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# FINANCE OF VESSEL UNDER CONSTRUCTION

Secured by a mortgage on the construction

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# 1 INTRODUCTION

## 1.1 Statement of the problem

About 90% of world trade is carried by the international shipping industry. Without shipping, the import or export of affordable food and goods would not be possible.<sup>1</sup> Such a fact explaining why a vessel is tremendously valuable for and the main asset in the industry of shipping. Considering that a vessel is really valuable to the industry, most of the shipping industry players have the intention to acquire vessels for them to own.

There are several manners in order to acquire a vessel, and two of them at least are, either, by way of purchasing a second-hand vessel or ordering a new build vessel from a shipbuilder. In particular, by reason of developing the capability to carry new or different cargo as well as replacing aging or technologically obsolete vessels, shipping companies acquire vessels with build a new vessel.<sup>2</sup> However, building a vessel is a multi-million dollar investment on the part of shipowners,<sup>3</sup> thus it requires careful planning in terms of negotiation drafting both the shipbuilding contract and the related financing arrangements.<sup>4</sup>

As it is mentioned before that a new build vessel requires a big amount of investment, shipowners need a financing arrangement in order to enter into a shipbuilding contract with a shipbuilder to acquire a new vessel. Bank financing is the main source of capital to the shipping industry, providing flexible and low cost capital to the shipping companies.<sup>5</sup> Consequently, the bank requires shipowners to provide them with security to secure the loan.

The ship mortgage remains the cornerstone upon which financiers<sup>6</sup> build a ship finance transaction, despite the availability of different kinds of security.<sup>7</sup> In other words, ship or vessel

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<sup>1</sup> ICS (International Chamber of Shipping), "Explaining Shipping", accessed on 5 November 2021. <https://www.ics-shipping.org/explaining/>

<sup>2</sup> Manolis G. Kavussanos and Ilias D. Visvikis, *The International Handbook of Shipping Finance: Theory and Practice* (London: Palgrave Macmillan, 2016), 96.

<sup>3</sup> Shipowner is a person or legal entity that owns a vessel or a fleet of ships according to the law.

<sup>4</sup> Baris Soyer and Andrew Tettenborn, ed., *Ship Building, Sale and Finance* (Abingdon: Informa Law from Routledge, 2016), 212.

<sup>5</sup> Kavussanos and Visvikis, *The International Handbook of Shipping Finance*, 75.

<sup>6</sup> Financier, in this case, means a bank or financial institutional who grants loans to the shipowner or other borrower

<sup>7</sup> Stephenson Harwood, *Shipping Finance: A Practical Handbook*, (Woking: Globe Law and Business Ltd, 2018), 151.

mortgage is still the primary source of security for the financiers. It is also natural that the vessel to which the interest relates serves as security for the financiers.<sup>8</sup> In the case of a new build vessel, as Norwegian law allows it, usually the security is the vessel under construction itself.

Unprecedented numbers of shipowners have defaulted on their bank loans since the most recent global economic downturn began in 2008.<sup>9</sup> The downturn is, then, followed by an oil price downturn where between mid-2014 and early 2016, the global economy faced one of the largest oil-price shocks in modern history,<sup>10</sup> thus, many more shipowners have defaulted and the value of vessels in general dropped. Such a situation leaves the financier with a mortgage over a vessel under construction which is no longer at the same value as it was expected by the time of the delivery and by the time the mortgage needs to be enforced.

Those factors definitely impact the shipping finance scheme in particular which then rise several questions of to what extent the Norwegian law governs and protects the financier, as well as what are the rights of a financier in enforcing the mortgage over a vessel under construction. Further, the question is also related to risks that the financier may bear or face if they were financing a new build vessel where the main security of the loan is the vessel under construction itself.

## **1.2 Purpose and scope of the thesis**

The main purpose of this thesis is to view, analyze, and identify the legal aspect of the mortgage over a vessel under construction and the risks that the financier may bear in financing a new build vessel secured by such mortgage. The perspective will be from the perspective of the shipowners' financier since the majority of shipbuilding contracts employed worldwide are financed on commercial bank loans.<sup>11</sup> Legal problems or issues related to the shipping financing and mortgage over a vessel under construction will be discussed.

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<sup>8</sup> Thor Falkanger, Hans Jacob Bull and Lasse Brautaset, *Scandinavian Maritime Law: The Norwegian Perspective* (Oslo: Universitetsforlaget, 2017), 138.

<sup>9</sup> Soyer and Tettenborn, *Ship Building, Sale and Finance*, 149.

<sup>10</sup> World Bank, "Special Focus 1: With the Benefit of Hindsight: The Impact of the 2014-16 Oil Price Collapse", 51, accessed on 5 November 2021. <https://thedocs.worldbank.org/en/doc/910311512412250749-0050022017/original/GlobalEconomicProspectsJan2018TopicalIssueoilpricecollapse.pdf>

<sup>11</sup> Harwood, *Shipping Finance*, 55.

Further, some economic and financial aspects will also be presented, including the commercial side of the ship financing, as it is related to the technicality of the ship financing and on how risks are being determined. However, the focus of this work is on the legal aspect of the problem, so that the financial risks assessment will be treated as supplements. Moreover, this intends to have a practical character, so that analysis of historical and developments in the sphere of shipping, ship financing, and/or security law as well as pure theoretical researches will not be made.

Therefore, the scope of this thesis intends to cover the pre-delivery financing by means of commercial bank loans provided by a bank as the financier or lender to the shipowners, including the required mortgage and important provisions of the loan agreement that are required by the bank to be fulfilled by the shipowners.

### **1.3 Structure of the thesis**

This research paper starts with Chapter 1 which contains the introduction of the thesis covering the statement of the problem, scope, structure, and legal sources of the thesis.

Further, Chapter 2 gives a presentation of the shipbuilding contract in general, Norwegian Shipbuilding Contract 2000 in particular, and important provisions under SHIP 2000 that are related to the ship financing arrangements.

Furthermore, Chapter 3 discusses ship financing of a new build vessel from Norwegian law perspectives and also based on the best practices of the industry, and not to mention references to English law pertaining to insurance shall be elaborated as a supplement of NMIP. Risks involved in financing a shipbuilding project, assessments on how the financier mitigate its risks and consideration behind granting the loan will also be discussed. In this case, ship building contract will state that the vessel under construction is owned by the buyer. The financing that will be discussed herein is financing provided by the buyer's financier.

Chapter 4 shall present the generality of mortgage over a vessel and particularly over a vessel under construction provided by the buyer to its financier under Norwegian law. By only means of comparison, mortgages from English perspectives shall also be presented. Further, in this chapter, the procedures on mortgage registration shall be presented, including the effects of such registration for the bank as the mortgagee<sup>12</sup> and the presence of Ship Mortgage Deed as mortgage documents required in registration.

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<sup>12</sup> Mortgagee is the financier who receives a mortgage over vessel from the shipowner.

Chapter 5 discusses the bank's interest during the construction period, on delivery, and after delivery phase of the whole shipbuilding project. References to the common provisions of the loan agreement in financing market shall be made in order to elaborate the bank's interest in those phases of the shipbuilding project.

Chapter 6 concentrates the discussion on the enforcement of the mortgage over a vessel under construction, reasons why the bank decided to enforce the mortgage, and procedures on how the bank shall enforce the mortgage.

The final chapter, Chapter 7, shows the concluding remarks of the foregoing discussions.

#### **1.4 Legal sources**

Within the scope of the thesis, relevant Norwegian legislation will be analyzed without leaving outside the English law since most of standard form of contracts and marine insurances are based on English law. Thus, English law perspectives may be briefly touched upon. The rules of mortgaging a vessel and a vessel under construction will be the focus, including how the mortgage itself could be enforced by the mortgagee.

The primary legal sources of this work are the legislations followed by all documents applicable within the industry, including NMIP as the insurance condition which is the basis for any Norwegian insurances related to the mortgagee. English terms of insurance shall also be discussed, particularly on the mortgagees' interest insurance. Thus, in this thesis, standard shipbuilding contract, any related loan agreement documents, and mortgage deed shall be discussed.

As it is mentioned in the previous chapter that this thesis will be focusing on the Norwegian law perspectives, the most relevant standard contract form on shipbuilding to be discussed is the Norwegian Standard Shipbuilding Contract (SHIP 2000). SHIP 2000 has now been widely accepted and used internationally, not just in the Nordic countries, but also in Europe and parts of Asia, since it is considered as the most balanced standard shipbuilding contract internationally.<sup>13</sup>

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<sup>13</sup> Øystein Meland, *Shipbuilding Contracts: A Commentary Based on SHIP 2000* (Oslo: Universitetsforlaget, 2019), 5.

## 2 SHIPBUILDING AND SHIPBUILDING CONTRACT

### 2.1 Shipbuilding

Shipbuilding is distinguished into two sub-sectors, which are marine equipment and ship construction.<sup>14</sup> On the one hand, the marine equipment sub-sector is related to all products and services supplied for the building, conversion, and maintenance of ships.<sup>15</sup> On the other hand, ship construction entails the production of a new build vessel in order to meet the demand of a specific market in shipping industries. Such sub-sector is also including ship repair and conversion. In this work, the ship construction or new building project is the sub-sector that shall be discussed further.

The initiative for a new building project is generally taken by a shipowner.<sup>16</sup> As it is mentioned before, in Chapter 1.1, that by reason of increasing its capacity to carry out businesses in the market and also keeping the technology of the vessel up to date, shipowners would buy a new build vessel. Shipowners, then, engage with a shipyard that would be able to build a new vessel according to their needs and enter into a contract pertaining to the production and delivery of a new build vessel from the shipyard to the shipowner so called the shipbuilding contract.

#### 2.1.1 Ship building contracts

In legal terms, a contract to build a ship is a sales contract.<sup>17</sup> The shipbuilding contract defines the relationship between the shipowner as the buyer and shipbuilder as the seller by imposing the rights, responsibilities, rules of conduct and assignment of risks between both parties. The contract shall also state the owner of the vessel under construction during the construction period, either the buyer or the seller. This shall determine who is entitled to register the vessel under its name within the registry.

In practice, the shipbuilding contract is usually prepared based on a standard form of contract. Standard-form shipbuilding contracts have been used for decades,<sup>18</sup> and become "an agreed document" amongst the shipowners and shipbuilders or shipyards. There are many standard-form contracts available in the market, for example, the Shipbuilders' Association of Japan

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<sup>14</sup>Ecorys Research and Consulting, "Study on the Competitiveness of the EU eco-industry", 22, accessed on 5 November 2021.  
[https://ec.europa.eu/environment/enveco/eco\\_industry/pdf/report%20\\_2009\\_competitiveness\\_part1.pdf](https://ec.europa.eu/environment/enveco/eco_industry/pdf/report%20_2009_competitiveness_part1.pdf)

<sup>15</sup> *Ibid.*

<sup>16</sup> Meland, *Shipbuilding Contracts*, 17.

<sup>17</sup> Falkanger, Bull and Brautaset, *Scandinavian Maritime Law*, 98.

<sup>18</sup> Meland, *Shipbuilding Contracts*, 16.



standard-form contract from 1974 which is known as SAJ form and considered as ‘yard forms’ as it is more in favor of the builder.

Further, the Association of Western European Shipbuilders prepared the AWES form which was most recently revised in 1995. However, such form has never been widely accepted by shipowners as it is considered less comprehensive and more in favor of the builder.<sup>19</sup> In 2000, the Norwegian Standard Shipbuilding Contract (SHIP 2000)<sup>20</sup> came into use and is being considered more comprehensive and balanced.

## **2.2 Norwegian Shipbuilding Contract 2000 (SHIP 2000)**

SHIP 2000 is the first Norwegian standard shipbuilding contract written in English. As a Norwegian sales contract, the standard governing law of SHIP 2000 is Norwegian law with the arbitration in Norway as the choice of forum. The provisions of the Norwegian Sales of Goods Act therefore apply in principle to the contractual relationships, but it is a useful interpretative aid in case the contract is incomplete or a contractual provision is unclear to some extent.<sup>21</sup> It has been considered as the most balanced standard-form shipbuilding contract since it was discussed and agreed between the Norwegian Shipowners’ Association and the Norwegian Shipbuilders’ Sales and Marketing Organization and the Norwegian Shipbuilders’ Association. Thus, the use of SHIP 2000 has steadily increased all over Scandinavian countries.

Despite originating in Norway, it can no longer be seen as a purely ‘national’ standard-form contract.<sup>22</sup> It has been recognized and used outside of Scandinavia, including in Spain, Germany, Poland, and many other countries. Even more, before the release of SHIP 2000, it has been reviewed by English lawyers so in some cases, if the parties agreed to use English law, SHIP 2000’s provisions shall be able to accommodate the interpretation of a contract under English law.

### **2.2.1 Contract price and payment terms**

#### **Contract price**

Article III of SHIP 2000 – Price and payment terms sets the original contract price. The question of what is included in the original contract price has to be addressed in order to distinguish it from the terminology of ‘contract price’ within the shipbuilding contract. The original

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<sup>19</sup> Meland, *Shipbuilding Contracts*, 17.

<sup>20</sup> Annex 1.

