remain unaltered.

ARTICLE VII TEST AND TRIALS

1. Notice
The Builder shall before delivery, by not less than 7 days written notice to the Buyer, notify the time and place for the sea trial for the Vessel. The Buyer shall have its Representative onboard the Vessel to witness the sea trial. Failure by the Representative to attend at the sea trial without any valid reason despite a notice to the Buyer as aforesaid, shall be deemed to be a waiver by the Buyer of its right to be present.

The Builder may after due notice conduct the sea trial without the Representative of the Buyer being present, provided a representative of the Classification Society is present, and in such case the Buyer shall be obligated to accept the results of the sea trial on the basis of a certificate of the Builder confirmed by the Classification Society and/or Regulatory Bodies stating the results of the sea trial.

2. Weather Conditions
The sea trial shall be carried out under weather conditions as set out in the Specifications. Any delay in delivery caused by delay of the sea trial due to unfavourable weather conditions shall be considered Permissible Delay.
3. **How conducted**
The sea trial shall be carried out in the presence of representatives from the Classification Society and/or Regulatory Bodies, and shall be conducted in the manner described in the Specifications, and shall be sufficient in scope and duration to enable all parties to verify and establish that all elements are functioning in accordance with the Contract.

All expenses in connection with the sea trial shall be for the account of the Builder, including without limitation all necessary crew.

4. **Method of Acceptance or Rejection**
   
   (a) Upon completion of the sea trial and when the trial results are available, and if the Builder considers the results thereof demonstrates that the Vessel conforms with the Contract, the Builder shall immediately give the Buyer a written notice of completion stating when the Vessel is ready for delivery. The Buyer shall within 48 consecutive hours after receipt of this notice and the test results notify the Builder in writing of its acceptance or rejection of the Vessel.

   (b) If the results of the sea trial demonstrate that the Vessel or any part or equipment thereof does not conform to the requirements of the Contract, or if the Buyer for other valid reasons rejects the Vessel, the Builder shall take all necessary steps to rectify such nonconformity. If necessary the Builder shall for its own account carry out a further sea trial in accordance with Article VII to ascertain that the Vessel complies with the terms of the Contract. Upon demonstration by the Builder that the deficiencies have been corrected, a notice thereof and of the readiness of the Vessel for delivery, shall be given to the Buyer, who shall then within 48 consecutive hours after receipt of such notice together with the new test results notify the Builder of its acceptance or rejection.

   (c) If the Buyer for any reason rejects the Vessel, the Buyer shall in its notice of rejection give particulars of its reason therefore in such detail as can be reasonably required.

   (d) The Buyer shall not be obliged to take delivery of the Vessel if it is not fully in conformity with the Contract, or if there are any conditions or recommendations imposed by the Classification Society and/or Regulatory Bodies. However, if the deficiencies or the conditions/recommendations are of minor importance, and the Builder is unable to rectify the matter within a reasonable time, the Builder may nevertheless require the Buyer to take delivery of the Vessel, provided:

   (i) the Builder undertakes for its own account to remedy the deficiency or fulfil the requirement as soon as possible, and

   (ii) the Builder shall indemnify the Buyer for any loss incurred as a consequence thereof, including loss of time

   (e) If the Builder disputes the rejection by the Buyer, the case shall be submitted for final decision by arbitration in accordance with Article XIX hereof.
5. Effect of Acceptance
Acceptance of the Vessel as provided above, shall be final and binding and shall preclude the Buyer from refusing formal delivery on basis of any alleged deficiency in any part or parts of the Vessel which were tested during the sea trial, provided all other procedural requirements for delivery have been met.

6. Disposition of Surplus Consumable Stores
Any fuel oil, unused lubricating oil, grease, fresh water or other consumable stores furnished by the Builder for the sea trial, remaining onboard the Vessel at the time of delivery shall be purchased by the Buyer from the Builder at the original net purchase price thereof (Builder to provide supporting invoices), and payment therefore shall be effected by the Buyer on Delivery and Acceptance of the Vessel.

