



REFUND GUARANTEE FOR SHIPBUILDING CONTRACTS

To: **[insert name and address of the Buyer]**

- (1) In this Guarantee, the following terms have the following meanings:

‘Contract’ means the contract dated **[insert date]** made between the Builder and you for the construction of the Vessel.

‘Contractual Interest’ means the sum payable on an Instalment at the rate of interest prescribed by the Contract as applicable to any part of an Instalment which the Builder is obliged to repay under the terms of the Contract, calculated from the date on which the Builder received the Instalment to the date of your receipt of the repayment.

‘Demand’ means a written demand for payment under this Guarantee made by one of your officers accompanied by (a) a copy of the written demand made by you to the Builder for repayment under the Contract, and (b) a statement from you made by one of your officers confirming that the sums demanded by you are due and owing, and all served in accordance with Clause 10 below.

‘Instalment’ means the amount of each payment in respect of the contract price under the Contract (to the extent that it has not been refunded) which is made on, before or after the date of this Guarantee to the Builder (or at the Builder’s direction) by you or on your behalf.

‘Maximum Liability’ means the aggregate amount of the paid Instalments under the Contract (which shall not exceed **[here insert amount]**) plus Contractual Interest.

‘Builder’ means **[here insert name and address of shipbuilder]**

‘Vessel’ means **[here insert technical description and/or name]**

- (2) In consideration of you entering into the Contract, agreeing to pay an Instalment or Instalments to the Builder, and agreeing to accept this Guarantee pursuant to the Contract, at the request of the Builder we irrevocably and unconditionally guarantee (but as primary obligor and not by way of secondary liability only) that if the Builder becomes liable under the Contract to repay any part of any Instalment we shall, upon receipt by us from you of a Demand, pay to you, or in the event that this Guarantee is assigned pursuant to Clause 8 below, to the assignee, upon the expiry of thirty (30) days from receipt of such Demand the sum demanded by you by way of the repayment of the aggregate of the paid Instalments under the Contract plus Contractual Interest provided that our total liability shall not exceed the Maximum Liability.

This Guarantee shall be in force and effect from the date of the Builder’s actual receipt of the first Instalment.

The amount of this Guarantee will be automatically increased upon the Builder’s receipt of the respective Instalments, each time by the amount of such Instalment, plus Contractual Interest.

- (3) This Guarantee is an independent on-demand guarantee and not a secondary liability guarantee. It shall not in any event be affected by any indulgence or delay allowed to the Builder nor by any amendment to, or variation of, or supplement to, the Contract, whether as to time or otherwise that may be agreed between you and the Builder nor by any circumstances that would otherwise discharge our liability as guarantor.