<sup>21</sup> Falkanger, Bull and Brautaset, *Scandinavian Maritime Law*, 98.

<sup>22</sup> Meland, *Shipbuilding Contracts*, 17.

contract price, on the one hand, is one fixed total amount agreed for the vessel as described at the time of entering into the contract after considerable negotiations, where the parties' negotiation positions and particularly the current market is decisive.<sup>23</sup> On the other hand, the contract price or could also be called the final price, the adjusted original contract following any modifications and changes, where it is regulated under Article VI of SHIP 2000.

When it comes to determining the original contract price, the price will also include all aspects as outlined in the form, described in more detail in the specification.<sup>24</sup> But the main consideration in determining the price is the assumptions concerning scope, equipment and work available to the parties at the time of entering into the contract. As all aspects described in the specifications are also determining, specifications should form an integral part of the contract and are aimed namely to give and/or describe:<sup>25</sup>

- a detailed description of the vessel, hull, machinery and equipment;
- a detailed description of how the different parts are to be arranged, including to describe type, location and details concerning cargo equipment, details on piping, placement of tanks and etc.;
- materials to be used and work process to be done; and
- standards and requirements the vessel needs to comply with, both the classification society's requirements or regulatory bodies' e.g. the Load Line Convention, IMO rules, and the SOLAS convention.

In performing their works, the shipbuilder must calculate and take into consideration all matters related to the work and equipment that the shipbuilder undertakes to perform and deliver to the buyer when giving his price,<sup>26</sup> and specifications are also one matter that the shipbuilder needs to rely on in order to perform their works as well as to determine the price. Based on those basis, the shipbuilder shall have a sufficient basis to make full calculations for the work and is expected to provide a fixed price to the buyer.<sup>27</sup>

It is however, based on a request from the buyer, the original contract price might be adjusted along the way of the construction. It is done by altering the specifications, provided that the parties will "first agree to possible adjustment in Contract Price". There are several modifications and changes that may affect the Contract Price, for example, the buyer may – after the

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<sup>23</sup> Meland, *Shipbuilding Contracts*, 65.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, 49.

<sup>26</sup> *Ibid.*, 66.

<sup>27</sup> *Ibid.* See ND 1989 page 428 the Gulating Court of Appeal, the court found that the yard shall be able to give a fixed price to the owner.

shipbuilding contract has been signed – have secured employment necessitating changes to the vessel or the buyer may want to install new equipment in order to comply with certain new standards.<sup>28</sup> This is stated in Article VI that the buyer's request shall be furnished by means of exchanges of letters duly signed by authorized representatives of the parties, or by signed change order form. In practice, both buyer and shipbuilder will exchange correspondences regarding the modifications and changes in the specifications in order for them to agree on all of the changes.

### **Payment terms**

SHIP 2000 is structured so that the use of partial advance payments is agreed upon and provides the buyer with an obligation to pay the contract price by instalments.<sup>29</sup> Under SHIP 2000, the first instalment shall be paid within 3 days after the signing and further instalments shall be paid on either the actual milestone or pre-agreed dates, however, in most cases the instalments are related to the progress in the building by insertion of such milestone.<sup>30</sup> Further, if any adjustment of contract price occurred due to modifications and changes, the payment of such shall be paid simultaneously with the last instalment upon delivery of the vessel.<sup>31</sup>

In general, the shipbuilding contract period will be very depending on capacity of the shipbuilder to build a vessel. It is also depending on, particularly, the financial situation of the buyer to pay the contract price, so it can be in months or even years. In practice, the completion of a vessel normally takes around 18-24 months.<sup>32</sup> On the one hand, the shipbuilder has to ensure that the buyer will be able to fulfill the obligations under the contract in terms of payment. For the interest of the shipbuilder, under SHIP 2000, upon the shipbuilder's request the buyer is obliged to provide all information necessary to enable the shipbuilder to reasonably satisfy himself that the buyer has financial arrangements or resources to pay the instalments when due.<sup>33</sup> On the other hand, the buyer normally will already approach its bank to discuss the visibility of payment terms under the shipbuilding contract. The arrangement of the payment terms as well as when the financier or bank has to disburse its loan to the buyer shall be discussed on Chapter 3 below.

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<sup>28</sup> Meland, *Shipbuilding Contracts*, 122.

<sup>29</sup> See Article III (3) of SHIP 2000.

<sup>30</sup> Meland, *Shipbuilding Contracts*, 70.

<sup>31</sup> See Article III (3)(f) of SHIP 2000.

<sup>32</sup> Orestis Schinas, Carsten Grau, and Max Johns, ed., *HSBA Handbook on Ship Finance*, (Berlin: Springer, 2015), 373.

<sup>33</sup> See Article III paragraph 5 of SHIP 2000.

### 2.2.2 Ownership and registration

Under Article XI (1) of SHIP 2000, the shipbuilder shall become the owner of the vessel upon delivery and acceptance thereof. This is based on assumptions that the shipbuilder will be the owner of the vessel during its construction, and the buyer will only be the owner of the vessel until he formally signs delivery and acceptance.<sup>34</sup> Nevertheless, the SHIP 2000 is a standard form shipbuilding contract that can be drafted to conform with the parties' needs. The buyer could also be the owner of the vessel under construction under the contract. It will give the buyer, as a contractual owner, a right to register the vessel under construction into the Ship Register (the Shipbuilding Register) as regulated under Section 31 of Maritime Code.

The legal effect of registration in the shipbuilding registry is similar to the registration of vessels in service.<sup>35</sup> One of the legal effects is that the owner will be able to install a mortgage over the construction in order to secure a loan agreement that the owner has been entered into with a bank. Under Section 1-2 of the Mortgage (and Lien) Act, statutory provision is required to legally establish a mortgage. Further, as the vessel under construction can be registered pursuant to Section 31 of Maritime Code, then, it is in line with Section 3-3 of Mortgage (and Lien) Act that a property can be registered in a real register might be mortgaged and receive legal protection by registration in the relevant register.

Moreover, Section 41 of Maritime Code clearly stated that a voluntarily established mortgage can be registered on what is being regarded as a ship,<sup>36</sup> where one of them is a ship or construction which is being built, and a building contract, provided it can be entered in the Shipbuilding Register, cf. Section 31 and Section 33 paragraph three of Maritime Code. Under such circumstances, therefore, the buyer's bank who is financing the building of a new vessel can have a secured and legally protected right by the use of a mortgage over a vessel under construction including the main engines and larger sections of the hull to secure the loan.<sup>37</sup>

### 2.2.3 Insurance

The standard provisions under SHIP 2000 on insurances states that the shipbuilder will arrange and pay for building insurances.<sup>38</sup> The starting point is that, in a shipbuilding project, the shipbuilder who is constructing the vessel at its yard will have the largest risk so that the

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<sup>34</sup> Meland, *Shipbuilding Contracts*,199.

<sup>35</sup> *Ibid*, 200.

<sup>36</sup> Under Section 41 of Maritime Code, other than what is mentioned above, a ship which must or can be entered in the Ship Register, cf. Section 1 and a construction which can be entered in the Ship Register in accordance with Section 33.

<sup>37</sup> See Section 43 of the Maritime Code.

<sup>38</sup> Article XI (2) (b) of SHIP 2000.

duty to insure is allocated for the shipbuilder.<sup>39</sup> The insurance may, however, be taken out by the owner or the buyer, but in practice, it will be taken out by the shipbuilder.<sup>40</sup> In case the insurance is procured by the shipbuilder, the underwriters have to be accepted by the buyer and it has to be on “All Risks” terms as the insurance shall also be meant to protect the interest of the buyer.<sup>41</sup>

Adequate insurance pertaining to the construction of the vessel is achievable under Nordic Marine Insurance Plan 2013 Version 2019 (NMIP), set out in Chapter 19 of NMIP on the builders’ risks insurance. Clause 19-1 of NMIP shows that the insurance is based on the all risks principle as it is applicable to all marine perils that are not specifically excluded. Further, under NMIP the assured and persons effecting the insurance can be two different persons.<sup>42</sup> The buyer, then, shall have the status of assured as the owner of the vessel under construction and the shipbuilder as the persons effecting the insurance. In such case, to be included in the insurance cover, the shipbuilder will be included as the co-insured pursuant to Clause 19-3 of NMIP.<sup>43</sup>

#### 2.2.4 Delivery date and delivery

When the construction of the vessel is completed and ready in all respects as described in the specification, under Article III (3) third paragraph of SHIP 2000, the shipbuilder must give notice to the buyer regarding such event. On the other hand, the delivery can only be effected if the buyer has fulfilled all its obligations under the contract,<sup>44</sup> and that is why the said notice is combined with a demand for payment of the instalment on delivery if there was an outstanding amount payable to the shipbuilder.<sup>45</sup>

Further, after the notice has been given and the outstanding payment has been settled, then the actual delivery of the vessel can be done. It is a formal procedure ending with the parties executing and signing the protocol of delivery and acceptance.<sup>46</sup> Under Article VIII (3) of SHIP 2000, the shipbuilder must provide and deliver the following documents, which shall accompany the protocol of delivery and acceptance, as follows:

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<sup>39</sup> Meland, *Shipbuilding Contracts*, 201.

<sup>40</sup> Cefor, "Commentary to Chapter 19 of NMIP", accessed on 15 November 2021. <http://www.nordicplan.org/Commentary/Part-Four/Chapter-19/#General>

<sup>41</sup> See Article XI (2) of SHIP 2000.

<sup>42</sup> Trine-Lise Wilhelmsen and Hans Jacob Bull, *Handbook on Hull Insurance* (Oslo: Gyldendal, 2017), 44.

<sup>43</sup> The situation is changing from what is being stated in NMIP. Considering that, in this case, the buyer is the assured, then the shipbuilder will be the co-insured.

<sup>44</sup> See Article VIII (3) first sentence of SHIP 2000.

<sup>45</sup> Meland, *Shipbuilding Contracts*, 146.

<sup>46</sup> *Ibid*, 148.

- 1) Protocol of trials made pursuant to the specifications;
- 2) Protocol of inventory and equipment of the vessel, including spare parts and the like, all as specified in the specifications;
- 3) Protocol of surplus consumable stores referred to under Article VII hereof which are payable by the buyer to the shipbuilder;
- 4) Drawings and plans pertaining to the vessel together with all necessary instructions manuals, as further stipulated in the specifications;
- 5) All certificates including the builder's certificate;
- 6) Declaration of warranty by the shipbuilder that the vessel is free and clear of any liens, claims, charges, mortgages and other encumbrances;
- 7) Commercial invoice and bill of sale or other relevant documents that certifies that the title of the vessel passes to the buyer.

The protocol of delivery and acceptance has also been called a 'take-over protocol' to emphasize the handing over of the vessel, physically.<sup>47</sup> This is also what has been described in Article VIII (5) of SHIP 2000 that the buyer shall take possession of the vessel immediately upon delivery and acceptance thereof, and shall remove the vessel from the premises of the shipbuilder. Otherwise, the shipbuilder may charge the buyer with reasonable mooring as well as other costs for electricity, water, guards, and other normal expenses if the vessel has not been removed from the shipbuilder's yard. Possession of the vessel by the buyer means that all risks related to the vessel pass from the shipbuilder to the buyer. Moreover, insurance procured by the shipbuilder will expire simultaneously.<sup>48</sup> Thus, after the delivery, the obligation to insure the vessel is on the shipowners.

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<sup>47</sup> Meland, *Shipbuilding Contracts*, 149.

<sup>48</sup> *Ibid*, 156.

### 3 SHIP FINANCING, RISKS INVOLVED, AND BANK'S REQUIREMENTS IN GRANTING FINANCING

#### 3.1 Ship financing

##### 3.1.1 Main features of financing in a shipbuilding project

The extensive capital requirements to finance newbuilding programs and second-hand acquisitions have led shipowners<sup>49</sup> to seek financing beyond their own private funds.<sup>50</sup> Even for a well-established company with big capital and stable cashflow financing is still needed as they cannot bear all of the risks to themselves and put all of their cash for the newbuilding. Further, to make the financing available the shipowners need to provide the financier with asset-based collateral. The available asset directly related to the project is the construction itself which, under Norwegian law, it can be mortgaged.<sup>51</sup>

In such situation, it is extremely risky for the shipowners and its bank in the shipbuilding phase, and not to mention that a huge part of the financing procedure is based on assumptions pertaining to the construction. The risk is also coming from the fact that the value or the price of the vessel under construction can be adjusted based on modifications and changes of which make another uncertainty within the project. From these matters, therefore, the choice of financing, risks assessment, and the choice of security are tremendously crucial factors for the success of the shipbuilding project.

There are financing alternatives that each company has in its arsenal at any given time, which are:<sup>52</sup>

Bank financing	Capital markets	Other
Mortgage-backed loans	High yield bonds	Seller's credit
Newbuilding financing	Convertible notes	Finance lease
Unsecured/corporate loans	IPOs	Operating lease
Mezzanine	Follow-on offerings	Private equity
	At-the-market offerings	Securitization
	MLPs	Export agency finance
	SPACs	

Even there are many alternatives available in the financing market, bank financing is still the main source of capital to the shipping industry, providing a flexible and low cost of capital to

<sup>49</sup> In this sub-Chapter, shipowners also means the buyer under the shipbuilding contract.