ARTICLE VIII DELIVERY DATE AND DELIVERY

1. Time and Place
The Vessel shall be delivered at the Builder’s yard (see Article II) or in the vicinity thereof free and clear of all liens, claims, mortgages and other encumbrances in a clean and seaworthy condition, ready for service, on _____________________ , 20_____ (the Contract Delivery Date), except that in the event of net delays in the construction of the Vessel or any performance required under the Contract due to causes which under the terms of the Contract permit postponement of the Delivery Date (Permissible Delay), the Delivery Date shall be postponed accordingly. Unless otherwise agreed, the Vessel shall not be delivered earlier than maximum 2 weeks prior to the Contract Delivery Date.

2. When and how effected
Provided that the Buyer has fulfilled all of its obligations under the Contract, delivery of the Vessel shall be effected forthwith upon acceptance thereof by the Buyer by the concurrent delivery by each of the parties hereto to the other of a Protocol of Delivery and Acceptance signed by each party. Both parties have the right to make reservations or notes in the Protocol, or in a separate document signed by the parties "for acknowledgement of receipt only".

3. Documents to be delivered to the Buyer
Upon delivery and acceptance of the Vessel, the Builder shall provide and deliver to the Buyer at its expense the following documents, which shall accompany the Protocol of Delivery and Acceptance:

(a) Protocol of Trials made pursuant to the Specifications.

(b) Protocol of Inventory and Equipment of the Vessel, including spare parts and the like, all as specified in the Specifications.
(c) Protocol of Surplus Consumable Stores referred to under Article VII hereof which are payable by the Buyer to the Builder.

(d) Drawings and Plans pertaining to the Vessel together with all necessary instruction manuals, as further stipulated in the Specifications.

(e) All Certificates including the Builder's Certificate required to be furnished upon Delivery and Acceptance of the Vessel pursuant to the Contract and the Specifications. It is agreed that if, through no fault on the part of the Builder, the Classification Certificate and/or other required certificates are not available at the time of delivery, provisional certificates shall be accepted by the Buyer, provided that the Builder at its expense shall furnish the Buyer with final certificates as promptly as possible. If final certificates are not provided or obtained within a reasonable time, the Builder shall compensate the Buyer for any damages, losses and extra expenses caused thereby.

(f) Declaration of Warranty by the Builder that the Vessel is free and clear of any liens, claims, charges, mortgages and other encumbrances.

(g) Commercial invoice

(h) Bill of Sale or other relevant document that certifies that the title of the Vessel passes to the Buyer.

4. Title and Risk
Title to and risk of loss of or damage to the Vessel shall pass to the Buyer upon Delivery and Acceptance thereof by the Buyer.

5. Removal of Vessel
The Buyer shall take possession of the Vessel immediately upon Delivery and Acceptance thereof, and shall remove the Vessel from the premises of the Builder within three (3) days after the Delivery and Acceptance as aforesaid. If the Buyer does not remove the Vessel within the said period, the Buyer shall thereafter pay to the Builder reasonable mooring charges for the Vessel.

ARTICLE IX        DELAYS AND EXTENSION OF TIME FOR DELIVERY
(FORCE MAJEURE)

1. Cause of Delay
   (a) In case of Force Majeure Delay, the Delivery Date shall be postponed by the number of days corresponding to the not delay in delivery as set out below. It shall be considered a Force Majeure Delay if the Delivery and Acceptance of the Vessel is prevented or delayed as a consequence of extraordinary circumstances or events beyond the Builder's control, such as:
Acts of God; acts of princes and rulers; requirements of government authorities: war or warlike condition, civil commotion or riots, mobilisation; sabotage; strike or lockout (except local labour disturbances at the Builder's yard) quarantines; flood, typhoons, hurricanes, storms or other extraordinary weather conditions not included in normal planning; earthquakes, tidal waves, landslide; fires, explosions, collisions or stranding; import or export bans or restrictions; prolonged failure, shortage or restriction of electrical current, oil or gas;

and/or: any other extraordinary events beyond the control of the Builder;

and/or: by late delivery of major parts or of important performance by Subcontractor(s) where the cause of delay would have been recognised as Force Majeure Delay under this Article IX if it had affected the Builder, provided that the Builder has shown due diligence in its choice of Subcontractor and ensured a reasonable margin for delays, so that at the time of ordering same it could reasonably be expected by the Builder to be delivered in time;

and/or: delays in the Builder's other commitments resulting from Force Majeure as herein described directly causing delay of the Builder's performance hereunder;