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- (4) Subject to Clause 5 below, this Guarantee shall remain in force until the first to occur of (a) due delivery of the Vessel to you and acceptance of the Vessel by you under the Contract; (b) the payment to you by the Builder or by us of all sums secured by this Guarantee; or (c) **[here insert date]**, (the "Validity Period"); provided that the Demand must be made no later than the end of the Validity Period. However, notwithstanding the foregoing, if within twenty-eight (28) days after our receipt of a Demand we receive a written notice from you or the Builder that your claim for the repayment of any sums referred to in the Demand has been disputed and that such dispute has been referred to arbitration or the court in accordance with the Contract (a "Notice of Dispute"), the Validity Period shall be automatically extended until thirty (30) days after the dispute has been finally determined in accordance with Clause 5 below.
- (5) Notwithstanding the other terms of this Guarantee, if within twenty-eight (28) days after our receipt of a Demand we receive a Notice of Dispute from you or from the Builder, then (a) we shall not be obliged to make any payment to you under this Guarantee until thirty (30) days after the dispute has been finally determined by arbitration or the court or in the event of an appeal from an arbitration award or court, until thirty (30) days after delivery of the final unappealable judgment of the appellate court; or in the event that the appellate court remits the matter back to the arbitration tribunal, until thirty (30) days after the publication of the revised final award or in the event of an appeal from that award, until thirty (30) days after delivery of the final unappealable judgment of the appellate court; and, (b) our liability under this Guarantee shall be to pay to you, upon receipt by us from you of a further demand accompanied by a copy of the award or as the case may be a copy of the judgment, the amount finally awarded, or adjudged by the court, to be due to you under the Contract as guaranteed hereby provided that our total liability shall not exceed the Maximum Liability.
- (6) All payments to be made under this Guarantee shall be made without any set off or counterclaim and without deduction or withholding for or on account of any taxes, duties or charges whatsoever, unless we are compelled by law to deduct or withhold the same in which case we shall make the minimum deduction or withholding permitted, and will pay such additional amounts as may be necessary in order that the amount received by you after such deductions or withholdings shall be equal to the amount which would have been received had no such deduction or withholding been made.
- (7) All payments to be made under this Guarantee shall be made in freely transferable **[here insert currency]**.
- (8) Notwithstanding any provision in the Contract, any of your rights under this Guarantee shall be freely assignable by you (a) to your financiers who are financing the purchase price of the Vessel under the Contract without our prior consent, or (b) to any other assignee with our prior written consent which shall not be unreasonably withheld.
- (9) (a) Law and Arbitration Clause*
- (i) This contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Guarantee shall be referred exclusively to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this clause. The seat of arbitration shall be London even where any hearing takes place in another jurisdiction.
- (ii) The reference shall be to three (3) arbitrators unless the Parties agree otherwise.
- (iii) The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms.
- (iv) The terms and procedures referred to in subclause (iii) above shall be those current at the time when the arbitration proceedings are commenced.
- (v) Any and all notices and communications in relation to any arbitration proceedings under this Clause, including commencement notices and appointment of arbitrators, shall be treated as effectively served from the date and time the e-mail was sent by e-mail to the e-mail addresses below:

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Name of party to this contract:

E-mail address(es) for receipt of notices and communications on behalf of the above party: **[here insert e-mail address(es)]**

Name of other party to this contract:

E-mail address(es) for receipt of notices and communications on behalf of the above party: **[here insert e-mail address(es)]**

Either party shall be entitled to change and/or add to the e-mail addresses above by sending notice of change to the other party at the above address (or, if previously amended by notice, the relevant amended addresses).

Nothing in this Clause shall prevent any notice and communication in relation to any arbitration proceedings in connection with this contract being served by other effective means.

(b) Law and Jurisdiction* - This Guarantee is governed by English law and we hereby submit to the exclusive jurisdiction of the High Court of England and Wales in relation to any legal proceedings concerning this Guarantee. We hereby authorise and nominate the following agent to accept service of any such court proceedings on our behalf: **[here insert name and address]**.

* subclauses 9(a) and 9(b) are alternatives; delete whichever is not applicable. In the absence of deletions, subclause 9(a) shall apply.

- (10) Save as provided in Clause 9 above, any notice, claim, Demand, further demand or Notice of Dispute to be given or made by you under this Guarantee shall be served on us by hand, registered post, courier, e-mail or by SWIFT or equivalent, and if served by hand, registered post or courier, to **[here insert address]** (or such other address as we may notify to you in writing) or if by e-mail to **[here insert e-mail address]** or if by SWIFT or equivalent at **[here insert number]** via your bank and shall be effective only upon actual receipt.
- (11) We hereby warrant that we are permitted by any relevant law to which we are subject (including, where relevant, the laws of the place or places of each of our incorporation, establishment, regulation, registration and residence) to:
 - (i) issue a guarantee in this form,
 - (ii) make payment under this Guarantee in a currency other than that of the place of (where relevant) each of our incorporation, establishment, regulation, registration and residence in case of a Demand or further demand for payment under this Guarantee, and
 - (iii) designate the place stated in paragraph 9 above as the forum and the place of jurisdiction to which we irrevocably submit.
- (12) We hereby warrant that we have obtained all necessary approvals and authorisations to issue and perform our obligations under this Guarantee.

Dated the day of

..... (signature)

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