<sup>50</sup> Harwood, *Shipping Finance*, 72.

<sup>51</sup> See Chapter 4.

<sup>52</sup> Harwood, *Shipping Finance*, 75.

the shipping companies. From 2007-2017, based on Clarksons Research, shipping finance sourced from banks is recorded to form up to 33% of the financing market which is being the majority.<sup>53</sup> Thus, the discussion further is focused on bank financing – newbuilding financing by form of commercial bank loans.

### 3.1.2 Commercial bank loans

#### **Term sheet**

Prior to entering into a shipbuilding contract with the shipbuilder, the shipowners will necessarily approach and engage with the bank in order to have a preliminary discussion pertaining to the financing. It will be involving negotiations and discussion on the acceptable financing arrangements for both shipowners as the borrower and the bank as the financier. Eventually, the shipbuilding contract shall be signed before any loan agreement is signed. As a matter of standard procedure, the bank will request a copy of the complete shipbuilding contract for review before the bank grants a loan.<sup>54</sup> A finance document so-called term sheet will be provided by the bank to the shipowners as a starting point of the commercial bank loans arrangement.

The term sheet is the key document for negotiations between bank and shipowners which is drafted by the bank in response to a financing request,<sup>55</sup> following the shipbuilding project plan from the shipowners. More negotiations on the terms sheet, then, will be necessary in order for the parties to reach a mutual agreement on how the financing or agreement will be prepared, signed, and executed. Once the terms sheet is agreed by the parties, the bank proceeds to its credit committee and, on approval, issues a committed term sheet, which the buyer is asked to sign.<sup>56</sup> Further, once the committed term sheet has been signed by the buyer, it means that the parties agree to complete the transaction outlined in the document, such as to prepare and sign a loan agreement.<sup>57</sup> In other words, a committed term sheet is constituting a pre-contractual commitment between the bank and buyer as well as a reference to prepare the loan agreement which is also replacing the term sheet after it is signed.

#### **Loan agreement**

Loan agreement is prepared and drafted by referring to the committed term sheet as mentioned above. However, loan agreement is more complex and comprehensive in terms of legal aspects compare to term sheet since loan agreement is a complete contract. It is drafted by a

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<sup>53</sup> Harwood, *Shipping Finance*, 25.

<sup>54</sup> Meland, *Shipbuilding Contracts*, 30.

<sup>55</sup> Harwood, *Shipping Finance*, 30.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*



draftsperson who is usually acting for the lender, as such, the draftsperson will tighten up most of the clauses from the bank's perspective and ensure that they are well-adapted to reflect the secured nature of the transaction and the shipping background.<sup>58</sup> Nevertheless, the draft person is also required to ensure that the buyer's point of view is met without unreasonably prejudicing the bank's position. Thus, loan agreement is the final agreement establishing the financing arrangements between the bank and the shipowners prepared by the bank's counsel by taking into account the shipowners' interest. The loan agreement will supersede the term sheet by the effective date of such agreement.

### **3.2 Risks involved from the bank's perspectives**

#### **3.2.1 Value of the vessel under construction**

Vessel under construction is the asset that will be mortgaged in order to secure the loan provided by the bank to the shipowners. A mortgaged asset should have sufficient value to secure the loan. In this case, the value of the vessel under construction might be reflected by the contract price to some extent, but it is not the exact value of the vessel under construction. Contract price gives you the total amount consisting of every part that will be forming an integral part of the vessel,<sup>59</sup> the cost of the tools and equipment to build the vessel, and also the fee of work and labor. Along the way of the shipbuilding phase, from time to time, the value of the vessel under construction should be increasing as it is approaching the completion of the building phase. It is increasing in a way where the 'real' value of the construction gradually turned into the value of the vessel that is completely built.

However, in shipping, a lot can happen in respect of market and values in a relatively short time, and a long period between the commencement of shipbuilding phase and the delivery increases this risk.<sup>60</sup> In other words, on the delivery date, the value of the vessel might be significantly reduced in market value. This risk shall be addressed by the bank. Usually, the bank will have a policy where there is a limit to the financing provided, say the bank is willing to finance only 60% of the contract price and the other 40% shall be borne by the shipowners as the buyer.<sup>61</sup> The bank will put some requirements on how and when the shipowners shall be able to utilize the loan that will also suggest when shall the bank be obliged to pay.<sup>62</sup>

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<sup>58</sup> Kavussanos and Visvikis, *The International Handbook of Shipping Finance*, 213.

<sup>59</sup> See Chapter 2.2.1. The Specification shows you all equipment, hull, machineries that shall be installed and the integral part of the ship.

<sup>60</sup> Simonsen Vogt Wiig AS, "Purchase of Vessels during construction", accessed on 22 November 2021. <https://svw.no/en/insights/purchase-of-vessels-during-construction>

<sup>61</sup> Schinas, Grau, and Johns, *HSBA Handbook on Ship Finance*, 45.

<sup>62</sup> See Chapter 3.3.2

Furthermore, the risk of value reduction of the vessel in the market due to market volatility may also be a problem by the time the mortgage needs to be enforced in order to secure the loan. In this situation, the bank will also put requirements under the loan agreement on a certain ratio level of the loan amount to the value of the security.<sup>63</sup>

### 3.2.2 Insurance covers

As it is explained in Chapter 2.2.3, insurance covers are required under the shipbuilding contract, SHIP 2000. Once the insurance is established, the bank as the mortgagee will be automatically co-insured.<sup>64</sup> Even though the automatic co-insured has been established to protect the interest of the mortgagee, it does not provide the mortgagee with an independent cover.<sup>65</sup> An independent co-insurance can be established according to Clause 8-7 of NMIP. This independent co-insurance will protect the mortgagee in a way where the insurer may not plead that he has no liability due to all or any acts or omissions from the person effecting the insurance or another assured, such as a breach of duty of disclosure, breach of duty of care, and/or breach of safety regulation.<sup>66</sup>

Nonetheless, the independent co-insurance under NMIP does not protect the mortgagee in the case of loss of insurance cover resulting from a failure of the person effecting the insurance to pay the premium.<sup>67</sup> Consequently, if such event occurred, there will be no more insurance covers to protect the interest of the bank as the mortgagee. Even more, the independent co-insurance only applies to the insurance covers included under the principal assured's hull insurance and not a separate hull insurance cover.<sup>68</sup> It will not cover a risk such as the risk of scuttling or casting away, which is not a 'peril of the sea'.<sup>69</sup> Given that there is no separate insurance available under NMIP to protect mortgagee's interest from such risk, thus, the bank has to find a solution by requiring the shipowners to procure a mortgagee's interest insurance that is available under English law.

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<sup>63</sup> See Chapter 3.3.4.

<sup>64</sup> Wilhelmsen and Bull, *Handbook on Hull Insurance*, 222.

<sup>65</sup> Cefor, "Commentary to Chapter 7 of NMIP", accessed on 15 November 2021. <http://www.nordicplan.org/Commentary/Part-One/Chapter-7/#General>

<sup>66</sup> Cefor, "Commentary to Clause 8-7 of NMIP", accessed on 15 November 2021. <http://www.nordicplan.org/Commentary/Part-One/Chapter-8/#Clause-8-7>

<sup>67</sup> *Ibid.*

<sup>68</sup> Wilhelmsen and Bull, *Handbook on Hull Insurance*, 236.

<sup>69</sup> David Osborne, Graeme Bowtle, and Charles Buss, *The Law of Ship Mortgages* (Abingdon: Informa Law from Routledge, 2017), 466.

### 3.3 Bank's requirements under the loan agreement to manage its risks

The bank granting a shipping loan should not only assess if the value of the vessel under construction on which security is granted is enough to recoup the loan in case of enforcement, but also analyze the buyer's and the parent's financial strength as well as the income stream that the buyer may generate throughout the period of the loan.<sup>70</sup> So, in order to put more comprehensive analysis, the credit committee of the bank will assess the risks before approving the term sheet by analyzing the following documents or matters:<sup>71</sup>

- 1) Constitutional documents, certificate of incorporation, business permit, and all licenses related to the businesses of the buyer.
- 2) Organizational structure and shareholders composition (not only the buyer but also any parent, associated, and/or affiliated companies including the subsidiaries, if any).
- 3) Financial statement from the past several years and company revenue projection for the several upcoming years.
- 4) Financial ratio of the company, e.g. EBITDA, leverage ratio, current ratio, and etc.
- 5) Other documents related to assets, cashflow and the corporate recourse enjoyed by the transaction.

Above mentioned manners of analysis and required documents to be analyzed reflect the 'five Cs of credit' which are:<sup>72</sup>

- 1) Character – who you do business with is really important.
- 2) Capital – capital structure of the company, their access to additional capital.
- 3) Capacity – capacity to service and repay debt measured by financial structure.
- 4) Collateral – the real asset that will be the security, in this case is the vessel under construction.
- 5) Conditions – economic conditions in general, and shipping market in particular.

Besides the financial factors, bank is also required to categorize loans by country to do more risks assessment. It can be argued that shipping is supranational, although for internal and regulatory purposes banks will usually assign location based on ownership, management or borrower domicile.<sup>73</sup> In case of financing a new build vessel, the location where the vessel will be built is also important to be the basis of risks assessment. It will determine whether the vessel under construction can be mortgaged or not. If the construction is located in Norway the vessel under construction can be registered and mortgaged as security to secure the loan as

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<sup>70</sup> Kavussanos and Visvikis, *The International Handbook of Shipping Finance*, 214.

<sup>71</sup> Personal communication with a banker and bank's legal officer.

<sup>72</sup> Harwood, *Shipping Finance*, 29.

<sup>73</sup> *Ibid*, 46.

it is allowed under Norwegian law.<sup>74</sup> On the other hand, in other countries, such as England, it may not be available. Thus, country risk is one of the important factors to be analyzed as it gives the bank access to the security instrument.

Furthermore, the bank will keep assessing and managing its risks during the period of loan agreement. Securities shall be established based on the loan agreement to secure the loan. From the perspective of the bank, the loan agreement is, inter alia, an instrument for managing credit risks, which is the risk that the bank will not be able to recover its loan, interest and other costs incurred, at the time and in the manner described in the loan agreement.<sup>75</sup> The bank will continually assess its risks by exercising or relying on the operative clauses which aim to protect the bank from the types of risk at each different stage of a shipping loan transaction.<sup>76</sup> Those operative clauses are: (1) conditions precedent; (2) representations and warranties or undertakings; and (3) covenants.

### 3.3.1 Security arrangements

There are a few types of security that are considered standard security in ship finance transactions, including newbuilding loans. The following are principal types of security for which a bank will look in a vessel-based transaction:<sup>77</sup>

- A first-priority mortgage over the vessel or vessel concerned;
- An assignment or assignments of all the insurances, the earnings and any requisition compensation of the vessel or vessels concerned, or assignment of the benefit of the shipbuilding contract is also widely used for securing shipbuilding loans;
- A personal and/or corporate guarantee and indemnity;
- A charge over or pledge of the shares of the borrower;
- Cash deposits or charge over accounts; and
- A deed of charge over any proceeds received under any master agreement.

The ultimate aim of security must be to give the bank maximum protection. Thus, security can be provided for the loan as an entire security “package“, consisting of different types of security. This will be subject to negotiation between the bank and the borrower on which security instrument shall be used and which assets shall be encumbered in order to secure the loan. However, the bank will not provide a loan to a buyer who will be able to provide securities but will not be able to fulfill the most important part of the borrower’s obligation, repay the

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<sup>74</sup> See Chapter 4.

<sup>75</sup> Kavussanos and Visvikis, *The International Handbook of Shipping Finance*, 214.

<sup>76</sup> *Ibid*, 215.

<sup>77</sup> Harwood, *Shipping Finance*, 102.

loan. Therefore, in the first place the bank will do the risks assessment related to the financial conditions of the buyer,<sup>78</sup> and also to look at the vessel under construction then evaluate whether it may give profit in the future.

Further, usually, a mortgage is an element in a reciprocal contractual relationship: credit is granted on the condition that security is provided<sup>79</sup> and the mortgage is the main security for any shipping finance transaction or loan. Therefore, the discussion on this thesis about security arrangements will be limited to a mortgage over vessel under construction only of all other above mentioned security arrangements.

### 3.3.2 Conditions precedent

Condition precedent is also called as ‘conditions of utilization’ where before being committed to advancing the loan, the bank will normally ask for fulfilment of certain documentation and actions from the shipowners as the borrower.<sup>80</sup> Not only for the availability of the loan, but conditions precedent also assure that the legality and enforceability of the borrower’s obligations with respect to the loan are satisfied.<sup>81</sup> There are two categories of the conditions precedent, which are:

- a. Conditions precedent relating to the security parties, which requires the buyer as the borrower to provide its constitutional documents (i.e., certificate of incorporation and memorandum and articles of association or equivalent) and specimen of signatures. Such documents are required by the bank for them to check whether the buyer is a valid company and has its right to do businesses in the country of incorporation, as well as to check that the signature affixed in any financing documents are signed by the authorized person with a specific signature ; and
- b. Conditions precedent relating to security and vessel, which requires the buyer as the borrower to provide the registration certificate of the vessel underlying the ownership of the buyer over the vessel, shipbuilding contract, and all technical and operational certificates of the vessel.