Provided always:
that there shall be no Force Majeure Delay if such delay could reasonably have been foreseen or anticipated by the Builder on the Date of Contract, or that it could have been prevented or overcome by the exercise of due diligence by the Builder, its servants, employees or Subcontractors.

(b) The provisions under sub-clause (a) above apply whether or not the Force Majeure occurs after the Contract Delivery Date.

(c) The Builder is obliged to do its utmost to avoid or minimise the Force Majeure Delay.

2. Notice of delay
(a) Within 10 days after the Builder becomes aware or should have become aware of any cause of delay as aforesaid, on account of which the Builder will claim that it is entitled under the Contract to postpone the Delivery Date, the Builder shall notify the Buyer in writing or by telefax, confirmed by registered mail, of the date such cause of delay commenced. Likewise, within 10 days after the date such cause of delay ended, the Builder shall notify the Buyer in writing or by telefax, confirmed by registered mail, of the date when such cause of delay ended.

Failure by the Builder to give such notices as aforesaid shall prevent the Builder from subsequently claiming Force Majeure Delay on account of such circumstances.

(b) The Builder shall notify the Buyer of the period, by which the Delivery Date is postponed by reason of such cause of delay, with all reasonable despatch after it has been determined. Failure by the Buyer to object to the Builder's claim for postponement of the
Delivery Date within 10 days after receipt by the Buyer of such notice shall be deemed to be a waiver by the Buyer of its right to object to such postponement of the Delivery Date for the net delay caused by the Force Majeure event, provided always that the Builder's information in respect of the cause of the delay and the consequences thereof were correctly stated in the notice.

3. **Permissible Delay**
Delays on account of such causes as specified in this Article IX, Clause 1 and in Article VI hereof and any other delays caused by non fulfilment by the Buyer of the Buyer's obligation hereunder or any other delays of a nature which under the terms of this Contract permit postponement or extension of the Delivery Date shall constitute Permissible Delay and shall extend the Delivery Date for any net delay caused thereby.

**ARTICLE X**

**WARRANTY OF QUALITY**

1. **Extent of Builder's responsibility**
Save as provided for below, and provided always that the deficiencies have been rectified within a reasonable time, the Builder shall have no responsibility for defects or the consequences thereof (including loss of profit and loss of time) discovered after the Delivery and Acceptance of the Vessel.

2. **Guarantee**
The Builder undertakes to repair and rectify at its own cost and expense and free of charge to the Buyer, any defects - including latent defects or deficiencies - concerning the Vessel or parts thereof, which are caused by faulty design, defective material and/or poor workmanship on the part of the Builder, its servants, employees or Subcontractors, but excluding defects arising after delivery due to normal wear and tear or improper handling of the Vessel or caused or aggravated by omission or improper use or maintenance of the Vessel on the part of the Buyer, its servants or agents and excluding Buyer's Supplies.

The Builder's liability as stated herein shall terminate if the defects as aforesaid have not been discovered within the Guarantee Period (of 12 months or such other period as the Builder and Buyer may agree) unless otherwise provided for in the Contract.

Any such defects shall be notified to the Builder as soon as possible after discovery, and at the latest within 8 days after expiry of the Guarantee Period. Such notice shall include particulars of the deficiency in such detail as can reasonably be expected.

If defects could only be discovered on dry docking the vessel, notice of such defect(s) need not be tendered before the Vessel is in the dock, but must be tendered before the Vessel leaves the dry-dock.