In addition to the above mentioned conditions precedent, partial payments of contract price by the shipowners to the shipbuilder in accordance with the shipbuilding contract shall be also a part of the conditions of utilization. As it is described in Chapter 3.2.1, the bank will only fi-

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<sup>78</sup> See Chapter 3.3.

<sup>79</sup> Thor Falkanger, “Credit Based Upon Security in Ships”, *Scandinavian Studies in Law Vol. 46*, (2004), 41, <https://www.scandinavianlaw.se/pdf/46-2.pdf>

<sup>80</sup> Harwood, *Shipping Finance*, 93.

<sup>81</sup> Kavussanos and Visvikis, *The International Handbook of Shipping Finance*, 217.

nance major parts of the contract price and the shipowners is required to pay partial payments in advance before the bank disburse the fund for the financing of the shipbuilding contract. Therefore, once the conditions precedent is fulfilled and the required partial payments of the shipbuilding contract price have been paid, the shipowners shall be entitled to utilize the loan and the bank shall be obliged to pay or disburse the fund under the loan agreement.

### 3.3.3 Representations and warranties

In order for the bank to willing to enter into a ship financing transaction, their requirements of legal or factual events have to be fulfilled by the shipowners, and such requirements shall be manifested under a clause so-called “Representations and Warranties”.<sup>82</sup> The representations and warranties shall be repeated several times within the period of the loan agreement,<sup>83</sup> which means that the legal or factual events required by the bank shall remain unchanged as long as the loan agreement has not been paid in full by the shipowners. One example of the important representations and warranties in a loan agreement is a representation on the ‘Legal and beneficial ownership’ which is related to the vessel under construction.

In the best practice of the finance industry, representation on legal and beneficial ownership shall state that the shipowners as the borrower shall always be the sole legal and beneficial owner of the respective assets (vessel under construction) over which it purports to grant a security interest.<sup>84</sup> This representation will supplement the conditions precedent as described in Chapter 3.3.2 where the loan shall only be disbursed if the ownership of the vessel under construction is evidenced by a certificate of registry. However, conditions precedent is not a repeated requirement under the loan agreement. In contrast, the representation is a repeated requirement, thus, the shipowners have to always maintain the vessel remain in its ownership throughout the period of the loan agreement as it is required by the bank.

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<sup>82</sup> Kavussanos and Visvikis, *The International Handbook of Shipping Finance*, 216.

<sup>83</sup> Schinas, Grau, and Johns, *HSBA Handbook on Ship Finance*, 64.

<sup>84</sup> Personal communication with a banker and bank’s legal officer, discussing standard loan agreement provisions on representations and warranties related to ship financing.

### 3.3.4 Covenants or undertakings

A loan agreement to finance new building vessel also includes covenants or undertakings provisions. The function of the covenants is to make sure that the shipowners' financial condition, businesses, the vessel under construction and any security on assets remain within the parameters of the bank's initial credit approval of the loan during the loan period.<sup>85</sup> Covenants might be related to the borrower's condition as well as to the vessel's condition.

#### **Covenants relating to the borrower**

One of the most important responsibilities of the shipowners as the borrower is to ensure that the value of the vessel (while in construction or even after it is being delivered) always exceeds a certain percentage of the loan outstanding.<sup>86</sup> In practice, usually, the bank will require the shipowners under the covenants provisions to maintain the vessel value in a percentage of 120% to 130% or sometimes be seen in reverse that the amount of the loan outstanding will never exceed 60% or 70% of the value of the vessel.<sup>87</sup> Such requirement shall be called the minimum value covenant – leverage covenant on loan to ship value.

The bank will usually put this requirement under the loan agreement to address the risk mentioned in Chapter 3.2.1, where due to volatility of the market, the value of the vessel might be reduced. The bank, thus, has a certain parameter as the basis for them to properly decide on how they can minimize and manage the risk of value reduction, either by seeking cash collateral or more security instrument that shall be added up to secure the loan.

#### **Covenants relating to the vessel**

In addition to covenants relating to the borrower, the bank will also put covenants relating to the vessel. Loan agreements frequently require the shipowner as the borrower to purchase insurance.<sup>88</sup> So, even though, the bank as the lender has been automatically included as co-insured under NMIP,<sup>89</sup> the bank will still require the shipowners to provide insurance term that is providing more protection. Under NMIP, the bank might be provided with more protection by establishing the independent co-insurance. However, independent co-insurance may not be sufficient for the bank as it leaves the bank with uncovered risks.

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<sup>85</sup> Kavussanos and Visvikis, *The International Handbook of Shipping Finance*, 218.

<sup>86</sup> Schinas, Grau, and Johns, *HSBA Handbook on Ship Finance*, 64.

<sup>87</sup> Harwood, *Shipping Finance*, 98.

<sup>88</sup> Greg Nini, "Insurance Covenants in Corporate Credit Agreements", *Journal Risk and Insurance Vol. 87*, Issue 1 (2018), 95, <https://doi-org.ezproxy.uio.no/10.1111/jori.12263>

<sup>89</sup> See Chapter 3.3.2.

The solution of such loophole is that the bank will require the shipowners to procure a separate insurance so-called ‘mortgagee’s interest insurance’, an insurance coverage based on English law. Such requirement shall be stated in one of the covenants provisions in the loan agreement. In practice, the covenants related to the procurement of mortgagee’s interest insurance will state that the bank will be the one who is effecting the insurance, but the costs arising from or in connection with the procurement of the insurance shall be borne by the shipowners.<sup>90</sup>

Mortgagee’s interest insurance or MII, is a contingent policy, which will provide cover in respect of:<sup>91</sup>

- Non-disclosure by the shipowner or shipbuilder;
- Misrepresentation by the shipowner or shipbuilder;
- Scuttling or casting away;
- Breach of warranty;
- Breach of trading warranty;
- Time bars;
- Unseaworthiness;
- Vessel out of class or no ISM certificate;
- P&I club failure to put up security following arrest; and
- Owner’s policy cancelled for non-payment of premium.

Those covers are not available under NMIP. Therefore, by requiring the procurement of MII, the bank shall be protected against the above mentioned risks and the bank will have separate insurance covering its interest as mortgagee which is not recognized under NMIP but available under English law.

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<sup>90</sup> Personal communication with a banker and bank’s legal officer, discussing standard loan agreement provisions on how the procurement of mortgagee’s interest insurance is arranged.

<sup>91</sup> Gard, "The shipping financier’s need for Mortgagees’ Interest Insurance", accessed on 24 November 2021. <https://www.gard.no/web/updates/content/51950/the-shipping-financiers-need-for-mortgagees-interest-insurance>



## 4 MORTGAGE OVER A VESSEL INCLUDING A VESSEL UNDER CONSTRUCTION

### 4.1 Introduction

A registered vessel may be made security for the repayment of a loan or the discharge of any other obligation.<sup>92</sup> It is called a mortgage over vessel. Conceptually, a vessel mortgage is an encumbrance on the vessel, thus, it can be said that it is not a provisional transfer of property.<sup>93</sup> Further, the fundamental rule in most jurisdictions is that mortgage over a vessel can be taken only after the vessel has been entered into a ship register. Therefore, procedures on how the mortgage will be registered are dictated by the legal system appropriate to the jurisdiction in which the vessel is registered,<sup>94</sup> and there are some differences between jurisdictions. Even so, the similar features of mortgage in any jurisdiction is that the mortgage gives, enables, and allows the bank:<sup>95</sup>

- *In rem* rights against the mortgaged vessel (ie, rights against the vessel herself, and not just personal rights against the owner);
- priority over unsecured creditors of the shipowner;
- to take possession of the vessel in the event of a default by the shipowner; and
- to sell the vessel and utilize the proceeds to satisfy bank's debt.

It is mentioned above that there are some differences in the rules pertaining to mortgage in one jurisdiction with other jurisdictions, and one of the differences is that in some jurisdictions a vessel under construction can be registered and, thus, be mortgaged.<sup>96</sup> On the other hand, in most jurisdictions even in English law there is no system for the registration of ships under construction.<sup>97</sup>

### English law

A registrable ship mortgage, under English, can be created only against a vessel registered under either Part I of the Merchant Shipping Act or Part II (with full registration), and then only in accordance the mortgage provisions of the Merchant Shipping Act 1995.<sup>98</sup> Further, in

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<sup>92</sup> Osborne, Bowtle, and Buss, *The Law of Ship Mortgages*, 48.

<sup>93</sup> Falkanger, "Credit Based Upon Security in Ships", 38.

<sup>94</sup> Harwood, *Shipping Finance*, 151.

<sup>95</sup> *Ibid.*

<sup>96</sup> Mortgage over a vessel under construction is regulated under the *International Convention Relating to Registration of Rights in Respect of Vessels Under Construction, 1967*, and few countries such as Norway, Sweden, Croatia, Greece, and Syrian Arab Republic are ratified the convention.

<sup>97</sup> Osborne, Bowtle, and Buss, *The Law of Ship Mortgages*, 63.

<sup>98</sup> *Ibid*, 50.

order to be considered as a vessel, the vessel has to “*be used in navigation*”.<sup>99</sup> Other than that, the shipowners have to present a builder’s certificate evidencing that the vessel has been properly built and launched to be used in navigation.<sup>100</sup> Thus, a mortgage could not be registered over a vessel under construction because it is considered substantially incomplete vessel from English law point of view.

As a result of such situation, the only security that can be provided by the buyer out of the shipbuilding project is the assignment of the benefit of the shipbuilding contract which is not the question in this work. Even so, the bank may also ask the buyer to mortgage any vessel from its existing fleet which has nothing to do with the shipbuilding project. However, a different question will rise if the buyer is a one-ship company.<sup>101</sup> Then, the mortgage will be from its parent company which, in such case, will raise another problem as each of the companies is a separate legal entity. Thus, the bank shall be advised by a credible lawyer who is familiar with the jurisdiction where the vessel will be built.

### **Norwegian law**

In general, under Norwegian law, there are three types of security in the context of maritime or shipping law which are: (1) a security created by a contract – so called contractual lien; (2) by decree of the enforcement authority – so called enforcement lien; and (3) directly by law – so called maritime lien.<sup>102</sup> Thus, a contractual lien can also be called ‘a mortgage’ since mortgage is a security established based on a contract – a loan agreement followed by the Ship Mortgage Deed.<sup>103</sup>

In contrast to English law, a vessel under construction in Norway can be registered into the Norwegian Ship Register. Upon application, the vessel under construction can be entered into a separate chapter of the Ship Register (the Shipbuilding Register).<sup>104</sup> Such application shall be made by the owner in the case of a ship under construction. The owner of the construction shall be determined in the shipbuilding contract as it is explained in Chapter 2.2.2. In case the owner of the vessel is the shipbuilder, to protect the rights of the buyer in respect of the ship as from the commencement of its construction, the shipbuilding contract shall be registered

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<sup>99</sup> Section 313 (1) of Merchant Shipping Act 1995.

<sup>100</sup> Merchant Shipping (Registration of Ships) Regulation 1993, regulation 28.

<sup>101</sup> S Harwood, *Shipping Finance*, 14.

<sup>102</sup> Falkanger, “Credit Based Upon Security in Ships”, 38.

<sup>103</sup> Annex 2.

<sup>104</sup> See Chapter 31 of Maritime Code.

upon application from the buyer.<sup>105</sup> Thus, once the construction is registered, a mortgage over the vessel under construction can be established for the interest of the bank.

Mortgage over vessel, both vessel used in navigation and under construction, based on Norwegian law will be discussed. References to English law will be presented as a comparison only.

## **4.2 Mortgage over vessel under Norwegian law**

The statutory rules on security are first of all found in: (1) the Mortgage and Liens Act of 8th February 1980 No. 2 (Mortgage Act); and (2) the Code of Enforcement of Claims of 26th June 1992 No. 86 (CoE). Section 1-2 second paragraph of Mortgage Act establishes the principle that a mortgage can only be valid if its basis is in statute.<sup>106</sup> Since those are general statutory rules on security, as such, those rules are basically applicable to real property so does to ships or vessels.<sup>107</sup> Further, when it comes to mortgage over vessels, the Maritime Code of 24th June 1994 No. 39 with amendments including Act 7th June 2013 No. 30 and Act of 17th June 2016 No. 71 (Maritime Code or MC).<sup>108</sup> Maritime Code, in this case, is the statute as the basis of the mortgage over vessel which is required by Mortgage Act as mentioned above.

Section 41 of Maritime Code sets out the object that are regarded as ship so that mortgage on a ship can be established. Pursuant to such Section, regarded as ships are: (1) a ship which must or can be entered in the Ship Register; (2) a construction which can be entered in the Ship Register;<sup>109</sup> and/or (3) a ship or construction which is being built, and a building contract, provided it can be entered in the Shipbuilding Register.

In this part, the discussion on mortgage over vessel used in navigation and over vessel under construction will be presented.