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The Guarantee Period will be extended in the following cases:

(a) After repair and rectification under this Article X has been carried out, there will be a further period of guarantee of .......... months for the repaired and rectified items. The further Guarantee Period shall, however, not be less than the original Guarantee Period for any such item. Such additional guarantee period will be granted on all remedial works notified by the Buyer to the Builder in the Guarantee Period, or any extension thereof. The Buyer shall, however, not be entitled to such additional guarantee for deficiencies caused by poor workmanship if the guarantee work has not been performed by the Builder or their Subcontractors.

(b) If as a result of guarantee works the Vessel has been lying idle in the Guarantee Period for an accumulated period of 30 days or more, the Guarantee Period shall be extended by the total number of days the Vessel has been lying idle, whether or not other work is carried out during such period.

3. Rectification of Defects
If the Builder is liable for defects as aforesaid, its obligations shall be as follows:

(a) The Builder shall rectify the defect or cause the defect to be rectified at its own costs. Provided the defect is remedied within a reasonable time, the Builder shall have no other liability for any damage or loss caused as a consequence of the defect, except for repair or renewal of the Vessel's part/parts that have been damaged as a direct and immediate consequence of the defect without any intermediate cause, and provided such part or parts can be considered to form a part of the same equipment or same system. The Builder shall in any event not be liable for any consequential losses as stated herein over and above ........................................ (insert a specific amount or a percentage of the Original Contract Price).

(b) The repairs, replacements and/or rectifications shall be made at the Builder's yard. However, the Buyer may, after having notified the Builder in writing, cause the necessary repairs, replacements and/or rectifications to be carried out elsewhere. In such case, the Builder shall at its own costs be entitled to forward necessary replacement parts or materials.

The Builder's liability shall in such case be limited to pay the cost of repairs including travelling and forwarding expenses (unless paid by Subcontractors), but limited to the price of the work which the Builder would normally charge at its yard.

In any case, the Builder shall co-operate with the Buyer to find proper solutions to rectify the deficiency.

(c) The Vessel shall in any case be taken at the Buyer's cost and expense to the place elected for repair and modification, ready for such repairs and modifications. Docking expenses and access works being necessary for performance of the guarantee work shall be for the Builder's account.
(d) The Builder shall have the ownership of replaced parts. The Buyer will return such parts to the Builder at Builder's request and at Builder's expense. If the Builder fails to present such request within a reasonable time, the Buyer has no responsibility for the replaced parts.

4. Subcontractors' Guarantees
The Builder shall - upon the Buyer's request - assign to the Buyer any rights the Builder may have against any Subcontractors, including any right to pursue any claim under the relevant subcontract. This provision shall in no way alter or diminish the Builder's obligations under the Contract.

The Builder shall endeavour to have provisions in the subcontracts whereby the Buyer may claim against the Subcontractor directly.

5. Assignment
If the Buyer sells the Vessel during the Guarantee Period and wishes to assign its rights hereunder, such assignment shall be subject to the Builder's consent, which shall not be unreasonably withheld or delayed.

6. The Guarantee Engineer
The Builder shall have the right and the Buyer may require the Builder to appoint a Guarantee Engineer to serve onboard the Vessel for such portion of the guarantee period as the Builder or Buyer may decide. The Buyer and its employees shall provide the Guarantee Engineer with full co-operation in carrying out his duties. The Buyer shall accord the Guarantee Engineer treatment and accommodation comparable to the Vessel's Chief Engineer, at no cost to the Builder. The Buyer shall pay to the Builder the same wages as a European Chief Engineer as compensation for part of the cost and charges to be borne by the Builder in connection with the Guarantee Engineer, and also direct expenses of repatriation by air to the Guarantee Engineer's home country.

The Guarantee Engineer shall, at all times and in all respects, be deemed to be the employee of the Builder. The Buyer shall be under no liability whatsoever to the Builder or to the Guarantee Engineer for personal injuries, including death, suffered by the Guarantee Engineer during the time when he is on board the vessel, unless such personal injuries, including death, were caused by gross negligence of the Buyer, or of any of its employees or agents. Nor shall the Buyer be under any liability whatsoever to the Guarantee Engineer for damage to or loss or destruction of property of the Guarantee Engineer, unless such damage, loss or destruction is caused by gross negligence of the Buyer, or of any of its employees or agents. The Guarantee Engineer shall if requested sign a Letter of Indemnity required by the Buyer.
ARTICLE XI  OWNERSHIP, RISK AND INSURANCE

1. Ownership and Registration
The Buyer shall become the owner of the Vessel upon Delivery and Acceptance thereof.

The Builder may mortgage the Vessel and its materials (excluding Buyer’s Supply if possible) as security for the construction financing, including the provision of refund guarantee(s), for the Vessel. The Buyer shall if necessary give its consent for that purpose. Any such mortgage shall be cancelled and deleted from the relevant registry at the latest on Delivery and Acceptance.

Any materials, parts, machinery or equipment purchased by the Builder and appropriated for the Vessel which are not utilised for the Vessel shall remain the property of the Builder after Delivery and Acceptance of the Vessel.

If the Builder’s yard is in Norway, the Buyer may register the Contract and the Vessel under construction in accordance with the rules of the Norwegian Maritime Act with the Builder as title holder.

2. Risk and Insurance
(a) Until Delivery and Acceptance, the Builder bears the risk of loss of or damage to the Vessel, materials, parts, machinery, boilers and equipment.

(b) The Builder will arrange and pay for building insurance (which shall include Buyers Supplies) with underwriters acceptable to the Buyer on customary "All Risk" terms. The insurance shall comprise necessary fire and transport insurance of material and equipment which the Builder procures from Subcontractors. Except as otherwise agreed the Builder is not obliged to insure the transport of Buyer's Supplies.

The insured amount shall as a minimum cover the aggregate of the instalments paid by the Buyer pursuant to Article III from time to time together with interest thereon and the value of any Buyer's Supplies.

By paying extra insurance premiums the Buyer may require that the building insurance is increased to cover the rebuilding value at any time.

The Buyer shall receive copies of the policies.

(c) (i) The insurance policies shall be taken out in the joint names of the Builder and the Buyer.

(ii) The Builder may collect directly from the insurance company any sums in respect of its own losses.

(iii) In the event of partial damage which is to be repaired and which is recoverable under the insurance policies, the Builder may collect advance instalments under the policy payable as the repair work progresses.
The proceeds recovered under the insurance policies shall be applied to repairs satisfactory to the Class and Regulatory Bodies, and the Buyer shall accept the Vessel under the Contract if completed thereafter in compliance with the Contract.

(iv) If prior to its delivery the Vessel sustains such heavy damages that the Builder has no obligation to rebuild the Vessel, or if the parties and the insurance company agree on total / constructive / compromised total loss then the proceeds under the insurance shall be paid as follows:

(a) The Buyer will recover direct from the insurance company an amount equal to the instalments paid together with interests in accordance with the terms of the Contract.

The Buyer will further collect directly from the insurance company any extra proceeds recoverable under an insurance policy taken out for Buyer's account in accordance with Article XI clause 2 (b) above.

The Buyer shall further collect payment for Buyer's Supplies covered by the insurance policies.

(b) The remaining part of the insurance proceeds shall be paid to the Builder.

(c) Notwithstanding the above; should the parties agree to continue with the Contract and rebuild the Vessel, the proceeds of the insurance policies shall be paid to the Builder as set out in this Article XI clause 2 (c) (iii) above. Such contract will include a possible revised Delivery Date.

(d) The Builder shall for its own account insure the Vessel on terms that are normally used for insuring vessels under construction at Norwegian yards. This building insurance shall be maintained until the Vessel is delivered to and taken over by the Buyer.

(e) War risk insurance for the Vessel with accessories shall be taken out only at the request of the Buyer and for its account.