### **4.2.1 Vessel ‘used in navigation’**

In regards with vessel used in navigation, it can be regarded as a ship if it can be entered in the Ship Register according to Section 1 of Maritime Code which is stating that a ship shall be regarded as a Norwegian ship when it has not been entered in the Ship Register of another

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<sup>105</sup> See Section 31 of Maritime Code.

<sup>106</sup> Falkanger, Bull and Brautaset, *Scandinavian Maritime Law*, 150.

<sup>107</sup> See the Property Rights Registration Act of 7<sup>th</sup> June 1935 no. 2.

<sup>108</sup> Falkanger, “Credit Based Upon Security in Ships”, 39.

<sup>109</sup> See Section 33 of Maritime Code.

State and is owned by a Norwegian national or other person described in such Section.<sup>110</sup> In other words, Section 1 of Maritime Code establishes a requirement of owner's nationality for the registration of a vessel 'used in navigation' in Norwegian Ship Register (NOR). It is also reflected in the Notification of Registration of Ships Form<sup>111</sup> where the applicant needs to declare its nationality in regards with registration into NOR.

In the event that the requirements are fulfilled, the shipowners shall be entitled to install a mortgage over the vessel as a security to secure the loan they received from a bank. In order to establish a mortgage over a vessel, it has to be properly identified which parts of the vessel will be included and whether the appurtenances is included in the mortgage. Section 45 of Maritime Code addresses such questions. It is stated that mortgages and other encumbrances upon any ship which has been or can be entered in the Ship Register shall also attach to each separate part of the ship, and to anything belonging to the ship which is on board or has been temporarily removed. But, provisions, fuel, and other consumable stores shall be deemed not to be such appurtenances.

Further, the practical approach of identification can be seen in the Ship Mortgage Deed that the identification of the security object is achieved by the use of the name of the ship, its signal letters, the register wherein the ship is entered, building year and home port.<sup>112</sup> Thus, the mortgage over a vessel will include not only the ship with its main engines and hull, but also anything belonging to the ship on or off board as long as it is not a consumable item which all of these details will be indicated in the mortgage deed.

#### 4.2.2 Vessel under construction and shipbuilding contract

In contrast to the registration of vessel 'used in navigation', a construction that is being built shall be regarded as ship if it can be registered according to Section 31 of Maritime Code. There are no requirements to the owner's nationality, as such, a foreign person or entity may be registered as the owner of the vessel under construction during the construction period.<sup>113</sup> The Notification to the Norwegian Shipbuilding Form does not put a question on the nationality of the owner of the vessel under construction.<sup>114</sup> Besides the construction, shipbuilding

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<sup>110</sup> See Section 1 of Maritime Code. Other than a Norwegian national, there are 3 other person or legal entities that may own Norwegian ships.

<sup>111</sup> Annex 3.

<sup>112</sup> Thor Falkanger, "Mortgage on Ships According to Norwegian Law", *Scandinavian Institute of Maritime Law Yearbook 2001*, No. 281 (2021), 13.

<sup>113</sup> SDIR, "New registration of a ship under construction in Norway", accessed on 26 November 2021. <https://www.sdir.no/en/shipping/registration-of-commercial-vessels-in-nisnor/new-registration-the-shipbuilding-register/new-registration-of-a-ship-under-construction-in-norway/>

<sup>114</sup> Annex 4.

contract might also be registered in the Shipbuilding Register in accordance with Sections 31 and 41 of Maritime Code.

As it is mentioned before in this Chapter's Introduction, vessel under construction in Norway and the shipbuilding contracts in Norway might be registered into the Shipbuilding Register. Thus, a mortgage can be established in favor of the bank that granted financing to the owner of the construction, which in this case is the shipowners. The background for the rules is the wish to facilitate financing ships under construction by using the ship under construction and the building contract itself as security.

Further, once the vessel under construction has been registered, a mortgage over such construction can be registered in Norway.<sup>115</sup> Section 43 of Maritime Code broadens the scope of the object by stating that a mortgage on a ship under construction or to be constructed in Norway also include the ship's main engines and larger sections of the hull. Even more, by an agreement the mortgage could be extended beyond this presumption, so that the mortgage shall include the engine or the section which is being built at another shipbuilder's yard in Norway.<sup>116</sup> These objects shall also be mentioned in the ship mortgage deed to formally include such objects in the mortgage. Therefore, under Norwegian law, a loan from a bank or financier can be secured by a mortgage over vessel under construction, and not only the construction but also parts that are supposed to be installed which is forming an integral part of the vessel.

### **4.3 Registration into the Ship Register**

#### **4.3.1 Registration of vessel under construction**

##### **Registration of the construction**

Vessel under construction may voluntarily be registered in a separate part of the NOR register, the Shipbuilding Register, and the estimated length must be 10 meters or more.<sup>117</sup> In this kind of registration, the hull number combined with the name of the shipbuilder is the unique identification during the construction period.<sup>118</sup> The registration in the NOR register shall be subject to the Regulation of 30 July 1992 No. 593 (Regulation on Ship Registration).<sup>119</sup>

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<sup>115</sup> See Section 41 of Maritime Code.

<sup>116</sup> Falkanger, "Mortgage on Ships According to Norwegian Law", 37.

<sup>117</sup> See Section 31 of Maritime Code

<sup>118</sup> SDIR, "New registration of a ship under construction in Norway", accessed on 26 November 2021. <https://www.sdir.no/en/shipping/registration-of-commercial-vessels-in-nisnor/new-registration-the-shipbuilding-register/new-registration-of-a-ship-under-construction-in-norway/>

<sup>119</sup> as amended by Regulation of 13 September 1996 No. 1996 on the registration of ships in the Norwegian ordinary ship register

In accordance with Section 9 of Regulation on Ship Registration, requests for registration of vessel under construction in the Shipbuilding Register shall be written on the form in a format and following procedures specified by the Norwegian Maritime Authority. It is the Notification to the Norwegian Shipbuilding Form that can be accessed through the Norwegian Maritime Authority's website. Such form must be signed by the shipowners as the registered owners, but it is also essential that all parties sign the form with a binding signature.<sup>120</sup>

Further, the shipowners have to pay a registration fee before submitting all the registration documents.<sup>121</sup> After the registration fee has been fully paid, the shipowners may submit the registration documents. The documents then shall be entered in the journal according to the date and time when they are received for registration. Entry to the journal does not constitute the entry to the Shipbuilding Register. The document has been finally entered in the Shipbuilding Register if a certificate of registration has been issued.<sup>122</sup> Such certificate certifies on what date and at what time and under what number the document was entered in the Registration, including the remarks on the fully paid fee. As a conclusion of the registration process, the shipowners shall be the owner of the construction as conformity of what has been agreed under the shipbuilding contract that the owner of the construction is the buyer.

### **Registration of the mortgage**

Registration of mortgage is also governed by Regulation on Ship Registration. In order to have a mortgage registered, writing is, of course, necessary, so in practical point of view, writing is a rule without exception.<sup>123</sup> A ship mortgage, in this case, stands as the written registration that to some extent requires formatting.<sup>124</sup> Mortgage Act and Maritime Code put some general requirements concerning the contents of a ship mortgage deed. A ship mortgage deed, at least, contains the name of mortgagor, the mortgagee, and the mortgaged asset, including the maximum amount of the mortgaged debt.<sup>125</sup> The requirement that a maximum should be stated for the sum which the creditor can obtain from the security, follows from Mortgage Act Section 1-4. Practically speaking that means, this is not necessarily the real debt; the figure in the document serves as 'a maximum amount'. The importance of the exception in the second sentence in the quotation is that, e.g. interest may be covered even if this

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<sup>120</sup> See Annex 4.

<sup>121</sup> See Section 6 of Regulation on Ship Registration.

<sup>122</sup> See Section 25 of Regulation on Ship Registration.

<sup>123</sup> Falkanger, "Mortgage on Ships According to Norwegian Law", 10.

<sup>124</sup> *Ibid.*

<sup>125</sup> See Section 1-4 first paragraph of Mortgage Act.

claim comes in addition to the stipulated amount, provided, however, that the interest is secured in accordance with Section 1-5 of the Mortgage Act.<sup>126</sup>

Even though Mortgage Act and Maritime Code does not prescribe any standard format of ship mortgage deed, a directive in accordance with Section 16 of Regulation on Ship Registration states that the document for registration must have clear writing and must also be formulated so clearly that there is no doubt about the legal foundations of the registration. For the sake of clarity, Spama AS, a company that has special expertise in banking and finance and is majorly owned by DNB Bank ASA,<sup>127</sup> issued a standard form of Ship Mortgage Deed.<sup>128</sup> As players in the banking and finance industry, many Norwegian commercial banks agreed on one standard form of Ship Mortgage Deed. Such standard form adopts all of the required information that a ship mortgage has to cover. The form even also make reference to Section 43 and 45 of Maritime Code to include main engines, hull sections, and also appurtenances in case of registering mortgage over vessel under construction. Therefore, it shall be a sufficient written document for registration of mortgage over vessel under construction for the favor of the bank according to the Regulation on Ship Registration.

Only for a short brief, after the Ship Mortgage Deed is ready, then, steps until the registration is completed are:<sup>129</sup>

- 1) Sending or delivering the original mortgage document, together with a copy, to the registrar.
- 2) The document will be registered in the daily journal with a note of date and minute of receipt.
- 3) If the document is found to be in order, it will be entered in the register. The full text will not be written in, only an abstract of the contents of the document.
- 4) The original will be returned with a certification thereon by the registrar that it has been registered as well as the time of registration, and together with it will follow an extract of the register showing previous registration which may affect the priority of the mortgage.

After finishing all of the above steps, then, the mortgage is effected and, therefore, the rights and interest of the bank start to be secured and protected.

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<sup>126</sup> Falkanger, "Credit Based Upon Security in Ships", 48.

<sup>127</sup> Spama AS, "Annual Report 2020", accessed on 5 November 2021. <https://spama.no/globalassets/spama-2020/spama-arsberetning-2020.pdf>

<sup>128</sup> Annex 2.

<sup>129</sup> Falkanger, "Mortgage on Ships According to Norwegian Law", 23.

#### 4.3.2 Effects of the mortgage registration

##### **Rank in priority**

Following the registration of the mortgage, in accordance with Section 23 of Maritime Code, the registered acquisitions of rights (e.g. mortgage) rank in priority before those not registered. For example, if a mortgage is entered into in 1999, but not registered, it will rank after a later mortgage that has been registered.<sup>130</sup> If there are more than one registration and both of them are registered at the same time, then they will have equal rank. However, executions and arrests shall be ranked prior to other acquisitions of rights. Thus, it is one of the bank's interests where the shipowners need to ensure that there will be no dispute or other claims against the vessel under construction. This will be discussed in particular in Chapter 5.

Maritime Code gives protection in case of bankruptcy. Pursuant to Section 25, a voluntarily established right, such as mortgage, must have been entered in the journal no later than the day before the commencement of such bankruptcy proceedings so that the right is protected against bankruptcy. This rule of priority against in case of bankruptcy is stricter.<sup>131</sup> Further, in the case of bankruptcy, a creditor with a valid and legally protected mortgage/pledge securing its claim has a preferential right to cover its claim by the realization of collateral. Thus, if the shipowners somehow have to be declared bankrupt, then, the bank will have the preferential right to recover the outstanding debt by enforcing the mortgage.<sup>132</sup>

##### **Rights and obligations of the mortgagor**

Once the mortgage over vessel under construction is registered and effected, there are general nature on the effects of a mortgage. Norwegian law, in its statutory provisions, puts explicit rights and obligations of the mortgagor. First, Chapter 1 of Mortgage Act in Section 1-6 states that in the case of non-possessory liens, whereof the ship mortgage is one example,<sup>133</sup> the owner has the right to the yield from the mortgaged property. In other words, the shipowner is entitled to the freights earned, unless there is an agreement to the contrary.<sup>134</sup> As it is subject to any agreement, then that right of the shipowners is not mandatory. In the case of vessel under construction the shipowner is entitled to any benefits arising out of the shipbuilding contract, i.e. contractual rights.

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<sup>130</sup> Falkanger, "Mortgage on Ships According to Norwegian Law", 23.

<sup>131</sup> *Ibid*, 25.

<sup>132</sup> See Chapter 6.2.

<sup>133</sup> Falkanger, "Credit Based Upon Security in Ships", 49.

<sup>134</sup> *Ibid*.



Further, Section 1-7 of Mortgage Act states that the owner has the right to use the ship “in the usual manner except as otherwise provided by agreement, distraint provisions or other statutory rules. However, they are responsible for the proper care and maintenance, so that the security of the mortgagee is not reduced.<sup>135</sup> Different situation will happen in case of the security is over a vessel under construction. It may not possible to use the ship in trade, as it is still in construction period. Even so, the shipowners remain responsible to carry out proper care and maintenance by monitoring and inspecting the vessel under construction throughout the entire period of construction. This responsibility is stated in Article V (3) of SHIP 2000.

### **Rights and obligations of the mortgagee**

On the other side, the mortgagee’s rights and obligations are regulated by the same rules as the relevant rules for the mortgagor. In addition, Ship Mortgage Deed<sup>136</sup> make reference to some provisions of the rules to restate the rights of the mortgagee pertaining to enforcement of the mortgage. Even the mortgage document is essential in respect of creating a security, but it does not give true information on the underlying obligations of the mortgagor. For that, we have to go to the loan agreement, a document that is getting increasingly more complex.<sup>137</sup>

The most important effect of mortgaging a vessel is the mortgagee’s right to demand a forced sale, but mortgaging has effects prior thereto: the mortgagee’s main concern is that the value of the security is protected.<sup>138</sup> Norwegian statutory provisions do not prescribe the rights of the mortgagee to protect the value of the mortgaged asset. So, the bank will refer to the loan agreement and will also be relying on the Ship Mortgage Deed as the general rules in the Mortgage Act will be more illustrated in the deed.<sup>139</sup> Under the Ship Mortgage Deed the bank as the mortgagee shall be entitled to:

- At any time and at the expense of the mortgagor, 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.
- Whether give a consent on insurance conditions that the mortgagor may procure.
- Whether give a consent on any major modifications and changes or to place major expenditures on the vessel.

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<sup>135</sup> Falkanger, “Credit Based Upon Security in Ships”, 49.

<sup>136</sup> Annex 2.

<sup>137</sup> Falkanger, “Credit Based Upon Security in Ships”, 43.

<sup>138</sup> Thor Falkanger, “Forced Sale of Vessels – according to Norwegian Law”, *Scandinavian Institute of Maritime Law Yearbook 1999*, No. 247 (1999), 48.

<sup>139</sup> Falkanger, “Credit Based Upon Security in Ships”, 49

- Whether give a consent on the sale of or further encumbrance of the vessel under construction – so called negative pledge. 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.

Moreover, the Code of Enforcement is setting out the rights of the mortgagee when it comes to enforcement which is the right to seek satisfaction from the security when the amount secured falls due – either ordinarily or because of extraordinary circumstances.<sup>140</sup> By the time the mortgage needs to be enforced, pursuant to Section 3-1 of CoE, the mortgagor shall reimburse the mortgagee’s legal costs as far as the case and the costs have been necessary. That provision is showing some balance when it comes to enforcement. CoE gives a full right to the mortgagee to get reimbursement from the mortgagor on their legal costs in order to protect their interest, but CoE also put some limitations on the basis that the costs claimed by the mortgagee are relevant to the enforcement of the security.

#### 4.3.3 Deletion from Shipbuilding Register and transfer to the ordinary register

As it is mentioned before, that there is a separate register for registration of vessel under construction and the shipbuilding contract within NOR so-called the Shipbuilding Register. The mortgage over vessel under construction is also registered in such register. According to Section 32 paragraph one of Maritime Code, once the vessel has been delivered, both the vessel under construction and the shipbuilding contract shall be deleted from the register. Such deletion shall be requested by the shipowners with submission of the Notification of Deletion to Norwegian Shipbuilding Register Form.<sup>141</sup>

A question of how the bank can keep the mortgage installed then arises in order for them to protect its interest. Principally, Maritime Code in its Section 32 paragraph 3 states that in case an encumbrance is registered on a vessel under construction or on a building contract, and the encumbrance is not transferred to the Norwegian Ship Register, such encumbrance shall not be deleted from the Shipbuilding Register without the written consent of the holder. In contrast, if the new building is being transferred to NOR without a change of ownership, the mortgage will be transferred automatically.<sup>142</sup> In the deletion form, reasons for deletion are stated and the shipowners must tick one of the reasons. Thus, if the vessel is intended to be

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<sup>140</sup> Falkanger, “Credit Based Upon Security in Ships”, 57.

<sup>141</sup> Annex 5. See Section 23 and 23a of Regulation on Ship Registration.

<sup>142</sup> SDIR, "Deletion from the Shipbuilding Register", accessed on 27 November 2021. <https://www.sdir.no/en/shipping/registration-of-commercial-vessels-in-nisnor/deletion-of-vessels/deletion-from-the-shipbuilding-register/>

registered into the ordinary register in NOR, then, deletion because of transferring the vessel to ordinary register must be ticked. In such situation, the bank will maintain its mortgage as it is automatically transferred.

Further, after the deletion is submitted, the shipowners shall receive a certificate of deletion to certify that the deletion has been done. Another application of registration into NOR shall be submitted by the shipowners with the same manners as the initial registration described in Chapter 4.3.1. But in this case, the submission is based on Notification of Registration to NOR/NIS and shall state that the vessel is intended to be registered into the ordinary register of NOR.

## **5 BANK'S INTEREST DURING CONSTRUCTION PERIOD, ON DELIVERY, AND AFTER DELIVERY**

In a new build financing, the shipbuilding contract and the loan agreement will be tremendously related. Both signed with a starting point that any performances or implementations of both contracts shall be affecting one another. At the initial stages, the bank will put requirements and restrictions in the loan agreement to manage the involved risks in financing a new build vessel. Continuously over the period of the shipbuilding contract and loan agreement, the bank will also put certain requirements and restrictions to address its interest. Not only during the construction period but also at the latter stages which are on delivery and after delivery stages or phases.

### **5.1 During shipbuilding period**

During the shipbuilding period, the bank required that the mortgage has been established according to Norwegian law. The mortgage gives the bank rank in priority as it is explained in Chapter 4.3.2. It is one of the important interests of the bank that its interest in respect of the vessel under construction remains prioritized. Under the loan agreement, in Representations clause, the bank will require the shipowners to ensure that the established mortgage has the priority which it is expressed to have in the Ship Mortgage Deed and there will be no other encumbrances established in respect of the asset.<sup>143</sup> This representation shall be made and repeated to protect the interest of the bank throughout the shipbuilding and loan agreement period.

Further, even though the bank's interest in respect of the mortgage will be prioritized in the case of bankruptcy of the shipowners. However, maritime liens ranking prior to the mortgage may take the mortgage security practically worthless.<sup>144</sup> Given that situation, the shipowners have to represent and warrant that there is no litigation, arbitration or administrative proceedings or investigations have been started or threatened against the shipowners. The representation including any claims against the shipowners that are related to the vessel under construction. If any such events occurred, it may trigger an event of default under the loan agreement.

One of the most important interests of the bank is its interest related to the progress of the construction. In order to monitor the progress of the construction, the bank will need access to inspect the vessel at the shipbuilder's yard at any time the bank deemed necessary. Besides access to inspect, the bank will also need the shipowners to give any information on the vessel and the construction progress. Thus, the vessel under construction's value can be continuously

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<sup>143</sup> Personal communication with a banker and bank's legal officer.

<sup>144</sup> Falkanger, "Mortgage on Ships According to Norwegian Law", 8.

monitored by the bank by carrying out an asset appraisal, which is usually carried out annually during the credit or loan period by an appraiser appointed by the bank.<sup>145</sup>

## **5.2 On delivery**

Following regular monitoring from the bank during the construction period, it will come to the time where the vessel is completely built and shall be delivered to the shipowners. In the delivery phase, the bank interests will be related to the condition of the vessel. The vessel has to be built in accordance with the specifications as prescribed on the shipbuilding contract. The vessel also has to be free from any overdue conditions according in connection with classification society's requirements. The bank will usually put provisions related to those matters in the loan agreement. In respect of the vessel status, the vessel shall, on the delivery date, be seaworthy and has been built in accordance with its Specifications and also be classed with the relevant Classification free of all overdue conditions.<sup>146</sup>

Further, as it is explained in Chapter 2.2.4 that the insurances procured by the shipbuilder will expire simultaneously after the vessel is delivered to the shipowners. On the delivery date, the shipbuilder is no longer responsible for the vessel and the risks are transferred to the shipowners. The bank's interest in this phase is that the vessel needs to be insured with a proper insurance and agreed by the bank. Under the loan agreement, the bank then will require the shipowners to procure insurances. Hull & Machinery, Protection & Indemnity, War Risks, and other mandatory and required insurances, such as Mortgagees' Interest Insurance.

## **5.3 After delivery**

Commercial bank loans are made available to the shipowners in tranches, and repayable over a fixed period of time in instalments.<sup>147</sup> Schedule of the repayment in the loan agreement will suggest how long the loan agreement will last, in most cases. Thus, even after the vessel has been completely built and delivered to the shipowners, the loan agreement will continue between the bank and the shipowners. The starting point is that the shipowners need a financing, at the first place, so that the shipowners may be able to manage its cashflow to acquire a new build vessel.

After the delivery, the vessel has to be transferred from the Shipbuilding Register to the ordinary register in NOR. In order to do so, the shipowners have to meet all the requirements pursuant to the Maritime Code and the Regulation on Ship Registration. One of the requirements

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<sup>145</sup> Personal communication with a banker and bank's legal officer.

<sup>146</sup> *Ibid.*

<sup>147</sup> Kavussanos and Visvikis, *The International Handbook of Shipping Finance*, 131.

is the owner's nationality requirement. It is the bank's interest that the vessel, after delivery, will be able to be registered in the ordinary register. Consequently, the bank will require the shipowners to maintain its shareholdings structure, so that the owner of the shipowners (as a limited liability company) are majorly Norwegian legal persons.

Further, besides the nationality requirement, in order to transfer the vessel from the Shipbuilding Register to the ordinary register. An application shall be submitted by the shipowners. If the shipowners did not submit any application, the transfer of register may not have happened and the interest of the bank may not be protected. However, the statutory provisions, Section 32 paragraph 3 last sentence of Maritime Code states that the mortgagee may himself apply to have the ship entered in the ordinary ship register. Thus, the bank will still be able to protect its interest over the vessel and have the mortgage remain in force.

## **6 ENFORCEMENT OF THE MORTGAGE**

### **6.1 Applicable law**

In the event of the shipowner as the borrower does not pay his debt on due time or any other Events of Default under the loan agreement occurred, one consequence may be that the vessel under construction, as it is mortgaged to the bank, will be sold at a forced auction or otherwise as directed by the enforcement (executionary) authorities, so that the secured debt may be covered from the proceeds from the sale.<sup>148</sup> In order to do such sale, the bank needs to go through certain processes as the procedures on enforcement of mortgage based on the statutory provisions.

In this case, the vessel under construction is registered in the Shipbuilding Register as a separate chapter under ordinary Norwegian ship register (NOR). The rules that are applicable under Norwegian law are the Code of Enforcement (CoE) and Mortgage Act, supplemented by some rules in the Maritime Code. CoE is mandatory.<sup>149</sup> Both CoE and Maritime Code are also governing the rights and obligations of the mortgagor and mortgagee, and the Ship Mortgage Deed that is submitted for the registration of the mortgage restates several rights of the concerning parties.

### **6.2 Enforcement mortgage on a vessel under construction**

When it comes to the enforcement, the financier as the mortgagee must have a ground for enforcement before they can obtain the assistance of the enforcement authorities as it is set out under Section 11-4 of CoE. Further, there are two possibilities available to a creditor to enforce the security, first, they may utilize the vessel (forced use) after the construction is completed. The other option is to sell the vessel (forced sale). However, in the case the creditor is a bank (financier), it is unlikely for them to utilize the vessel (forced use) as they do not have the capability to operate and manage the vessel. Thus, the best option for the bank is to do the forced sale and obtain the proceeds out of it in order to cover the outstanding amount payable from the shipowner to them.

The necessary precondition for a forced sale is, of course, that the debt or part of it is due and unpaid, e.g., interest for the last half year or the instalment for the same period has not been paid.<sup>150</sup> This is also contained in Maritime Code Section 44 paragraph one (6) that a debt secured by a contractual mortgage on a ship entered in the Ship Register when there is a sub-

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<sup>148</sup> Falkanger, "Forced Sale of Vessels", 3.

<sup>149</sup> *Ibid*, 4.

<sup>150</sup> *Ibid*, 5.

stantial breach of the obligation to pay interest and instalments according to the contract. In practice, such situation can be determined by looking into the underlying documents of the debt itself, which is the loan agreement. One of the provisions under loan agreement gives the right to the bank to make calculation of, based on their own and sole discretion, the outstanding amount payable from the shipowner to the bank. The owing amount, then, may be the basis for forced sale, the purpose being enforcement of the interest or the instalment only.<sup>151</sup>

#### 6.2.1 Reasons of enforcement from the bank's perspectives

Code of Enforcement distinguishes between general and special grounds for enforcement. The general enforcement grounds are mentioned in Section 4-1 of CoE, however, the special grounds as governed under Section 11-2 of CoE are more important in practice.<sup>152</sup> By referring to Section 11-2, the relevant grounds for the bank who hold a security on vessel under construction based on loan agreement is what is stated in letter (a) of such Section which is registered contractual mortgage as the ground of enforcement.

In general, the starting point of enforcement is that the shipowners is failed to repay the debt on time. Such failure will lead the shipowners in a situation so-called 'on default', triggering an event of default. In practice, there are more events that are considered as the Events of Default that may lead to enforcement of the mortgage over vessel. The loan agreement sets out a list of events and circumstances, the occurrence of which will allow the bank to declare the loan amount and all accrued interest and expenses immediately due and payable.<sup>153</sup> A standard event of default clause will include the following:

- a) Breach of payment obligations;
- b) Breach of representations and warranties;
- c) Breach of covenants;
- d) Insolvency or bankruptcy of the shipowners; and
- e) Depreciation in the value of the ship (resulting in the breach of the minimum asset cover requirement which is not rectified within the period sets out in the loan agreement).