ARTICLE XII DEFAULT PROVISIONS

1. **Builder's Default - Cancellation by Buyer**

The payment of any sums under this Contract by the Buyer prior to delivery of the Vessel shall be by way of advances to the Builder. In the event that the Buyer shall exercise its right of cancelling the Contract under and pursuant to any of the provisions of the Contract specifically permitting the Buyer to do so, then the Buyer shall notify the Builder in writing or by telefax confirmed by registered mail, and such cancellation shall be effective as of the date notice thereof is received by the Builder.
Upon such cancellation the Builder shall promptly either accept the notice of cancellation, or declare its intention to dispute the same under the provisions of Article XIX hereof.

Upon cancellation the Builder shall refund all sums paid by Buyer to the Builder under Article III hereof, including interest thereon at the rate of \ldots\ldots\% (per cent) per annum from the date of payment to the date of refund. The Builder shall also return Buyer's Supplies, or if they cannot be returned, the Builder shall pay to the Buyer an amount equal to the Buyer's costs for such equipment.

Save for the Builder's obligation to refund amounts as set out above, the Builder shall have no liability for any other loss suffered by the Buyer caused by a cancellation pursuant to this Article XII, clause 1, first paragraph.

2. **Buyer's Default - Disputes regarding Payment**
   
   (a) If the Buyer fails to make payments provided for in Article IV clause 3, the Builder shall by written notice or by telefax confirmed by registered mail to the Buyer request payment of the unpaid amount. If the amount has not been paid within 7 Banking Days from receipt of such notice, the Builder may postpone the commencement of or stop the work on the Vessel and enforce payment of the claim, the net loss of time caused thereby being Permissible Delay under the Contract.

   (b) If 21 days have elapsed from the receipt of the above notice without the Buyer having paid or provided acceptable security, the Builder may cancel the Contract.

   In either case the Builder may claim compensation for losses caused thereby.

Notwithstanding the above, if there is a dispute in respect of the Buyer's payment obligation, the Builder has no right to postpone the commencement or stop the work or cancel the Contract, if the Buyer provides security acceptable to the Builder for the disputed unpaid amount.

3. **Insolvency**

   If proceedings are commenced by or against the Buyer or Builder for winding up, dissolution or reorganisation (except in case of merger) or for the appointment of a receiver, trustee or similar officer, or if bankruptcy is opened, the party who is not subject to such proceedings shall have the right to cancel this Contract.

   Upon such cancellation, the Builder shall refund all sums paid by Buyer to the Builder under Article III hereof, including interest thereon at the rate of \ldots\ldots\% (per cent) per annum from the date of payment to the date of refund. The Builder shall also return Buyers Supplies, or if they cannot be returned, the Builder shall pay to the Buyer an amount equal to the Buyer's costs for such equipment.

   Save as for the Builder's obligation to make refund as set out above, neither the Builder nor the Buyer shall have any liability for losses suffered by the other party caused by the cancellation pursuant to this Article XII, clause 3.
ARTICLE XIII  ASSIGNMENT

Neither of the parties hereto shall assign the Contract to a third party unless prior consent of the other party is given in writing, such consent not to be unreasonably withheld.

The Contract shall endure to the benefit of and shall be binding upon the lawful successors or the legitimate assigns of either of the parties hereto.

ARTICLE XIV  TAXES AND DUTIES

1. Taxes and Duties in the country of the Builder
The Builder shall bear and pay all taxes and duties imposed in the country of the Builder in connection with the execution and/or performance of the Contract, excluding any taxes and duties imposed in the country of the Builder upon the Buyer’s Supplies.

2. Taxes and Duties outside the country of the Builder
The Buyer shall bear and pay all taxes and duties imposed outside the country of the Builder in connection with the execution and/or performance of the Contract, except for taxes and duties imposed upon those items to be procured by the Builder for construction of the Vessel.

ARTICLE XV  PATENTS, TRADEMARKS, COPYRIGHTS

Machinery and equipment of the Vessel may bear the patent numbers, trademarks or trade names of the manufacturers.

The Builder shall defend and hold harmless the Buyer from patent, trade mark, copyright or other intellectual property liability or claims of any nature or kind, including costs and expenses for, or on account of any intellectual property rights made or used in the performance of the Contract, or the Buyer’s use of the Vessel, and also including costs and expenses of litigation, if any.