In order to exercise its right to enforce the mortgage, the bank must submit an application of enforcement. Before submitting application of enforcement, the bank needs to give notification to the shipowner as the borrower in writing that an application for a forced sale will be submitted to the court 14 days later if payment is not received.<sup>154</sup>

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<sup>151</sup> Falkanger, "Forced Sale of Vessels", 5.

<sup>152</sup> Falkanger, Bull and Brautaset, *Scandinavian Maritime Law*, 156.

<sup>153</sup> Kavussanos and Visvikis, *The International Handbook of Shipping Finance*, 135.

<sup>154</sup> Falkanger, "Forced Sale of Vessels", 11.



## 6.2.2 Procedures of the forced sale

### **Submitting the application**

The bank with its receivable based on loan agreement secured by a mortgage over vessel under construction wishing to have the vessel sold, has to submit an application addressed to a competent court. In order to determine which court is competent, the bank needs to refer to Section 11-3 of CoE. The court where the vessel is registered, nor the home port of the vessel, or the court where the owner is domiciled in.<sup>155</sup> In Section 11-3 it is stated that the court in whose geographical district the vessel is at the time of submitting the application, or is “expected to arrive in the near future”.<sup>156</sup> It means that, in the case of vessel under construction, the competent court is the court whose jurisdiction includes the location of the shipbuilder’s yard.

Other than that, the form of application itself has to be in writing and signed by authorized person of the bank containing the register designation and where the property is located, as well as unregistered rights in the property known to the bank, including information on the nature, size and maintenance of the property.<sup>157</sup> Then, the bank shall submit the application to the competent court.

### **Forced sale of vessels under construction**

Since vessel under construction can be registered into the Shipbuilding Register under the ordinary Norwegian Register, thus, applicable rules on the forced sale of vessel under construction in Norway are the exact same rules which are applicable to the forced sale of a sailing vessel or vessel used in navigation.<sup>158</sup> Once the court has accepted the application for a forced sale, the court will also decide on how the sale is going to be carried out. There are, at least, two options on how the sale is going to be carried out, first, the actual sale by an assistant of the court and forced sale by way of an auction. It is not up to the bank, but it is up to the court. According to Section 11-12 of CoE, the court decides on the basis of what is assumed to give the greatest benefit either by an auction or a sale by an assistant of the court.

#### 1) Actual sale by an assistant of the court

When the court chooses this alternative, it appoints an assistant which appears to be a professional ship broker who is familiar with the market for the type of vessel in question. The ship broker will, then, circulate the vessel’s particulars and as far as possible follow the procedures applying to ordinary sales.<sup>159</sup> The ship broker shall also be subject to the

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<sup>155</sup> Falkanger, “Forced Sale of Vessels”, 6.

<sup>156</sup> See Ot prp nr 65 (1990-91) page 207.

<sup>157</sup> Section 11-6 of Code of Enforcement.

<sup>158</sup> Falkanger, “Forced Sale of Vessels”, 25.

<sup>159</sup> Falkanger, Bull and Brautaset, *Scandinavian Maritime Law*, 157.

court orders since they are the assistant of the court. In accordance with Section 11-28 of CoE, the ship broker shall obtain some acceptable offer on the vessel, and the offers shall be accepted by the claimant creditor which, in this case, is the financier or bank. In determining which offer is acceptable, there are two important rules setting out the lowest limit for an acceptable offer that the ship broker (the court) has to take into account.<sup>160</sup> First, a sale must obtain full satisfaction for all parties with rights ranking higher in priority than those of the creditor demanding the forced sale. Second, the court must not confirm a sale if it considers that further efforts to effect a sale may result in higher net proceeds.

After the court confirmed on the sale, there will be a transfer of risk and ownership which is subject to the full payment of the purchase price of the vessel.<sup>161</sup> The day where it is fully paid called as the settlement date. Even the buyer has paid the purchase price in full, the fund will not be directly wired to the bank's account.<sup>162</sup> The payment to the bank or creditor shall be done by the court through the ship broker as they are the one who manage the distribution of the fund based on distribution decision by the court.

## 2) Forced auction

The other alternatives to do the forced sale is by way of forced auction. When the court decides that a forced auction is preferable to a sale with a ship broker as the court's assistant, the rules are a similar nature.<sup>163</sup> However, in case of forced auction, a public auction shall be held and administered by the court through an enforcement officer. The enforcement officer shall fix a date for the auction and notifies all concerned parties.<sup>164</sup> When the auction is held, bidding will continue until the director of the auction declares the public meeting closed. Based on Section 11-50 of CoE, it is up to the claimant, in this case the bank, to decide whether any of the bids are acceptable. Once it has been accepted by the claimant, the court shall confirm such price and give a decision whether it is acceptable. Then, the same principle apply as under an actual sale by assistant of court.<sup>165</sup> The fund will not be directly wired to the claimant's account, but it will depends on the distribution decree issued by the court and the claimant have to wait until it is settled.

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<sup>160</sup> *Ibid*, 157.

<sup>161</sup> Falkanger, "Forced Sale of Vessels", 20.

<sup>162</sup> *Ibid*, 23.

<sup>163</sup> *Ibid*.

<sup>164</sup> *Ibid*.

<sup>165</sup> Falkanger, Bull and Brautaset, *Scandinavian Maritime Law*, 159.

## 7 CONCLUSION

In Norwegian law, it is possible for a bank to grant a loan to a shipowner who wants to build a new vessel and take the construction as security by mortgage. This is achievable if under the shipbuilding contract the construction is owned by the shipowner or buyer by amending the standard provisions under SHIP 2000. Since Norway is ratifying the International Convention Relating to Registration of Rights in Respect of Vessels Under Construction, 1967 which is then adopted in the Maritime Code, the registration of and the mortgage on vessel under construction is possible so long as it is built in Norway. Thus, the rights of the bank as the mortgagee shall be legally protected according to Maritime Code.

Further, the loan agreement is an instrument for the bank to protect its interest as well as to manage its risks. There are several interests that the bank needs to protect during shipbuilding period, on the delivery phase and after the delivery phase. Under the loan agreement, representations and warranties and also covenants provisions are taking key roles to protect the bank's interest. Those provisions will ensure that: (1) the bank have the access to inspect the construction during the shipbuilding period; (2) on delivery, the vessel is built in accordance with specifications and classification society's requirements without any conditions and the shipowners have procured proper insurance for the new build vessel; and (3) after delivery, the shipowners shall ensure that the requirements to transfer the vessel and mortgage registration are fulfilled, thus, the rights of the bank as the mortgagee remain valid.

Even though the bank's rights are protected by the mortgage over the vessel under construction, there are risks involved in the financing of a new build vessel. By the time the vessel under construction is completely built and has to be delivered, the value of the vessel under construction as the mortgaged asset might be significantly reduced due to market volatility. So that the value of the vessel is not as what was expected at the commencement of the shipbuilding contract. Besides the value volatility, throughout the construction period, the bank should be covered by insurances, and NMIP provides an independent co-insurance to protect the interest of the bank over the vessel under construction. It is, however, such independent co-insurance is not a separate insurances coverage that will only give coverage in respect of the principle insurances, the builder's risks insurance under NMIP. It will not cover a risk such as the risk of scuttling or casting away, which is not a 'peril of the sea'.

Those risks shall be addressed by the bank by putting certain requirements in the loan agreement as the instrument to manage its risks. In practice, the bank will only provide the loan up to certain percentages of the shipbuilding contract price that the bank deemed suitable – might be up to 60%. The conditions precedent of the loan agreement, then, require the shipowners to pay the other portion of the shipbuilding contract price in advance. Further, the bank will also set out a financial covenant in respect of the value of the vessel under construction. The min-

imum value covenant or leverage covenant on loan to ship value. Thus, the value of the mortgage will remain within the parameters of the bank's initial credit approval of the loan during the loan period. Furthermore, in regards to the lack of separate insurance cover, the bank will also require the shipowners to procure the Mortgagees' Interest Insurance that is not available under Norwegian law but available in English law in order to cover the risk of scuttling or casting away and other risks which are not perils of the sea.

In case of the shipowners violate and breach any provisions under the loan agreement which is considered as an event of default, thus, under Norwegian law there are alternatives of forced sale and forced use are available to enforce the mortgage. It is the bank's sole discretion to decide which alternatives the bank deemed the best alternative to enforce the mortgage. The forced sale might be carried out by way of forced auction or actual sale by an assistant of the court. Further, the court will decide which manner of the forced sale shall be carried out. As a result of the sale of the vessel, thus, the proceeds of the sale shall be utilized to repay the outstanding loan amount.

Therefore, the analysis of the questions presented in the introduction shows that from the legal aspect of mortgage, under Norwegian law, vessel under construction can be mortgaged to protect the bank's interest and further be enforced. The natural risk in this transaction is that after the vessel is completely built and delivered, the value of the vessel may be not the same as the estimated value at the beginning of the shipbuilding contract considering that the market is volatile and vulnerable. Consequently, the bank needs to be aware of the risks before they are about entering into a loan agreement with a shipowner to finance their newbuild vessel. This awareness shall be followed by better risks assessment and management by keep monitoring the market specifically for the value of the same type of the vessel that is being built and to use different approach when drafting the loan agreement to make it more suitable with the nature of the transaction, especially to be more aware on what financial covenants are being included given that the covenants provisions are the tool for the bank to keep managing their risks throughout the loan period.

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## **ANNEXES**

The following documents are the annexes of this thesis:

1. Annex 1 – Norwegian Shipbuilding Contract 2000 (SHIP 2000)
2. Annex 2 – Ship Mortgage Deed by Spama AS
3. Annex 3 – Notification of Registration to NOR/NIS
4. Annex 4 – Notification of Registration to Shipbuilding Register
5. Annex 5 – Notification of Deletion to Norwegian Shipbuilding Register

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



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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

<b>"Force Majeure"</b>	any one or more of the events set out in Article IX clause 1
<b>"Force Majeure Delay"</b>	a delay caused by Force Majeure, which according to Article IX constitutes Permissible Delay
<b>"Guarantee Period"</b>	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
<b>"Maker's List"</b>	an agreed list of suppliers approved for delivery of equipment, machinery or services which shall be included in the Specifications
<b>"Original Contract Price"</b>	the price stipulated in Article III clause 1
<b>"Permissible Delay"</b>	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
<b>"Regulatory Bodies"</b>	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
<b>"Representative"</b>	a person or persons authorised by the Buyer as set forth in Article V clause 2
<b>"Specifications"</b>	the specifications referred to in Appendix I hereto
<b>"Subcontractor"</b>	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
<b>"Vessel"</b>	the vessel described in Article II.
<b>"Working Day"</b>	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 outfitings 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 .....  
in....., 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.





**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 outfittings 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 outfittings. 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 Shipyard 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 (inclusive 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 net 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.

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 Buyer's 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 ..... % (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. § 67

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 .....% (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).

\* \* \*

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

..... the ..... 20.....

.....

**Appendix I** Specification and list of plans and drawings

**Additional Articles/clauses:**

To be registered in the ship registers	<b>Mortgagor(s)</b>		
	Name		Corp.ID No./Nat.ID.No.
	<b>Mortgagee(s)</b>		
	Name		Corp.ID No./Nat.ID.No.
	<b>Mortgage amount</b>		
	Currency	Amount	Amount in words
	<b>Mortgaged vessel</b>		
	Name of the ship (alternatively, hull number)		
			with
	Call sign.	Entered in ship register	
Year of construction	Home port (alternatively, name of main shipyard)		
<p>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.</p> <p>The mortgage shall also attach to all insurance proceeds receivable in respect of the vessel.</p> <p>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.</p>			
Additional shipyard(s)			
<b>Agreed priority</b>			
The mortgage has right of priority advancement.			
<b>Negative pledge</b>			
The vessel may not be sold or further encumbered without the mortgagee's consent unless specified in the following:			
<b>The following condition(s) shall not be registered</b>			
Declaration of debt liability			
<p><i>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.</i></p>			
<b>The mortgagor undertakes:</b>			
<p>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,</p>			

*Conditions continue overleaf.*

Conditions continued from previous page.

- b) to maintain adequate insurance cover in respect of the vessel against such risks and on such conditions as the mortgagee 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.

Place, date

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.

1. Signature

Name(s) in typed or printed letters

Address (in typed or printed letters)

2. Signature

Name(s) in typed or printed letters

Address (in typed or printed letters)

**SEND DIRECTLY TO**  
The Norwegian Maritime Authority, Ship Registers (Nis/Nor)  
P.O. Box 73, Nygårdstangen  
N-5838 BERGEN

**JOURNAL NUMBER/ STAMP**

## NOTIFICATION

The vessel is to be registered in:

- THE NORWEGIAN INTERNATIONAL SHIP REGISTER - NIS
- THE NORWEGIAN SHIP REGISTER - NOR (FOR SHIPS SUBJECT TO MANDATORY REGISTRATION)

<b>NAME:</b>	
<b>CALL SIGN (Norwegian)</b>	
<b>FORMER NAME:</b>	
<b>IMO NUMBER:</b>	
<b>Registration No. in The Register of Norwegian Fishing Vessels</b>	

- The ship is abroad. A Provisional Certificate of Nationality is needed. Please use form KR-0011 (available in Norwegian only)

<b>OWNER'S NATIONALITY</b> (To be completed for registration in <b>NOR</b> )	<b>OWNER'S NATIONALITY</b> (To be completed for registration in <b>NIS</b> )
<p>The owner satisfies the requirements to nationality set out in the Maritime Act</p> <p><input type="checkbox"/> § 1, S.1 Norwegian citizen (Fill in 1)</p> <p><input type="checkbox"/> § 1, S.1 Norwegian citizen resident abroad (Fill in 1 and 4)</p> <p><input type="checkbox"/> § 1, S. 1 Unlimited partnership or other general partnership (Fill in 1 and 6)</p> <p><input type="checkbox"/> § 1, S. 1 Limited partnership (Fill in 1)</p> <p><input type="checkbox"/> § 1, S. 1 company with limited liability (Fill in 1 and 3)</p> <p><input type="checkbox"/> § 1, S. 3 (Fill in 1,2,3,4-as appropriate). EEA person/ company (on equal footing with a Norwegian national)</p>	<p>The owner satisfies the requirements to nationality set out in the Act relating to NIS,</p> <p><input type="checkbox"/> § 1 no. 1. (Fill in 1 and 3)</p> <p><input type="checkbox"/> § 1 no.1. (Fill in 1, 3 and 6)- unlimited partnership</p> <p><input type="checkbox"/> § 1 no. 2A. (Fill in 1, 3 and 5)</p> <p><input type="checkbox"/> § 1 no. 2B. (Fill in 1, 3, 5 and 6)</p> <p><input type="checkbox"/> § 1 no 3. (Fill in 1, 2, 3, 4 and 5)</p>
	<p><b>Foreign trade union(-s):</b> <b>(Only applicable for ships registered in the NIS)</b></p>



**PLEASE FILL IN APPLICABLE ALTERNATIVE (-S)**

**- see under Owner's Nationality**

<b>1) OWNER:</b>	<b>NAME:</b>			
	<b>ORG.NO./ PERSONAL ID.NO.</b> (11 didgits)		<b>OWNERS IMO ID.NO.</b> (7 didgits)	
	<b>NATIONALITY:</b>			
	<b>E-MAIL:</b>			
	<b>PHONE:</b>		<b>FAX:</b>	

<b>2) HEAD OFFICE:</b>	<b>NAME:</b>			
	<b>ORG.NO./ PERSONAL ID.NO.</b> (11 didgits)			
	<b>E-MAIL:</b>			
	<b>PHONE:</b>		<b>FAX:</b>	

<b>3) BUSINESS ADDRESS:</b>	<b>NAME:</b>			
	<b>ORG.NO./ PERSONAL ID.NO.</b> (11 didgits)			
	<b>E-MAIL:</b>			
	<b>PHONE:</b>		<b>FAX:</b>	

<b>4) NORWEGIAN REPRESENTATIVE</b> pursuant to:  S.1 (1) no.3 of the NIS Act/ S. 1 no. 3 of the Maritime Act	<b>NAME:</b>			
	<b>ORG.NO./ PERSONAL ID.NO.</b> (11 didgits)			
	<b>E-MAIL:</b>			
	<b>PHONE:</b>		<b>FAX:</b>	

<b>5) MANAGING COMPANY:</b> pursuant to:  S.1 (1) no.3 of the NIS Act/ S. 1 no. 3 of the Maritime Act	<b>NAME:</b>			
	<b>ORG.NO.</b>			
	<b>E-MAIL:</b>			
	<b>PHONE:</b>		<b>FAX:</b>	

<b>ISM-liable company</b> pursuant to the ISM-Code: Please see separate form, KR-0014	
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<b>6) MANAGING OWNER:</b>	<b>NAME:</b>			
	<b>ORG.NO./ PERSONAL ID.NO.</b> (11 didgits)			
	<b>E-MAIL:</b>			
	<b>PHONE:</b>		<b>FAX:</b>	

**OTHER**

<b>BODY WITHOUT ORG. NO.</b>	<b>NAME:</b>			
	<b>ADDRESS</b>			
	<b>E-MAIL:</b>			
	<b>PHONE:</b>		<b>FAX:</b>	

**Signature**

<p><b>Owner</b></p> <p>Place: _____ Date: _____</p> <p>_____</p> <p>Binding signature (for companies- pursuant to Certificate of Company Registration) - to be repeated in capital letters-</p>	<p><b>If other invoicing address than owner:</b> Alternatively, use separate form, KR-0070</p> <p>Place: _____ Date: _____</p> <p>Name: _____</p> <p>Org.nr./personal ID.no. (11digits): _____</p> <p>_____</p> <p>I/we hereby confirm that I/we may be invoiced for this registration. To be signed with binding signature by the invoice recipient. Kindly repeat with capital letters.</p>
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**The Register's stamp and signature**

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**SEND DIRECTLY TO**

The Norwegian Maritime Authority, Ship Registers (Nis/Nor)  
P.O. Box 73, Nygårdstangen  
N-5838 BERGEN

**JOURNAL NUMBER/ STAMP**

**NOTIFICATION TO  
THE NORWEGIAN SHIPBUILDING REGISTER**

**FOR THE REGISTRATION OF:**

( Fill only in I, II or III)

I.  **SHIP/ DEVICE UNDER CONSTRUCTION IN NORWAY**

(The Norwegian Maritime Code § 31, S. 1, sub-section 1/  
§33/ §39/§ 507)

Built to order                      or                       For own account

II.  **CONTRACT FOR BUILDING OF SHIP/DEVICE IN NORWAY**

(The Norwegian Maritime Code § 31, S. 1, sub-  
section 2./ § 33/ §39/§ 507)

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

(The Norwegian Maritime Code § 31, S. 1, sub-section 3/ § 33)

<b>SHIPBUILDING YARD</b> Principal yard, in Norway, where the construction is taking place	Yard. No.	
	Name	Org.no
<b>CONTRACTING YARD</b> Name of yard which has entered into the contract with the party placing the order	Yard. No.	
	Name	Org.no
<b>DATE OF CONTRACT</b>		

<b>BUILDING PERIOD</b> (in Norway)	From	To
<b>PLACE OF BUILD</b>		
<b>TYPE OF VESSEL</b>		
<b>STATUTORY AUTHORITY FOR REGISTRATION</b> The Norwegian Maritime Act	<input type="checkbox"/> § 31 <input type="checkbox"/> § 39- please state No. and name below <input type="checkbox"/> § 507- please state No. and name below	
	Product license No.	Name of the Product,/device
<b>BUILDING MATERIAL</b>	<input type="checkbox"/> Aluminium <input type="checkbox"/> Iron <input type="checkbox"/> Steel	
	<input type="checkbox"/> Concrete <input type="checkbox"/> Composite <input type="checkbox"/> Wood	
	<input type="checkbox"/> Ferro concrete <input type="checkbox"/> Plastic <input type="checkbox"/> Rubber canvas	
	Other	

(SIDE 1 AV 3 SIDER)

<b>PROPULSION</b>	<input type="checkbox"/> Engine	<input type="checkbox"/> Steam	<input type="checkbox"/> No means of propulsion
	<input type="checkbox"/> Sails	<input type="checkbox"/> Turbine	
Other			

<b>ESTIMATED MEASUREMENTS IN METRES</b>	Length	Breadth	Depth	Max length
	Gross tonnage	Net tonnage	Deadweight (if available)	

<b>HULL BUILT BY (if other than the shipbuilding yard)</b>	Name	Org.no
	Address	Yard No.

<b>TO BE REGISTERED AS OWNER/ TITLE HOLDER</b>	Name			
	Org.no	Personal Id.No. (11 digits)	Phone	Fax
	E-mail			

<b>NAME OF PARTY PLACING THE ORDER</b>	Name			
	Org.no	Personal Id.No. (11 digits)	Phone	Fax
	E-mail			

**OTHER**

<b>BODY WITHOUT ORG.NO</b>	Name			
	Address			
	E-mail			

**SIGNATURE**

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.

<b>For the yard</b>	<b>For the party placing the order</b>
Place and date	Place and date
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 -
<b>If other invoicing address than owner:</b> Alternatively, use separate form, KR-0070	
Name	Org.nr./personal ID.no. (11 digits)
Place and date	I/we hereby confirm that I/we may be invoiced for this registration. To be signed with binding signature by the invoice recipient. Kindly repeat with capital letters.

**The Register's stamp and signature**

**PLEASE SEND DIRECTLY TO:**

The Norwegian Maritime Authority, Dep. of Ship Registration by email,  
[post@nis-nor.no](mailto:post@nis-nor.no)  
Alternatively,  
PO Box 73 Nygårdstangen  
N-5838 BERGEN, NORWAY

**JOURNAL NUMBER/ STAMP**

**NOTIFICATION OF DELETION TO:**

- NORWEGIAN INTERNATIONAL SHIP REGISTER - NIS  
 NORWEGIAN SHIP REGISTER – NOR  
 NORWEGIAN SHIPBUILDING REGISTER

<b>INFORMATION CONCERNING VESSEL</b>	<b>CALL SIGN:</b>	
	<b>NAME OF VESSEL:</b>	
	<b>IMO NO.:</b>	
	<b>YARD NO.:</b>	
	<b>AT YARD:</b>	

<b>REASON FOR DELETION:</b>	<p><input type="checkbox"/> SOLD TO NORWEGIAN OWNER AND TRANSFERRED TO NEW REGISTER</p> <p><input type="checkbox"/> SOLD TO FOREIGN OWNER AND TRANSFERRED TO NEW REGISTER</p> <p><input type="checkbox"/> TRANSFERRED TO NEW REGISTER BY NORWEGIAN OWNER WITHOUT CHANGE OF OWNERSHIP Please specify:</p> <p><input type="checkbox"/> TRANSFERRED TO NEW REGISTER BY FOREIGN OWNER WITHOUT CHANGE OF OWNERSHIP Please specify:</p> <p><input type="checkbox"/> CUSTOM BUILT FOR NORWEGIAN PRINCIPAL. THE NEWBUILDING HAS BEEN DELIVERED TO THE BUYER.</p> <p><input type="checkbox"/> CUSTOM BUILT FOR FOREIGN PRINCIPAL. THE NEWBUILDING HAS BEEN DELIVERED TO THE BUYER.</p> <p><input type="checkbox"/> THE NEWBUILDING ORDER WAS NOT COMPLETED</p> <p><input type="checkbox"/> DELETION OF VESSEL NOT UNDER OBLIGATION TO REGISTER (LENGTH LESS THAN 15M)</p> <p><input type="checkbox"/> SOLD TO FOREIGN OWNER FOR BREAKING UP</p> <p><input type="checkbox"/> SOLD TO NORWEGIAN OWNER FOR BREAKING UP</p> <p><input type="checkbox"/> BROKEN UP</p> <p><input type="checkbox"/> CONDEMNED</p> <p><input type="checkbox"/> LOST AT SEA</p>
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<b>DELETED TO: (COUNTRY)</b>	<input type="checkbox"/> <input type="checkbox"/> WITHOUT BEING TRANSFERRED TO NEW REGISTER
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**The below questions are relevant for NIS and NOR-vessels subject to mandatory registration (15 m or more) only:**

**YOUR FEEDBACK ON YOUR EXPERIENCE WITH OUR ADMINISTRATION DURING THE TIME THE SHIP HAS BEEN UNDER THE NORWEGIAN FLAG IS OF GREAT VALUE TO US.**

Your comments help us provide the best possible service and we would be most grateful if you would take the time to answer the questions below. Both positive and negative feedback is of importance.

THE DEPARTMENT OF SHIP REGISTRATION	Always	Most of the time	Some times	Never
Provides good customer service. I feel that the staff provide «that little extra».				
The staff have a professional attitude.				
The staff possess the necessary expertise.				
Comments:				
OTHER DEPARTMENT WITHIN THE NMA (please specify):	Always	Most of the time	Some times	Never
Provides good customer service. I feel that the staff provide «that little extra».				
The staff have a professional attitude.				
The staff possess the necessary expertise.				
Comments:				

**Signature**

<p><b>Owner</b></p> <p>Place: _____ Date: _____</p> <p>_____</p> <p>Binding signature (for companies- pursuant to Certificate of Company Registration) - to be repeated in capital letters-</p>	<p><b>If other invoicing address than owner:</b> Alternatively, use separate form, KR-0070</p> <p>Place: _____ Date: _____</p> <p>Name: _____</p> <p>Org.nr./personal ID.no. (11digits): _____</p> <p>_____</p> <p>I/we hereby confirm that I/we may be invoiced for this registration. To be signed with binding signature by the invoice recipient. Kindly repeat with capital letters.</p>
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<p><b>The Register's stamp and signature</b></p>
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