Nothing contained herein shall be construed as transferring any patent or trademark rights or copyright in equipment covered by the Contract, and all such rights including the design of the Vessel are hereby expressly reserved to the true and lawful owners thereof.

The Builder’s warranty hereunder does not extend to the Buyer’s Supplies.
ARTICLE XVI     BUYER'S SUPPLIES

1. Responsibility of Buyer
(a) The Buyer shall, at its own risk, cost and expense, supply and deliver to the Builder all of the items to be furnished by the Buyer, as specified in the Specifications and as defined in Article I, at warehouse or other storage facility of the Builder in a proper condition ready for installation in or on the Vessel, in accordance with the time schedule designated and advised by the Builder to the Buyer.

(b) In order to facilitate installation by the Builder of the Buyer's Supplies in or on the Vessel, the Buyer shall furnish the Builder with necessary specifications, plans, drawings, instruction books, manuals, test reports and certificates required by all applicable rules and regulations. If so reasonably requested by the Builder, the Buyer shall without any charge to the Builder, provided always that such installation is not Builder's responsibility pursuant to the Specifications, cause the representatives of the manufacturers of the Buyer's Supplies to assist the Builder in installation thereof in or on the Vessel and/or to carry out installation thereof by themselves or to make necessary adjustments at the Builder's yard.

(c) Any and all of the Buyer's Supplies shall be subject to the Builder's reasonable right of rejection, when and if they are found to be unsuitable or in improper condition for installation.

(d) Should the Buyer fail to deliver any of the Buyer's Supplies within the time designated, the Delivery Date shall be automatically extended for the period by which the failure actually caused a delay in the delivery of the Vessel.

(e) If delay in delivery of any of the Buyer's Supplies exceeds thirty (30) days, then the Builder shall be entitled to proceed with construction of the Vessel without installation thereof in or on the Vessel as hereinabove provided, and the Buyer shall accept and take delivery of the Vessel so constructed, unless such delay is caused by Force Majeure in which case the provisions of Article XVI, 1(d) shall apply.

2. Responsibility of Builder
The Builder shall be responsible for storing and handling with due diligence the Buyer's Supplies after delivery thereof at the Builder's yard, and shall, at its own cost and expense, install them in or on the Vessel, unless otherwise provided herein or agreed by the parties hereto, provided always, that the Builder shall not be responsible for the quality, efficiency and/or performance of any of the Buyer's Supplies.
ARTICLE XVII NOTICES

1. Address
Any and all notices and communications in connection with the Contract shall be addressed as follows:

To the Buyer:
Telephone:
Telefax:
E-mail:

To the Builder:
Telephone:
Telefax:
E-mail:

2. Language
Any and all written notices and communications in connection with the Contract shall be in the English language.

ARTICLE XVIII ENTIRE CONTRACT
The Contract contains the entire contract and understanding between the parties hereto and supersedes all prior negotiations, representations, undertakings and agreements on any subject matter of the Contract.

ARTICLE XIX GOVERNING LAW, DISPUTE AND ARBITRATION

1. Governing Law
The parties hereto agree that the validity and interpretation of the Contract and of each Article and part thereof shall be governed by the laws of the Kingdom of Norway.

2. Arbitration
Any dispute between the parties concerning the Contract shall be settled with final and binding effect for both parties by Arbitration in .............................................., Norway. The parties will jointly appoint three arbitrators of which at least one shall be a lawyer admitted to practice in Norway. If the parties fail to agree on the choice of arbitrators within 14 days from presentation by either party of a written demand for arbitration, each party shall appoint one arbitrator, and the two so appointed shall appoint a third arbitrator who shall act as the chairman of the arbitration panel. If a party fails to appoint an arbitrator within 14 days after he has been requested to do so by the other party, the Chief Justice of the Appeal Court in the district where the Builder has its venue shall at the request of either party appoint the arbitrator(s).

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The Contract with its Appendices and Exhibits has been drawn up in two identical originals, one for each party.

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 Appendix I  Specification and list of plans and drawings

Additional Articles/clauses: