Design and Build of Sydney Inner Harbour Passenger Ferries
TPD-14-3911

Incat Tasmania Pty Ltd (ABN: 93 054 616 410)
Sydney Ferries (ABN: 46 202 040 027)
Transport for NSW (ABN: 18 804 239 602)

Commercial in Confidence
Explanatory Notes for NEWBUILDCON are available from BIMCO at www.bimco.org

1. Place and date of Contract (CL. 3, CL. 44(b), CL. 47)
   Sydney, 17 September 2015

2. Builder’s name, full style address and contact details (Definitions)
   Name: Incat Tasmania Pty Ltd
   Address: 18 Bender Drive, Derwent Park, Tasmania 7009
   Country: Australia
   Phone/Fax: (03) 6271 1333 / (03) 6273 0932
   E-mail: [Redacted]
   Company registration No. ABN 93 054 616 410

   Additional names, addresses and contact numbers:
   Name: [Redacted]
   Address: [Redacted]
   Country: [Redacted]
   Phone/Fax: [Redacted]
   E-mail: [Redacted]
   Company registration No. [Redacted]

3. Buyer’s name, full style address and contact details (Definitions)
   Name: Sydney Ferries, a New South Wales Government Agency constituted under the Transport Administration Act 1988 (NSW)
   Address: Level 6, 18 Lee Street, CHIPPENDALE, NSW 2008
   Country: Australia
   Phone/Fax: Not applicable
   E-mail: Not applicable
   Attention: Chief Executive, Sydney Ferries
   Company registration No. ABN 46202 040 027

   Additional Agent’s names, addresses and contact numbers:
   Name: Transport for NSW, a New South Wales Government Agency constituted under the Transport Administration Act 1988 (NSW)
   Address: Level 5, Zenith Centre, Tower A 821 Pacific Highway, CHATSWOOD, NSW 2067
   Country: Australia
   Phone/Fax: +61 2 9200 0200
   E-mail: To be advised
   Attention: Senior Project Manager
   Company registration No. ABN 18 804 239 602

4. Vessels’ description/type (Definitions, CL. 2(b))
   Six (6) catamaran passenger ferries

A. Main dimensions (CL. 2(b)):
   As set out in the Specification
   LGA (m): [Redacted]
   Length between perpendiculars (m): [Redacted]
   Deadweight capacity DWT (mts): [Redacted]
   Mean draft in cold water (m): [Redacted]

B1. Cargo capacity (CL. 2(b)(ii) and CL. 13):
   n/a
   (i) Cubic capacity:
   (ii) Bale capacity:
   (iii) Grain capacity:

B2. TEU carrying capacity (only if applicable)
   (state number of containers): [Redacted]
   (i) Total TEU:
   a. No. of TEU
   b. No. of pallets
   (ii) Total under deck:
   a. No. of TEU
   b. No. of pallets
   (iii) No. of TEU homogenous loaded at 54 mts.

C. Main engine(s) (CL. 2(b)(ii), CL. 2(b)(iii) and CL. 9)
   As set out in the Specification
   (i) Makers Type:
   (ii) Max. Continuous Rating (MCR) (kilowatts at MCR):
   (iii) RPM at MCR:
   (iv) Specific Fuel Oil Consumption at MCR:
   (v) Normal Continuous Rating (NCR):
   (vi) RPM at NCR:
   Type of fuel and specification (including Calorific Value (kcal/kg)).
D. Average speed (CL. 2(b)(ii) and CL. 8)

As set out in the Specification
(i) Service speed at design draft (kn):
(ii) Min. number of knots:
(iii) Engine output (Kilowatts at MCR):
(iv) Percentage of engine's max. continuous power/sea margin:

E. Other matters (optional) (state any other technical requirements for the particular vessel type) (CL. 2(b)(vii) and CL. 12)

As set out in the Specification

5. Shipyard(s) (if different from Box 2) (Full style address and contact details) (Definitions)

Name:
Address:
Country:
Phone/Fax:
E-mail:

Additional names, addresses and contact numbers:
Name:
Address:
Country:
Phone/Fax:
E-mail:

6. Builder's Hull Numbers (Definitions, CL. 2(a))

Hull Numbers 082, 083, 084, 085, 086 and 087

7. Flag State (Definitions)

n/a

8. Classification Society/Class Notation (Definitions, CL. 3)

Lloyds Register as applicable (see Specification)
NSCV Class 1D and Lloyds Register as applicable

9. Contract Price and Currency (Definitions, CL. 7)

(a) Price As set out in Annex "D" (Payment Schedule)
(b) Currency AUD
(Also see Rider Clause 54 (Contract Price))

10. Contractual Date of Delivery (Definitions, CL. 14(a)(ii)(iii))

See Delivery Schedule Annex "C"

11. Payment Amounts and Time Due (Definitions, CL. 7, CL. 15, CL. 39(a))

See CL. 15(a) and Annex 17 (Payment Schedule)
1st instalment (see CL. 16(a)(i))
-2nd instalment and lima due
-3rd instalment and lima due
-4th instalment and lima due
-Final instalment (see CL. 15(a)(iii))

12. Builder's Bank Account Details (CL. 15(d))

Name:
Address:
Country: Australia
Phone/Fax: n/a
E-mail: n/a
Sort code: n/a
Account number: n/a
Account name: n/a

13. Speed Deficiency (CL. 8, CL. 39(a)(iv))

(i) Contract Price reduction amount: 0.75% of the Contract Price for each Vessel
(ii) Maximum amount: (state monetary limit): 15% of the Contract Price for each Vessel

This document is a computer generated NEWBUILDCON form printed by authority of BIMCO. Any insertion or deletion to the form must be clearly visible. In the event of any modification made to the pre-printed text of this document which is not clearly visible, the text of the original BIMCO approved document shall apply. BIMCO assumes no responsibility for any loss, damage or expense as a result of discrepancies between the original BIMCO approved document and this computer generated document.
### Explanatory Notes for NEWBUILDCON are available from BIMCO at www.bimco.org

<table>
<thead>
<tr>
<th>14</th>
<th>Excessive Fuel Consumption (Cl. 3, Cl. 39(a)(v))</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Contract Price reduction amount: n/a</td>
</tr>
<tr>
<td>(ii)</td>
<td>Maximum amount: (state monetary limit): n/a</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>15</th>
<th>Deadweight Deficiency (Cl. 10, Cl. 39(a)(v))</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Deadweight tolerance: n/a</td>
</tr>
<tr>
<td>(ii)</td>
<td>Contract Price reduction amount: n/a</td>
</tr>
<tr>
<td>(iii)</td>
<td>Maximum amount: (state monetary limit): n/a</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>16</th>
<th>Cubic Deficiency (Cl. 11, Cl. 39(a)(v))</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Cubic capacity tolerance: n/a</td>
</tr>
<tr>
<td>(ii)</td>
<td>Contract Price reduction amount: n/a</td>
</tr>
<tr>
<td>(iii)</td>
<td>Maximum amount: (state monetary limit): n/a</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>17</th>
<th>Other Deficiencies (Optional) (Cl. 12, Cl. 39(a)(v))</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>Minimum Passenger Capacity: 400 passengers</td>
</tr>
<tr>
<td>(b)</td>
<td>Design Load Displacement: n/a</td>
</tr>
</tbody>
</table>

Termination right accrues if Design Load Displacement exceeds [ ]
(See Rider Clause 56 (Other Deficiencies))

<table>
<thead>
<tr>
<th>18</th>
<th>Late Delivery Compensation (Cl. 13)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Amount per day: $3,000</td>
</tr>
<tr>
<td>(ii)</td>
<td>Maximum amount: $450,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>19</th>
<th>Bank Guarantees (Cl. 14(a) and (b))</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>Buyer’s guarantees</td>
</tr>
<tr>
<td>(i)</td>
<td>Number of days after signing Contract: n/a</td>
</tr>
<tr>
<td>(ii)</td>
<td>Buyer’s Installment/Performance Guarantees: n/a</td>
</tr>
<tr>
<td>(b)</td>
<td>Builder’s Guarantees</td>
</tr>
<tr>
<td>(i)</td>
<td>Number of days after signing Contract: 7 days</td>
</tr>
</tbody>
</table>

(Also see Rider Clause 58 (Builder’s Bank Guarantees) and 59 (Parent Company Guarantees))

<table>
<thead>
<tr>
<th>20</th>
<th>Guarantee Period (state number of months, if left blank 12 months shall apply) (Cl. 35(a)(i))</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Guarantee Period does not apply to Design Defects see Cl. 35(a)(ii) and Rider Clause 70 (Liability for Design Defects))</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>21</th>
<th>Additional Guarantee Period (state number of months) (Cl. 35(a)(i))</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>6 months</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>22</th>
<th>Suspension and Termination (Cl. 30)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Running Period (state number of days): 7 days</td>
</tr>
<tr>
<td>(ii)</td>
<td>Notice period (state number of days): 7 days</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>23</th>
<th>Governing law and Dispute Resolution (Cl. 41 and Cl. 42)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>Governing law</td>
</tr>
<tr>
<td>(b)</td>
<td>Place of dispute resolution Sydney, New South Wales (also see Rider Clause 76 (Dispute Resolution))</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>24</th>
<th>Guarantee Engineer (state monthly lump sum) (Cl. 39(a))</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>[rate applicable after Sydney Harbour Sea Trials period only]</td>
</tr>
</tbody>
</table>

(Also see Rider Clause 65 (Guarantee Engineer))

<table>
<thead>
<tr>
<th>25</th>
<th>Effective Date of Contract (state conditions to be fulfilled) (Cl. 44(a))</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>See Rider Clause 50 (Conditions Precedent)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>26</th>
<th>State number of days within which conditions have to be satisfied (Cl. 44(b))</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7 days</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>27</th>
<th>Optional additional vessels (state number) (Cl. 46)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n/a</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>28</th>
<th>Optional additional vessels contract price and delivery dates (Cl. 46)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n/a</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>29</th>
<th>Declaration of Options (state number of months after Effective date) (Cl. 46)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n/a</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>30</th>
<th>Interest (state rate of interest) (Cl. 18, Cl. 38(a)(1)(b), Cl. 38(b)(1)(a), Cl. 38(d)(1) and Cl. 39(d)(v))</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Bank Bill Swap Reference Rate +2% per annum (See Rider Clause 49.1 (Definitions))</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>31</th>
<th>Buyer’s Guarantor (state name of bank or party as appropriate, full style address and contact details) (Cl. 44(a)(i))</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Name: n/a</td>
</tr>
<tr>
<td></td>
<td>Address: n/a</td>
</tr>
<tr>
<td></td>
<td>Country: n/a</td>
</tr>
<tr>
<td></td>
<td>Phone/Fax: n/a</td>
</tr>
<tr>
<td></td>
<td>E-mail: n/a</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>32</th>
<th>Builder’s Guarantor (state name of bank or party as appropriate, full style address and contact details) (Cl. 44(a)(i), Cl. 77(d)(v)(l))</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Name: n/a</td>
</tr>
<tr>
<td></td>
<td>Address: n/a</td>
</tr>
<tr>
<td></td>
<td>Country: Australia</td>
</tr>
<tr>
<td></td>
<td>Phone/Fax: n/a</td>
</tr>
<tr>
<td></td>
<td>E-mail: n/a</td>
</tr>
</tbody>
</table>
Explanatory Notes for NEWBUILDCON are available from BIMCO at www.bimco.org

33. Additional Annexes
   Annex C (Delivery Schedule)
   Annex D (Payment Schedule)
   Annex E (Schedule of Rates)
   Annex F (Insurances)
   Annex G (Options)
   Annex H (Key Personnel)

34. Numbers of Additional Clauses
   Rider Clauses 49 to 84 (inclusive)

This Contract consists of PART I, including additional clauses, if any agreed and stated in Box 34, and PART II and PART III being the Rider Clauses as stated in Box 34 as well as any Annexes agreed and attached hereto and shall be performed subject to the conditions contained herein. All Parts and Annexes of this Contract must be read together as one whole. In the event of a conflict of conditions the provisions of PART I shall prevail over those of PART II and PART III to the extent of such conflict, but no further.

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

Signature (Builder)
Signed by Incat Tasmania Pty Ltd ABN 93 054 616 410 in accordance with section 127 of the Corporations Act 2001:

Director/company secretary
CHRIS ROBER WILLIAM STORELL STENNAPA
Name of director/company secretary
(BLOCK LETTERS)

Director
SIMON BAIRD CARTER
Name of director
(BLOCK LETTERS)

Signature (Buyer and Agent)
Signed by the Executive Director Transport Delivery on behalf of Transport for NSW (Agent):

Signature of Acting Chief Executive

This document is a computer generated NEWSBUILDCON form printed by authority of BIMCO. Any insertion or deletion to the form must be clearly visible. In the event of any modification made to the pre-printed text of this document which is not clearly visible, the text of the original BIMCO approved document shall apply. BIMCO assumes no responsibility for any loss, damage or expense as a result of discrepancies between the original BIMCO approved document and this computer generated document.
# NEWBUILDCON - Standard Newbuilding Contract - PART II

## LIST OF CLAUSES

### DEFINITIONS

### INTERPRETATION

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Builder's and Buyer's obligations</td>
</tr>
<tr>
<td>2.</td>
<td>Description</td>
</tr>
<tr>
<td>3.</td>
<td>Classification, Rules and Regulations</td>
</tr>
<tr>
<td>4.</td>
<td>IMO Hazardous Materials Inventory</td>
</tr>
<tr>
<td>5.</td>
<td>Protective Coatings</td>
</tr>
<tr>
<td>6.</td>
<td>Source of Origin</td>
</tr>
</tbody>
</table>

### SECTION 2 - FINANCIAL

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>Contract Price</td>
</tr>
<tr>
<td>8.</td>
<td>Speed Deficiency</td>
</tr>
<tr>
<td>9.</td>
<td>Excessive Fuel Consumption</td>
</tr>
<tr>
<td>10.</td>
<td>Deadweight Deficiency</td>
</tr>
<tr>
<td>11.</td>
<td>Cubic Capacity Deficiency</td>
</tr>
<tr>
<td>12.</td>
<td>Other Deficiencies (optional Clause)</td>
</tr>
<tr>
<td>13.</td>
<td>Late Deliver for non-permissible delays</td>
</tr>
<tr>
<td>14.</td>
<td>Guarantees</td>
</tr>
<tr>
<td>15.</td>
<td>Payments</td>
</tr>
<tr>
<td>16.</td>
<td>Taxes, duties, stamps, dues and fees</td>
</tr>
<tr>
<td>17.</td>
<td>Right to set-off</td>
</tr>
<tr>
<td>18.</td>
<td>Interest</td>
</tr>
</tbody>
</table>

### SECTION 3 - PRODUCTION

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

### SECTION 4 - DELIVERY

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>28.</td>
<td>Delivery</td>
</tr>
<tr>
<td>29.</td>
<td>Documents on Delivery</td>
</tr>
<tr>
<td>30.</td>
<td>Final Inspection</td>
</tr>
<tr>
<td>31.</td>
<td>Title and Risk</td>
</tr>
<tr>
<td>32.</td>
<td>Possession and Removal of the Vessel</td>
</tr>
<tr>
<td>33.</td>
<td>Vessel Registration, Certification</td>
</tr>
</tbody>
</table>

### SECTION 5 - LEGAL

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>34.</td>
<td>Permissible Delays</td>
</tr>
</tbody>
</table>

35. Builder's Guarantee
36. Guarantee Engineer
37. Responsibilities and exclusions from liabilities
   Builder's exclusion Clauses
   (a) Liability for Defects discovered before or at the time of delivery.
   (b) Liability for Defects discovered after delivery
   (c) Liability for third party replacement or repair
   (d) Implied terms
   Mutual exclusion Clauses
   (e) Liability following termination
   Responsibility Clauses
   (f) Responsibility for death and personal injury
   (g) Responsibility for damage to or loss of property
38. Insurances
   (a) Builder's Insurances
   (b) Allocation of Insurance Proceeds
39. Suspension and Termination
   (a) Buyer's Agent's Termination
   (b) Builder's Termination
   Suspension of Work
   (c) Deemed Insolvency
   (d) Effect of Buyer's Agent's Termination
   (e) Effect of Builder's Termination
40. Copyrights, Trade Marks and Patents
41. Governing law
42. Dispute Resolution
   (a) Classification/Regulatory Authorities
   (b) Expert determination
   (c) Arbitration and Mediation

### ANNEXES

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ANNEX &quot;A&quot;</td>
<td>(GUARANTEES)</td>
</tr>
<tr>
<td>ANNEX &quot;B&quot;</td>
<td>(SPECIFICATION)</td>
</tr>
<tr>
<td>ANNEX &quot;C&quot;</td>
<td>(MAKER'S LIST)</td>
</tr>
<tr>
<td>ANNEX &quot;D&quot;</td>
<td>(DELIVERY SCHEDULE)</td>
</tr>
<tr>
<td>ANNEX &quot;E&quot;</td>
<td>(PAYMENT SCHEDULE)</td>
</tr>
<tr>
<td>ANNEX &quot;F&quot;</td>
<td>(SCHEDULE OF RATES)</td>
</tr>
<tr>
<td>ANNEX &quot;G&quot;</td>
<td>(INSURANCES)</td>
</tr>
<tr>
<td>ANNEX &quot;H&quot;</td>
<td>(KEY PERSONNEL)</td>
</tr>
</tbody>
</table>
NEWBUILDCON - Standard Newbuilding Contract - PART II

DEFINITIONS

In this Contract:

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

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

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

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

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

“Classification Society” means the classification society stated in Box 8.

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

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

“Contractual Date of Delivery” means the contractual date of delivery for each Vessel stated in Box 10.

“Defects” means any deficiencies or defects in the design, construction, material and/or workmanship on the part of the Builder or its Sub-contractors (including without limitation the failure of any Vessel to meet the Specification) and Design Defects.

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

“Final Instalment” means the last instalment payable in respect of delivery of each Vessel calculated in accordance with Clause 15 (Payments).

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

“Instalments” means the amounts payable in accordance with Box 11.
**NEWBUILDCON - Standard Newbuilding Contract - PART II**

"In writing" means any method of legible communication.

"Maker's List" means the list of suppliers for equipment, machinery and services approved by the Parties' Agent and stated in Annex C the Specification.

"Parties" means the Builder and the Buyer.

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

"Permissible Delays" means delays to the design, construction and/or delivery of the Vessel and which entitle the Builder to extend the Delivery Date in accordance with Clause 34 (Permissible Delays).

"Personnel" means the employees, agents, servants, suppliers and independent contractors engaged by either any Party in order to perform work or duties under this Contract for which that Party is responsible.

"Plans and Drawings" means the plans and drawings attached hereto or listed and/or described in the Specification.

"Regulatory Authorities" means the regulatory authorities whose rules and regulations must be complied with in the construction and delivery of the Vessel. Such bodies shall include the Flag State together with the other bodies listed in the Specification New South Wales Roads and Maritime Services as delegate of the Australian Maritime Safety Authority.

"Shipyard" means the place or places stated in Box 5 where the Vessels will be assembled and/or constructed which cannot be changed unless otherwise agreed by the Buyer in writing.

"Specification" means the technical details contained in Annex B.

"Sub-contractor" means any person (not being a servant or employee of the Builder) or company with whom the Builder has entered into a contract for the design, construction, manufacture or supply of any item, equipment, work or service for any of the Vessels.

"Vessels" means the vessel vessels described in Box 4 (including their machinery, equipment and appurtenances described in the Specification) with hull numbers as per Box 6, built in accordance with this Contract.

**INTERPRETATION**

**Singular/Plural**

In this Contract the singular includes the plural and vice versa as the context admits or requires.

**Headings**

The index and headings to the Clauses and Annexes to this Contract are for convenience only and will not affect its construction or interpretation.

**Jointly and severally**

All covenants, agreements, undertakings, indemnities, representations and warranties by more than one person are entered into, given or made by such persons jointly and severally.

*Also see Rider Clause 49*
NEWBUILDCON - Standard Newbuilding Contract - PART II

SECTION 1 - VESSEL

1. Builder's and Buyer's obligations

It is mutually agreed between the Builder and the Buyer and the Agent that:

(a) the Builder shall design, construct, test and survey, launch, equip, complete, sell and deliver the Vessels to the Buyer all in accordance with good international shipbuilding and marine engineering practice and supply each "Mock-up" in accordance with the provisions of this Contract; and

(b) the Buyer shall purchase, take delivery of and pay for the Vessels and each "Mock-up";

and

(b)(c) unless the context otherwise requires, this Contract shall apply to each Vessel individually as if separate contracts on these terms had been entered into in respect of each Vessel.

2. Description

(a) The Vessels shall be constructed at the Shipyard and shall have the Builder's Hull Numbers stated in Box 6. Where reasonably practicable, the machinery, equipment and appurtenances that are to be installed in the Vessels and any materials used or intended to be used in the construction of the Vessels shall also be endorsed with the Builder's Hull Numbers stated in Box 6 as soon as they arrive at the Shipyard. At the time of endorsement, the Builder must record the serial numbers and any other identifying information of the machinery, equipment, appurtenances and materials so endorsed and notify the Agent of same within three (3) days of endorsement.

(b) The Vessels shall have the dimensions and characteristics as stated in Box 4 and the Specification. These shall be defined, measured, tested and calculated in accordance with the Specification or, if omitted from the Specification, in accordance with the following:

(i) Speed — Each Vessel's average speed on a sea trial undertaken in both directions over a measured distance of one (1) nautical mile, with clean hull, in weather with wind speed and sea state not exceeding Beaufort Wind Force Scale 3 and Douglas Sea State Scale 2 respectively on a draft as stated in Box 4D(i). During such a sea trial the engine's output in kilowatts shall be as stated in Box 4D(iii) corresponding to the percentage of the engine's maximum continuous power output stated in Box 4D(iv) at the approximate revolutions per minute stated in Box 4D(v).

(ii) Fuel Consumption - The fuel consumption of each Vessel's main engine on the test bed using fuel of the type and specification stated in Box 4C(vii) shall not exceed the number of grams per kilowatt/hour stated in Box 4C(iv) when the engine develops the number of kilowatts with an effective calorific value of the number of kilocalories per kilogram stated in Box 4C(ii) and Box 4C(vii) respectively.

(iii) Deadweight - Each Vessel's deadweight shall be the number of metric tons stated in Box 4A(iii) on international summer freeboard, corresponding to a mean draft in saltwater (specific gravity 1.025) as stated in Box 4A(iv). The specified deadweight shall include fuel, provisions, stores, freshwater, crew and passengers in addition to spare parts not less than the requirements of the Classification Society.

(iv) Propulsion - Each Vessel's propulsion machinery shall be of the type and with
maximum continuous power in kilowatts at the number of revolutions per minute as stated in Box 4C(i), 4C(ii) and 4C(iii).

(v) Cargo Capacity – Each The Vessel’s cargo capacity shall be the capacities stated in Box 4B1 and 4B2.

(vi) Other matters – Each The Vessel shall meet the technical requirements stated in Box 4E.

3. Classification, Rules and Regulations

(a) The Vessels shall be designed, constructed, surveyed, tested and delivered in compliance with the applicable laws, rules, regulations and requirements of the Classification Society stated in Box 8, and the Regulatory Authorities and as described in the Specification:

(i) in force as of the date of this Contract stated in Box 1, and

(ii) if not in force as of the date of this Contract, which are ratified and promulgated on or before the date of this Contract and which will be compulsory for the Vessels on or before the delivery of the Vessels in accordance with Clause 28 (Delivery).

All such laws, rules, regulations and requirements of the Classification Society and the Regulatory Authorities shall be complied with without qualification or recommendation (see Clause 26 (Changes in Rules and Regulations)).

(b) The final decisions of the Classification Society or Regulatory Authorities shall be binding on the Parties as to each Vessel’s compliance with their respective applicable laws, rules, regulations and requirements.

(c) All costs, fees and charges incidental to and in respect of compliance with the applicable laws, rules, regulations and requirements of the Classification Society or Regulatory Authorities referred to above, including without limitation costs related to drawings approval, travel costs of the Classification Society or Regulatory Authorities and other costs related to the supervision of the Vessels by the Classification Society or Regulatory Authorities, shall be for the Builder’s cost and expense.

Also see Rider Clause 63 (Classification, Rules and Regulations)

4. IMO Hazardous Materials Inventory

The Builder shall, in accordance with the IMO Guidelines on Ship Recycling, Resolution A.962 (23), with amendments in force as of the date of this Contract:

Endeavour to take due account of each the Vessel’s ultimate disposal when designing and constructing each the Vessel by:

(a) using materials which can be recycled safely and in an environmentally sound manner; and

(b) by minimising the use of materials known to be potentially hazardous to health and the environment.

In consultation with equipment manufacturers provide the Buyer with a Green Passport
Statement of Compliance issued by the Classification Society containing information including the Vessel's hull number and main particulars and listing any and all materials known to be potentially hazardous utilised in the construction of the Vessel, its equipment and systems.

The list of the materials known to be potentially hazardous shall contain the location and the approximate quantity/volume of each identified material on board the Vessel.

5. Protective Coatings

The Vessel's double-side skin spaces and dedicated seawater ballast tanks shall be coated in accordance with the Specification. In any event, the minimum coating standard shall be in accordance with the requirements of the IMO Performance Standard for Protective Coatings for dedicated seawater ballast tanks in all types of ships and double-side skin spaces of bulk carriers (IMO PSPC, Resolution MSC. 215(82)) and, where applicable, in accordance with the IACS Common Structural Rules for Bulk Carriers and Oil Tankers or subsequent modifications or replacement applicable in accordance with Clause 3(a) (Classification, Rules and Regulations).

6. Source of Origin

If so requested by the Buyer Agent, the Builder shall identify the country of origin of all the main components listed in the Maker's List and Specification.
7. Contract Price

The Contract Price shall be the amount stated in Box 9(a) as may be adjusted in accordance with the terms of this Contract.

The Contract Price and any other payments to be made to the Builder pursuant to this Contract shall be paid in the currency stated in Box 9(b) and in accordance with the payment terms stated in Box 11 and Clause 15 (Payments).

Also see Rider Clause 54 (Contract Price).

8. Speed Deficiency

If the speed of each Vessel as stated in Box 4D(ii) is not achieved in the manner stated in the Specification or Clause 2(b)(i) the following shall apply:

(a) There shall be no adjustment of the Contract Price for reduction in speed except to the extent provided in Sub-clause 8(b).

(b) If the reduction in speed is greater than 2/10ths of a knot, the Contract Price shall be reduced by the amount stated in Box 13(i) for each whole 1/10th of a knot reduction in speed in excess of 2/10ths of a knot as liquidated damages up to the maximum amount stated in Box 13(ii).

(c) If the reduction in speed would entitle the Buyer to a reduction in the Contract Price greater than the maximum amount stated in Box 13(ii), the Buyer-Agent shall have the option to terminate this Contract in accordance with Clause 39(a)(iv) (Suspension and Termination).

9. Excessive Fuel Consumption

If the fuel consumption of the Vessel’s main engine on the test bed using the fuel specified in Box 4C(vii) exceeds the figure stated in Box 4C(iv) the following shall apply:

There shall be no adjustment of the Contract Price except to the extent provided in Sub-clause 9(b).

If the excess fuel consumption is greater than 2% (two percent) of the specified fuel consumption the Contract Price shall be reduced by the amount stated in Box 14(i) for each whole percentage in excess of 2% as liquidated damages up to a maximum amount as stated in Box 14(ii).

If the excess fuel consumption would entitle the Buyer to a reduction in the Contract Price greater than the maximum amount stated in Box 14(ii), the Buyer shall have the option to:

accept the main engine at a reduction in the Contract Price corresponding to the maximum amount stated in Box 14(ii) or

(i) reject the main engine and either

If the actual fuel consumption of the main engine for any Vessel exceeds the figure stated in the Specification and if such excess fuel consumption is greater than 2% (two percent) of the
NEWBUILDCON - Standard Newbuilding Contract - PART II

specified fuel consumption the Agent shall have the option to reject the main engine and require the Builder to rectify the deficiency and repeat the trial or replace the main engine with one that conforms to the requirements of the Contract. (The time taken to rectify the deficiency and repeat the trial or replace the main engine in accordance with this Sub-Clause shall not be a Permissible Delay). If the Builder fails to
terminate the Contract forthwith in accordance with Clause 39(a)(v) (Suspension and Termination).

10. Deadweight Deficiency
If the actual deadweight of the Vessel determined in accordance with the Specification is less than the deadweight stated in Box 4A(iii) the following shall apply:

(a) There shall be no adjustment of the Contract Price except to the extent provided in Sub-clause 10(b).

(b) If the reduction in deadweight is greater than the number of metric tonnes stated in Box 15(i) then for each whole metric tonne in excess of the figure in Box 15(i) below the deadweight stated in Box 4A(iii) the Contract Price shall be reduced by the amount stated in Box 15(ii) as liquidated damages up to a maximum amount as stated in Box 15(iii).

(c) If the reduction in deadweight would entitle the Buyer to a reduction in the Contract Price greater than the maximum amount stated in Box 15(iii) the Buyer shall have the option to terminate this Contract in accordance with Clause 39(a)(vii) (Suspension and Termination).

11. Cubic Capacity Deficiency
If the actual cubic capacity of the Vessel determined in accordance with the Specification is less than the cubic capacity specified in Box 4B1(i) the following shall apply:

(a) There shall be no adjustment of the Contract Price except to the extent provided in Sub-clause 11(b).

(b) If the reduction in cubic capacity is greater than the number of cubic metres stated in Box 16(i) then for each full cubic metre in excess of the figure in Box 16(i) below the cubic capacity stated in Box 4B1(i) the Contract Price shall be reduced by the amount stated in Box 16(ii) as liquidated damages up to a maximum amount as stated in Box 16(iii).

(c) If the reduction in cubic capacity would entitle the Buyer to a reduction in the Contract Price greater than the maximum amount stated in Box 16(iii) the Buyer shall have the option to terminate this Contract in accordance with Clause 39(a)(vii) (Suspension and Termination).

12. Other Deficiencies (optional Clause)
NOTE: This Clause has been left blank intentionally to allow the parties to insert, where appropriate, a liquidated damages provision covering deficiencies in any special technical requirements for a particular vessel type and specified by the parties in Box 4E and Box 17. (See also Clause 39(a)(viii)).

See Rider Clause 56 (Other Deficiencies).

13. Late Delivery for non-permissible delays
If delivery of any Vessel in accordance with Clause 28 (Delivery) takes place more than 30 days after the Delivery Date for that Vessel then for each day thereafter the Contract Price shall be reduced by the amount stated in Box 18 per Vessel per
day
as liquidated damages up to a maximum delay of 180 days (comprising a 30 day grace
period plus 150 days).

If the aggregate delay in respect of any 1 or more Vessels exceeds 180 days the Buyer-Agent
shall have the option to terminate this Contract
in accordance with Clause 39(a)(iii) (Suspension and Termination).

14. Guarantees
Buyer's Instalment/Performance Guarantee
To secure the Buyer's obligation to pay the instalments of the Contract Price prior to
delivery the Buyer shall, within the number of days stated in Box 19(a)(i) after the signing
of this Contract, deliver to the Builder an irrevocable and unconditional guarantee issued
by the bank or party stated in Box 31 substantially in the form and substance set out in
Annexes A(i) (Instalments) or A(ii) (Performance) as stated in Box 19(a)(ii), failing which
the Builder shall have the option to terminate this Contract in accordance with Clause
39(b)(iv) (Suspension and Termination).

(a) Builder's Refund Bank Guarantee
(i) To secure the Builder's obligation to refund the Buyer's pre-delivery First Instalments
pursuant to this Contract the Builder shall, at its own expense, within the number of days stated in Box
19(b)(i) after the signing of this Contract and before the due date for payment of the First Instalment in
accordance with Clause 15(a)(i) (Payments – Instalments), provide the Buyer-Agent with a
Refund Bank Guarantee acceptable to the Agent issued in favour of the Buyer by the bank or
party named in Box 32 substantially in the form and substance set out in ANNEX A(iii)(a) (Refund
Guarantee) for the amount of the First Instalment, failing which the Agent shall have the option to terminate this Contract in accordance with Clause 39(a)(ix) (Suspension and Termination).

(ii) To secure the Builder’s obligation to refund the Buyer’s Guaranteed Instalments pursuant
to this Contract the Builder shall, at its own expense, within twenty (20) Banking Days of issue
of the invoice for each Guaranteed Instalment, provide to the Agent further Bank Guarantees
acceptable to the Agent issued in favour of the Buyer by the bank or party named in Box 32 for
the amount of the relevant Guaranteed Instalment and otherwise substantially in the form and
substance set out in ANNEX A(iii)(a), failing which the Agent shall have the option to terminate
this Contract in accordance with Clause 39(a) (Suspension and Termination).

(b) Guarantee Compliance and Expiry
The Parties shall ensure that any Bank Guarantee issued on their behalf shall:

(i) comply with the laws, regulations, constitution and procedures of the Guarantor and
its country of issue, including but not limited to, its registration with any necessary
authorities; and

(ii) on expiry be returned to the Guarantor; and

(iii) in the case of the Bank Guarantees given under Clause 14(a), remain in force until either:

(A) a date at least 330 days after the Contractual Date of Delivery; or
NEWBUILDCON - Standard Newbuilding Contract - PART II

(B) delivery of the relevant Vessel under Clause 28 (Delivery);

whichever is sooner; or

(iv) in the case of the Bank Guarantees given under Rider Clause 58.1, remain in force for at least 20 months after delivery of the relevant Vessel under Clause 28 (Delivery).

in the case of the Refund Guarantee (sub-Clause 14(b)), remain in force until either

a date at least 300 days after the Contractual Date of Delivery stated in Box 11 or

30 days after the final resolution of any dispute under Clause 42 (Dispute Resolution), whichever is the later; or

delivery of the Vessel to, and acceptance of the Vessel by, the Buyer

whichever is the sooner.

Also see Rider Clause 58 (Builder’s Bank Guarantees)

15. Payments

(a) Instalments

The Contract Price shall be paid by the Buyer to the Builder by Instalments, when due and payable in accordance with Annex “D” (Payment Schedule) Box 11 and this Clause, the pre-delivery Instalments being paid as advances and not deposits as follows:

(i) The Instalments shall be due from the Buyer as described in Annex “D” (Payment Schedule). Unless otherwise stated in Box 11 the first Instalment shall be due and payable by the Buyer five (5) Banking Days after the Refund Guarantee has been provided in accordance with Clause 14(b) (Builder’s Refund Guarantee).

(ii) The Builder shall give the Buyer Agent invoices addressed to the Buyer containing the details and including the information specified in Annex “D” (Payment Schedule) for each Instalment due under this Contract.

With the exception of the first and Final Instalment the Builder shall give the Buyer Agent an invoice to cover the sum due to it not less than ten (10) Banking Days prior to the due date of each Instalment.

(iii) All Instalments other than the first and Final Instalment shall be payable within Banking Days of the due date thereof receipt of the invoice.

(iv) The Final Instalment shall be due and payable upon delivery of the Vessel in accordance with Box 11 and Clause 28 (Delivery).

(b) Payment for Modifications and other items

(i) In respect of each Vessel, the sums due or refundable as a result of modifications and changes, and changes in Rules and Regulations under Clause 24 (Modifications and Changes) and Clause 26 (Changes in Rules and Regulations) shall be added to or deducted from the Final Instalment for that Vessel.

(ii) In respect of each Vessel all expenses payable in accordance with Clause 27(c)(iii) (Conduct of the Sea Trial) and Clause 22(b) Rider Clause 64 (Sydney Harbour Sea Trials) shall be paid together with
the Final Instalment for that Vessel.

(iii) Sums due for other items shall be paid within 280 Banking Days after receipt by the Buyer Agent of the Builder's invoice addressed to the Buyer and issued during the first week of the month after they become due and subject to provision by the Builder of adequate supporting documents. The adequacy of the supporting documents will be as determined by the Agent acting reasonably.

(c) Payment of Liquidated Damages

All respect of each Vessel, any amounts for liquidated damages under Clause 8 (Speed Deficiency), Clause 9 (Excessive Fuel Consumption), Clause 10 (Deadweight Deficiency), Clause 11 (Cubic Capacity Deficiency), Clause 12 and Rider Clause 56 (Other Deficiencies) and Clause 13 (Late Delivery for non-permissible delays) shall be calculated and determined before delivery in accordance with Clause 28 (Delivery) and may shall be deducted from the Final Instalment for that Vessel.

(d) Payment Procedures

(i) If the date on which any payment is due in accordance with the provisions of this Contract does not fall on a Banking Day, payment shall be made on the next Banking Day.

(ii) Payment of sums due in accordance with the provisions of this Contract shall be made, in the case of payments to the Builder, by electronic transfer to the Builder's account stipulated in Box 12 and, in the case of payments to the Buyer by electronic transfer to such bank as the Buyer by notice to the Builder nominates to receive payments on its behalf.

(iii) The cost of remitting payments shall be for the account of the payer.

(iv) Payments by either any Party to the other under this Contract, and their receipt, shall not be deemed a waiver of any right or claim either any Party may have against the other.

(v) If there is a dispute in respect of an invoice issued by the Builder, the Buyer shall pay the Instalments due and/or any other payment to be made under this Contract, or any such amounts as it considers due to the Builder, into the Escrow Account, until settled in accordance with the terms of this Contract. For avoidance of doubt, such action by the Buyer shall not be deemed to be a default of the Buyer's performance of its obligations under this Contract, no interest shall be payable by the Buyer under Clause 18 (Interest) and the Builder must continue to perform its obligations in accordance with this Contract. In the event of late payment of instalments by the Buyer, the Builder shall have the right to suspend work under this Contract in accordance with Clause 30(c) (Suspension of Work).

16. Taxes, duties, stamps, dues and fees

(a) The Builder shall bear and pay all taxes, duties, stamps, dues and fees of whatever nature levied or imposed in by any country (including import duties, customs duties or GST payable upon importation of the Vessels, and stamp duty payable in connection with acquisition of the Vessels) the place stated in Box 2 in connection with the execution and/or performance of this Contract, and there shall be no adjustment to the Contract Price in relation to such taxes, duties, dues or fees, excluding any taxes, duties, stamps, dues and fees imposed in the place stated.
in Box 2 upon the Buyer's Supplies which shall be for the Buyer's cost and expense.

The Buyer shall bear and pay all taxes, duties, stamps, dues and fees imposed outside the place stated in Box 2 in connection with the execution and/or performance of this Contract, except for taxes, duties, stamps, dues and fees imposed upon those items and services procured by the Builder for construction of the Vessel.

(b) If either Party the Buyer pays any taxes, duties, stamps, dues and fees for which the other Party the Builder is responsible under this Clause, the other Party the Builder shall reimburse the paying Party the Buyer within fifteen (15) Banking Days of receipt of notice to that effect, together with evidence of the amount paid.

Also see Rider Clause 55 (Goods and Services Tax).

17. Right to set-off

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

18. Interest

If either the Builder or the Buyer fails to pay any sum due in accordance with the terms of this Contract, the other Party shall have the right to charge interest from the due date for payment at the rate stated in Box 30 on such outstanding sums (see also Clause 39 (Suspension and Termination)).
19. Sub-contracting

The Builder shall employ the Sub-contractors as set out in the Specification or Maker's list. Except for minor work, the Builder shall not employ other sub-contractors without the Buyer's approval, which shall not be unreasonably withheld.

Notwithstanding any sub-contracting, the Builder shall remain fully responsible for the due performance of such work as if undertaken by the Builder at the Shipyard.

Also see Rider Clause 52 (Subcontracting)

20. Approvals

The times and numbers specified in this Clause shall apply unless otherwise stated in the Specification.

(a) As soon as possible and not later than sixty (60) running days after the effective date of the Contract (see Clause 44 (Effective date of Contract)), the Builder shall provide the Assurance Documentation for approval, proposed detailed building and testing schedules. The Agent shall comment on the schedules as soon as possible and at the latest within fourteen (14) running days after receipt of the proposals. The Builder shall thereafter prepare and issue in writing amended Assurance Documentation and testing schedules incorporating the Agent's comments within fourteen (14) running days thereafter.

(b) The Builder shall despatch to the Agent a total of three (3) full sets of the Plans and Drawings for the Agent's approval as required by the Design Management Plan agreed between the parties and the Specification and shall also submit such other technical information as the Agent may reasonably require, not less than thirty (30) running days before any construction works commence. The Builder shall give notice to the Agent advising the date of despatch of the Plans and Drawings and the Agent shall give notice to the Builder confirming receipt thereof. The Buyer shall within fourteen (14) running days of receipt send to the Builder one (1) set of the Plans and Drawings with the Buyer's approval or approval with comments, amendments or reservations.

Also see Rider Clause 60 (Approvals)

In the event that the Agent needs additional time to consider the Plans and Drawings submitted pursuant to this Clause, it shall request the same in writing of the Builder whose agreement shall not be unreasonably withheld. Such additional time shall not be a Permissible Delay for the purposes of Clause 34 (Permissible Delays).

In the event that the Agent's comments, amendments or reservations are unclear, unspecified or illegible, the Builder shall give notice requesting clarification. If the Agent fails to respond to the request to provide clarification within five (5) running days of receipt of the Builder's notice, the Builder shall be entitled to place its own reasonable interpretation on such comments, amendments or reservations when determining whether and to what extent it can adopt the comments, amendments or
reservations.

If requested by the AgentBuyer in writing, the Plans and Drawings shall also be sent in an agreed electronic format.

(c) The Builder shall take due note of the AgentBuyer's comments, amendments or reservations (if any) on Plans and Drawings submitted pursuant to this Clause and, if such comments, amendments or reservations are not of such a nature or extent as to constitute a modification or change of the Specification within the meaning of Clause 24 (Modifications and Changes), then the Builder shall commence or continue construction of the Vessel in accordance with the corrected or amended Plans and Drawings.

(d) If the Builder considers the comments, amendments or reservations to the Plans and Drawings are of a nature or extent that constitutes a modification or change under Clause 24 (Modifications and Changes), the Builder shall notify the AgentBuyer accordingly and proceed in accordance with Clause 24 (Modifications and Changes). If the AgentBuyer disagrees the matter shall be resolved in accordance with Clause 24(e).

In the event that the Buyer fails to return any Plans and Drawings to the Builder with approval or approval with comments, amendments or reservations, if any, within the time limit stated above, such Plans and Drawings shall be deemed to have been approved by the Buyer.

(e) The AgentBuyer's approval or deemed approval of any Plans and Drawings shall not affect the obligations of the Builder to design, construct and deliver, or the obligations of the Buyer to take delivery of, and pay for, the Vessel in accordance with the other provisions of this Contract; nor shall it diminish affect the Builder's responsibility in respect of its obligations under this Contract nor shall it constitute any acceptance by the Agent or the Buyer of any responsibility for any Defects in the Vessel. Any dispute between the Agent and the Builder in relation to the conformity of the Plans and Drawings to the Specification shall be referred to dispute resolution in accordance with Clause 42 (Dispute Resolution) and Rider Clause 76 (Dispute Resolution).

(f) The Builder shall give the AgentBuyer, as soon as practicable, copies of all relevant correspondence relating to the Vessel to and from the Classification Society and the Regulatory Authorities, together with all plans approved by the Classification Society and the Regulatory Authorities. A complete copy of all correspondence with the Classification Society and the Regulatory Authorities in relation to each Vessel must be provided to the Agent no later than 3 weeks prior to the delivery of that Vessel.

21. Buyer's Supplies

(a) Buyer

(i) The Buyer shall, at its own risk, cost and expense, supply and deliver to the Builder all of the Buyer's Supplies. Such items shall be delivered at a warehouse or other storage facility at the Shipyard or as otherwise directed by the Builder in a proper condition ready for installation by the Builder or Sub-contractor in or on the Vessel (hereinafter "Installation"), in accordance with the building and testing schedules in Clause 20(a) (Approvals) or as may reasonably be required by the Builder.

(ii) To assist Installation, the Buyer shall provide the Builder with the necessary documentation including specifications, plans, drawings, instruction books, manuals, test reports and certificates required to comply with all applicable rules and regulations. If so requested by the Builder, the Buyer shall, if reasonably possible and at no cost to the Buyer, arrange for the representatives of the manufacturers of the Buyer's supplies.
Supplies to assist the Builder in installation and/or to carry out the installation of the Buyer's Supplies by themselves or to make necessary adjustments at the Shipyard in accordance with the manufacturer's instructions, including commissioning.

(iii) The Builder may reject any and all of the Buyer's Supplies when and if found on reasonable grounds to be unsuitable or in improper condition for installation or not in compliance with the Classification Society or Regulatory Authorities' requirements.

(iv) If delay in delivery of any of the Buyer's Supplies in accordance with Sub-Clause (a) (i) exceeds thirty (30) days and will cause actual delay to the delivery of the Vessel, the Builder shall have the right to proceed with the construction of the Vessel without installation of the delayed items. The Buyer shall accept and take delivery of the Vessel so constructed.

(b) Builder

(i) The Builder shall safely store and handle the Buyer's Supplies after delivery thereof at a warehouse or other storage facility at the Shipyard or elsewhere as determined by the Builder and shall, at its own cost, expense and responsibility, install them in or on the Vessel in accordance with the Specification, provided that the Builder shall not be responsible for the quality, efficiency and/or performance of any of the Buyer's Supplies.

(ii) The Buyer's Supplies shall be at all times the property of the Buyer but shall be at the Builder's risk from the time of their delivery to the Shipyard until the time of their redelivery to the Buyer whether or not as part of the Vessel.

22. Buyer's Technical Representative, Assistants, Officers and Crew

(a) The Buyer may, at its own cost and expense, have one or more representatives present at the Shipyard throughout the construction together with a reasonable number of assistants and, as appropriate, officers and crew. The Agent/Buyer shall notify the Builder in advance in writing of:

(i) the names of the Buyer's Technical Representative, assistants and, as appropriate, officers and crew; and

(ii) the scope of the Buyer's Technical Representative's authority which, in particular, shall include

the extent to which the Buyer's Technical Representative has authority to act on behalf of the Buyer and the Agent in connection with the approval of Plans and Drawings and/or any other document required to be produced by the Builder, calculations, agree modifications and invoices and attendance at and approval of tests, trials and inspections relating to each Vessel wherever such work is being done including without limitation at the Shipyard and/or premises of Sub-contractors, supervision of construction of each Vessel throughout the entire period of construction and any other matters for which they are specifically authorised by the Buyer or the Agent, for the purpose of determining that each Vessel is being constructed in accordance with the terms of this Contract, the Specification and the Plans and Drawings; at the Shipyard and/or premises of Sub-contractors; and

(iii) any other information reasonably required by the Builder to facilitate access to the Shipyard and/or premises of Sub-contractors and any other premises where work is being
(b) The Builder shall, at its own cost and expense, provide the Buyer's Technical Representative and assistants with reasonable office accommodation and facilities (including communication equipment, such as telephone, fax and appropriate internet access, and printers or a connection to the Builder's printers) as the Agent may reasonably require. The Buyer shall bear the costs of all communication expenses arising from the use by the Buyer's Technical Representative and assistants of the communications equipment provided by the Builder.

Such expenses shall be payable by the Buyer on receipt of an invoice from the Builder in accordance with Clause 15(b) (Payments - Payment for Modifications and other items).

(c) The Builder shall have the right to request the Agent to replace the Buyer's Technical Representative or any assistants but only if the Builder shows that they are carrying out their duties in an unreasonable manner detrimental to the proper progress of the construction of the Vessel, in which case the Agent shall make proper replacement as soon as possible.

(d) The Buyer's Technical Representative shall have the right to communicate directly with the Classification Society and/or Regulatory Authorities, provided such communication does not unreasonably interfere with the Builder's communication with the Classification Society and/or Regulatory Authorities.

(e) The Builder shall render reasonable assistance to the Agent in helping to provide suitable accommodation, obtain necessary visas, residence and work permits and any other administrative assistance as the case may be for the Buyer's Technical Representative, assistants and, as appropriate, officers and crew.

(f) The Buyer's Technical Representative shall observe the work rules and regulations prevailing at the Builder and Sub-contractors' premises.

(g) The Builder shall promptly provide to the Buyer's Technical Representative and shall ensure that its Sub-contractors shall promptly provide all such information as the Buyer's Technical Representative may reasonably request in connection with the construction of the Vessels.

(h) No act, omission or conduct of the Buyer's Technical Representative shall, in any way, affect the responsibility of the Builder to construct the Vessels in accordance with the provisions of this Contract, the Specification and the Plans and Drawings.

23. Inspections, Tests and Trials

(a) To enable the Buyer's Technical Representative and assistants to carry out their duties and inspect the work being done, the Buyer's Technical Representative and/or assistants shall have the right to inspect the Vessels throughout the period of the construction of the Vessels and until their delivery and acceptance in accordance with Clause 28 (Delivery).

(b) The Buyer's Technical Representative and/or assistants shall have the right to attend all tests, trials and inspections, including those supervised by the Classification Society and Regulatory Authorities, on any parts of the Vessel whether or not installed. The Builder shall give the
24. Modifications and Changes

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

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

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

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

(e) If the AgentBuyer does not accept the Builder’s notice as provided in Clause 20(d)
NEWBUILDCON - Standard Newbuilding Contract - PART II

(Approvals) or if in the AgentBuyer's opinion the Builder's proposal for modifications and/or changes under this Clause is unreasonable, the AgentBuyer may, by giving notice to the Builder, order the Builder to proceed with the requested modifications and/or changes but the consequences of implementing such modifications and/or changes shall be decided in accordance with Clause 42 (Dispute Resolution).

(f) If the AgentBuyer elects not to continue with the request for modifications and/or changes, the AgentBuyer shall notify the Builder accordingly.

(g) If the AgentBuyer does not respond within seven (7) running-days after receipt of the Builder's notice in Sub-Clause (b), the AgentBuyer shall be deemed to have withdrawn the request for modifications and/or changes.

25. Builder's Modifications and Substitution of Materials

See Rider Clause 57 (Substitution of Materials). The Builder shall have the right to make minor modifications and/or changes to the Specification and/or plans if so required by virtue of changes to the Builder's local conditions or facilities, the availability of materials and equipment, the introduction of improved methods or for any other reason of a similar nature provided that the Builder shall first obtain the Buyer's written approval, which shall not be unreasonably withheld or delayed.

Such modifications and/or changes Substituted materials shall satisfy the requirements of the Classification Society and the Regulatory Authorities and shall not relieve the Builder from its obligation to otherwise deliver the Vessel in accordance with this Contract. Any savings obtained shall be credited to the Buyer and the Buyer shall not be obliged to pay any extra for, or suffer any delay in delivery or other adverse consequences of, such substituted materials, modifications and/or changes.

26. Changes in Rules and Regulations

If, after the date of Contract, there are any changes in applicable laws, rules, regulations or requirements (or their application) of the Classification Society or Regulatory Authorities, the following shall apply:

(a) Upon receipt of notice of such changes either any Party shall promptly notify the other Parties thereof.

(b) Subject to Sub-clause 26(c), if such changes will be compulsory for the Vessels at the time of their delivery, in accordance with Clause 28 the Builder shall, unless the AgentBuyer at its sole discretion seeks and obtains a waiver from the Classification Society or Regulatory Authorities (as appropriate), incorporate such modifications and/or changes into the construction of the Vessels. The Parties shall endeavour to agree on such adjustments to the Contract Price, Delivery Date or other Contract terms as are a direct consequence of the change in applicable laws, rules, regulations or requirements. If the Parties fail to agree on the adjustments, the Builder shall proceed with the required changes and the matter shall be decided in accordance with Clause 42 (Dispute Resolution).

(c) If such changes were published on or before the date of the Contract and are applicable and mandatory to the Vessels on or before the date of their delivery in accordance with Clause 28 then the Builder shall not have the right to seek adjustment to the Contract including,
NEWBUILDCON - Standard Newbuilding Contract - PART II

without limitation, Contract Price and Delivery Date.

(d) If such changes are not compulsory but the Agent/Buyer requires the changes to be incorporated, Clause 24 (Modifications and Changes) shall apply.

27. Builder's Sea Trials

This Clause will apply to the Builder's Sea Trials conducted in respect of each Vessel. The times and numbers specified in this Clause shall apply unless otherwise stated in the Specification.

(a) Notice

The Buyer's Technical Representative, together with a suitable number of assistants, officers and crew, shall have the right to be present at the Builder's Sea Trials. The Builder shall give the Agent/Buyer at least fourteen (14) running-days notice of the time and place and expected duration of the Builder's Sea Trials and the Buyer-Agent shall promptly acknowledge receipt of such notice. If neither the Buyer's Technical Representative nor any authorised assistants attend the Builder's Sea Trials for any reason after such notice to the Buyer-Agent, such absence shall be deemed to be a waiver by the Buyer of its right to be present. The Builder may then conduct the Builder's Sea Trials without the Buyer's Technical Representative being on board, provided that a representative of the Classification Society and Regulatory Authorities is present. In such circumstances, the results and conditions of the Builder's Sea Trials shall be as confirmed in writing by the Classification Society and/or Regulatory Authorities.

(b) Weather Conditions

The Builder's Sea Trials shall be conducted in weather conditions as described in this Contract and/or Specification. If the Builder's Sea Trials are interrupted or prevented by weather conditions in excess of the stated conditions, any resulting delay in delivery of the Vessel in accordance with Clause 28 (Delivery) shall be deemed a Permissible Delay in accordance with Clause 34 (Permissible Delays). In such an event, the Builder's Sea Trials shall be discontinued or postponed until the first favourable day thereafter when weather conditions permit.

(c) Conduct of the Builder's Sea Trials

(i) The Builder's Sea Trials shall be conducted in the presence of representatives from the Classification Society and Regulatory Authorities and in the manner described in this Contract. The Builder's Sea Trials shall be of sufficient scope and duration to enable the Parties to verify and establish that the Vessel conforms in all respects with the performance requirements of this Contract. The Builder shall have the right to repeat any Builder's Sea Trials, subject to appropriate notice to the Agent/Buyer.

(ii) The Builder shall provide sufficient crew necessary for the safe navigation of the
NEWBUILDCON - Standard Newbuilding Contract - PART II

(iii) All expenses in connection with the Builder's Sea Trials, including the provision of bunkers, lubricating oil, grease, fresh water and stores needed to undertake the Builder's Sea Trials shall be for the Builder's cost and expense. Together with the Final Instalment, the Buyer shall reimburse the Builder at cost price for any quantities of bunkers and unbroached lubricating oil, grease, fresh water and stores remaining on board at delivery.

(d) Method of Acceptance or Rejection

(i) Within 10 days of upon completion of the Builder's Sea Trials the Builder shall give the Agent the results of the Builder's Sea Trials in writing. If the Builder considers that the results thereof demonstrate that the Vessel conforms to the requirements of this Contract, the notice by the Builder shall also give the Agent notice of when the Sydney Harbour Sea Trials will take place. Such notice shall state where and when the Vessel will be ready for the Sydney Harbour Sea Trials delivery, which will be at least fifteen (15) running days after the notice is given. Within five (5) running days after receipt of this notice and the trial results, the Agent shall notify the Builder in writing either of its acceptance for delivery or rejection of the Vessel its agreement that the Vessel has successfully completed the Builder's Sea Trials and that the Vessel may undertake the Sydney Harbour Sea Trials or of its rejection of the Vessel.

(ii) If the results of the Builder's Sea Trials demonstrate that the Vessel or any part or equipment thereof does not conform to the requirements of this Contract, or if the Agent rejects the Vessel for other reasons which the Builder accepts as valid, the Builder shall take all necessary steps to rectify such non-conformity. If necessary the Builder shall for its own cost and expense carry out a further sea trial or other tests as the Builder and the Agent consider appropriate in accordance with this Clause to ascertain that the Vessel complies with the terms of this Contract. Upon demonstration by the Builder that the deficiencies have been corrected, the procedure set out in this Sub-Clause (d) shall apply.

(iii) If the Agent gives notice of rejection under (i) above or rejects the Vessel under (ii) above following the Builder's Sea Trials the Agent shall state in its notice of rejection in which respects the Vessel does not conform to the requirements of this Contract (hereinafter “Delivery Builder's Sea Trials Defects”).

(iv) If the Delivery Builder's Sea Trials Defects are of minor importance and do not affect Class or the Buyer's unrestricted use and safe operation of the Vessel in its intended trade but the Builder is unable to rectify the matter within a reasonable time and in any event before the accrual of the Agent's right to terminate in accordance with Clause 39 (Suspension and Termination), the Builder may nevertheless require the Buyer conduct the Sydney Harbour Sea Trials to take delivery of the Vessel, on condition that the Builder first:

(1) undertakes to remedy the Delivery Builder's Sea Trials Defects for its own cost and expense as soon
as possible; and

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

(3) provides the Buyer-Agent with a Bank Guarantee issued in favour of the Buyer by the party named in Box 32 (or if Box 32 is not filled in, a bank guarantee from a first class bank) substantially in the form and substance set out in Annex A(iii)(a) for a sum which the Agent-Buyer reasonably requests to cover (1) and (2) above, failing agreement such sum to be resolved in accordance with Clause 42 (Dispute Resolution);

whereupon the Builder may conduct the Sydney Harbour Sea Trials Buyer shall accept delivery of the Vessel.

(v) If the Builder disputes the rejection of the Vessel by the Agent-Buyer, the dispute shall be resolved in accordance with Clause 42 (Dispute Resolution).

See Rider Clause 64 (Sydney Harbour Sea Trials).
NEWBUILDCON - Standard Newbuilding Contract - PART II

SECTION 4 – DELIVERY

28. Delivery

This Clause will apply in respect of the delivery of each Vessel. Subject to Rider Clause 64.5 (Sydney Harbour Sea Trials – Method of Acceptance or Rejection), each Clause 27(d) (Sea Trials – Method of Acceptance or Rejection) the Vessel shall be delivered by the Builder to the Buyer on (or one or more representatives appointed by the Buyer to act on its behalf) in/near Sydney, Australia, at a safe place nominated by the Agent after the Delivery Date at the Shipyard or at a safe place in the immediate vicinity thereof in a clean and orderly condition, ready for service, upon:

(a) exchange and acceptance by the Builder and the Buyer Parties hereto of a Protocol of Delivery and Acceptance signed by the Builder and the Buyer Party acknowledging delivery of the Vessel by the Builder and acceptance thereof by the Buyer; and

(b) the provision by the Builder of the other documents listed in Clause 29 (Documents on Delivery).

29. Documents on Delivery

The Clause will apply in respect of the delivery of each Vessel in accordance with Clause 28 (Delivery). Upon exchange of the Protocols of Delivery and Acceptance the Builder shall provide at no cost to the Buyer the following additional documents:

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

(b) Protocol of Inventory and Equipment of the Vessel, including spare parts, as detailed in the Specification.

(c) Protocol of Surplus Consumable Stores which are payable by the Buyer to the Builder.

(d) Plans and Drawings pertaining to the Vessel in hard copy and in electronic editable format together with all necessary instruction manuals, as detailed in the Specification.

(e) All certificates including the documents required to be furnished on delivery pursuant to this Contract. All certificates shall be issued without qualification.

If, however, the Classification certificate and/or other required certificates are not available at the time of delivery, the Buyer shall accept interim certificates provided that the Builder, at its cost and expense, provides the Buyer with final certificates as promptly as possible.

The Builder warrants that:

(i) such interim certificates shall enable the Vessel to be registered and trade and operate without restriction in its Intended Trade; and
NEWBUILDCON - Standard Newbuilding Contract - PART II

(ii) final certificates shall be provided as above.

If the Builder fails to perform (i) and/or (ii) above, the Builder shall compensate the Buyer for any loss incurred as a consequence thereof, including loss of time.

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

(g) Builder's Certificate.

(h) Certificate of Non-Registration.

(i) Commercial invoices covering Final Instalment and modifications in respect of that Vessel.

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

(k) The Bank Guarantee referred to in Rider Clause 58 (Builder's Bank Guarantees).

(l) The documents identified in Appendix A5 of Annex B (the Specification).

(m) Any other documents reasonably required by the Agent/Buyer.

The Agent/Buyer may require the Builder by giving reasonable notice, prior to delivery in accordance with Clause 28 (Delivery), to arrange for any documents listed above to be duly notarised and, if required, legalised at the Buyer's cost and expense.

30. Final Instalment

This Clause will apply in respect of the Final Instalment for each Vessel.

(a) The Final Instalment for each Vessel shall be adjusted in accordance with this Contract and notified by the Builder to the Buyer not later than two (2) Banking Days prior to the notified date of delivery (see Rider Clause 27(d) 64.5 (Sydney Harbour Sea Trials - Method of Acceptance or Rejection)).

Net later than two (2) Banking Days prior to the notified date of delivery the amount of deposited with the Builder's Bank as set out in Box 12, with irrevocable instructions that, subject to Sub-Clause (e) below, the amount shall be released to the Builder against presentation by the Builder of a copy of the Protocol of Delivery and Acceptance of the Vessel signed by the Builder and the Buyer. Interest, if any, accruing on such deposit shall be for the benefit of the Buyer.

(b) If the Buyer does not agree the amount of the Final Instalment as adjusted and notified by the Builder, the Buyer shall notify the Builder within Thereafter the Buyer may take delivery of the Vessel in accordance with Clause 28 (Delivery) and the Buyer must, on payment of, the Final Instalment as adjusted (or such other amount as the Builder may agree) into the Escrow Account within of that date of delivery but without prejudice to the Buyer's
rights and remedies under this Contract and the dispute shall be resolved in accordance with Clause 42 (Dispute Resolution).

If the Protocol of Delivery and Acceptance is not so presented within seven (7) days following the date for delivery of the Vessel as notified by the Builder in accordance with Clause 27(d) (Sea Trials—Method of Acceptance or Rejection), the Buyer shall have the right to withdraw the said deposit plus accrued interest. However, if and when a new date for delivery of the Vessel is notified to the Buyer by the Builder in accordance with Clause 27(d) (Sea Trials—Method of Acceptance or Rejection), the Buyer shall make a further cash deposit for the Final Instalment in accordance with the same terms and conditions as set out above.

31. Title and Risk
This Clause will apply in respect of each Vessel. Loss of or damage to the Vessel shall rest with the Builder until delivery and acceptance of the Vessel in accordance with Clause 28 (Delivery) and exchange of the Protocols of Delivery and Acceptance is effected for the Vessel, immediately upon which shall pass to the Buyer.

32. Possession and Removal of the Vessel
This Clause shall apply in respect of each Vessel. The Buyer shall take physical possession of the Vessel immediately upon delivery and acceptance thereof in accordance with Clause 28 (Delivery).

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

33. Vessel Registration Certification
The Buyer shall register the Vessel at its own cost and expense. The Buyer shall obtain a Certificate of Operation for each of the Vessels at its own cost and expense.
34. Permissible Delays

(a) The Delivery Date shall be extended if any of the following events cause actual delay to the delivery of the Vessel:

(i) Force majeure events

(1) acts of God;

(2) any government requisition, control, intervention, requirement or interference;

(3) threat or act of war, warlike operations, terrorism or the consequences thereof;

(4) riots, civil commotions, blockades or embargoes;

(5) epidemics;

(6) earthquakes, landslides, floods, tidal waves or extraordinary weather conditions;

(7) strikes, lockouts or other industrial action, but only if of a general nature and not limited solely to the Builder and/or the Sub-contractors or their employees;

(8) fire, accident, explosion (whether in the Shipyard or elsewhere);

(9) any interruption to the supply of public utilities to the Builder;

(10) any other cause of a similar nature to the above beyond the control of the Builder or its Sub-contractors;

(11) delays to Builder’s Sea Trials in accordance with Clause 27(b) (Builder’s Sea Trial – Weather Conditions); or

(12) delays to the Sydney Harbour Sea Trials in accordance with Rider Clause 64.3 (Sydney Harbour Sea Trials – Weather Conditions).

(ii) Other events

Late delivery of, or delivery of, any defective Buyer’s Supplies in accordance with Clause 21(a)(iv) (Buyer’s Supplies);

(1) Delays due to modifications and changes in accordance with Clause 24(b) or (e) (Modifications and Changes);

(2) Delays due to changes in rules and regulations in accordance with Clause 26 (Changes in Rules and Regulations); (except to the extent that Clause 26(c) applies);

(3) An actual or constructive total loss in accordance with Clause 38(b)(ii) (Insurances – Allocation of Insurance Proceeds);

Suspension of work pursuant to Clause 39(e) (Suspension and Termination – Suspension of Work);
(iii) Provided that in respect of (i) and (ii) above:

(1) such events were not caused by the error, neglect, act or omission of the Builder or its Sub-contractors; and

(2) were not, or could not reasonably have been, foreseen by the Builder at the date of the Contract; and

(3) the Builder shall have complied with Sub-Clause (b) hereunder; and

(4) the Builder shall have made all reasonable efforts to avoid and minimise the effects such events have on the delivery of the Vessel.

(b) The Builder shall notify the Agent/Buyer within ten (10) running days of when the Builder becomes aware of the occurrence of any event of delay on account of which the Builder asserts that it may have the right to claim an extension of the Delivery Date under Clause 34(a). A failure to so notify shall bar the Builder from claiming an extension to the Delivery Date. The Builder shall also advise the Agent/Buyer in writing (A) within two (2) running days of the ending of any event notified under this Clause that the event has ended, and (B) as soon as reasonably possible after (A), the length of extension of the Delivery Date claimed by the Builder.

(c) Where more than one event (or the impact of more than one event) causes concurrent delays and the cause of at least one of these events, but not all of them, is not a Permissible Delay, then to the extent that the impact of the delays is concurrent, the Builder will not be entitled to an extension of the Delivery Date for that period of time when the impact of such delays is concurrent.

35. Builder's Guarantee

This Clause shall apply in respect of each of the Vessels.

(a) Except as otherwise provided in Clause 35(a bis) below, the Builder shall guarantee each Vessel against any Defects (see Definitions) provided:

such Defects are:

(i) such Defects are discovered within the number of months stated in Box 20 (hereinafter "the Guarantee Period") after delivery of the Vessel in accordance with Clause 28 (Delivery); and

(ii) notice thereof is given to the Builder as soon as reasonably possible after the discovery thereof and latest thirty (30) running days after the expiry of the Guarantee Period describing such Defects so far as reasonably practical

(hereinafter called "Guarantee Defects").

(a bis) Clause 35(a) does not apply to Design Defects. The Builder's liability for Design Defects shall be governed by Rider Clause 70 (Liability for Design Defects).

(b) The Builder shall make any necessary repairs or replacements to rectify any Guarantee Defects and damage to the Vessel caused as a direct and immediate consequence of such Guarantee Defects. Such repairs and replacements shall be made at the Shipyard at the Builder's cost and expense.

(c) The Buyer shall have the right to arrange for the necessary repairs to rectify any Guarantee Defects and damage to the Vessel caused as a direct and immediate consequence of such Guarantee Defects to be made elsewhere or obtain any necessary
replacement parts and materials:

(i) if it is impractical to bring the Vessel to the Shipyard; or

(ii) if the Builder cannot supply necessary replacement parts and materials without impairing or delaying the operation or working of the Vessel.

(d) In the event that the Buyer makes the necessary repairs or replacements at any other shipyard or works other than the Shipyard, the Buyer shall first, but as soon as possible, give the Builder notice of the time and place such repairs will be made. The Builder shall have the right, without prejudice, to inspect through its own representative the nature and extent of the Guarantee Defects to be replaced or repaired. The Builder shall, in such case, promptly advise the Buyer in writing, after such examination has been completed, of its acceptance or rejection of such Guarantee Defects as ones that are covered by the guarantee.

(i) The Builder shall pay the Buyer in the currency stated in Box 9(b) the reasonable cost and expenses of such repairs or replacements.

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

(e) The Builder guarantees repairs or replacements to the Vessels made under Sub-Clause 21 from the date of completion of such repairs or replacements provided such work has been performed by the Builder or its Sub-contractors. The additional Guarantee Period shall, however, not end on a date earlier than the end of the original Guarantee Period for any such item.

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

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

Also see Rider Clause 58 (Builder’s Bank Guarantees)

36. Guarantee Engineer

This Clause will apply in respect of each of the Vessels.

See Rider Clause 65 (Guarantee Engineer)
NEWBUILDCON - Standard Newbuilding Contract - PART II

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

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

(c) If the Agent/Builder decides not to exercise their right to require the Builder to provide a Guarantee Engineer on board the Vessel, this shall not prejudice the Buyer’s rights under the provisions of Clause 35 (Builder’s Guarantee).

37. Responsibilities and exclusions from liabilities

Builder’s exclusion Clauses

(a) Liability for Defects discovered before or at the time of delivery

The Buyer’s remedy for delay in delivery of any the Vessel in accordance with Clause 28 (Delivery), or for Defects discovered before or at the time of such delivery, are set out in Clauses 8 to 13 inclusive, and Clause 27(d) (Builder’s Sea Trials – Method of Acceptance or Rejection). Rider Clause 56 (Other Deficiencies). Rider Clause 64.5 (Sydney Harbour Sea Trials – Method of Acceptance or Rejection). Rider Clause 69 (Liquidated Damages for Guarantee Defects) and Rider Clause 70 (Liability for Design Defects).

(b) Liability for Defects discovered after delivery

Exception to the extent expressly provided in Clauses 8 to 13 inclusive, Clause 27(d) (Builder’s Sea Trials – Method of Acceptance or Rejection). Clause 35 (Builder’s Guarantee), Rider Clause 64.5 (Sydney Harbour Sea Trials). Rider Clause 69 (Liquidated Damages for Guarantee Defects) and Rider Clause 70 (Liability for Design Defects) the Builder shall have no liability in contract, tort (including negligence), breach of statutory duty or otherwise for:

(i) any Defect discovered after delivery of the Vessel in accordance with Clause 28 (Delivery) or

(ii) any Loss, damage or expenses caused as a consequence of such Defect, (which shall include, but not be limited to, loss of time, loss of profit or earnings or demurrage directly or indirectly incurred by the Buyer).

(c) Liability for third party replacement or repair

The Builder shall not be responsible for any Defects in any part of any the Vessel which may, subsequent to delivery of the Vessel, have been replaced or in any way repaired by any...
contractor, other than the Builder or its Sub-contractors, or for any such Defects which have been caused in whole or part by omission or improper use or maintenance of the Vessels on the part of the Buyer or its agents or by ordinary wear and tear.

(d) Implied terms

The guarantees contained in Clauses 8 to 13 inclusive, Clause 27 (d) (Builder’s Sea Trials – Method of Acceptance or Rejection), Clause 35 (Builder’s Guarantee), Rider Clause 64.5 (Sydney Harbour Sea Trials), Rider Clause 69 (Liquidated Damages for Guarantee Defects) and Rider Clause 70 (Liability for Design Defects) replaces and excludes any other liability, guarantee and/or condition and/or innominate term imposed or implied by the law, customary, statutory or otherwise, by reason of the construction and sale of the Vessels by the Builder for and to the Buyer.

Mutual exclusion Clauses

(e) Liability following termination

In the event of termination in accordance with the provisions of Clause 39 (Suspension and Termination), neither Party shall have any liability to the other whatsoever or howsoever arising, except as expressly provided in that Clause.

Responsibility Clauses

(f) Responsibility for death and personal injury

Each Party to this Contract shall accept responsibility and liability for the death and personal injury of its Personnel, unless the death or personal injury was inflicted by the another Party or its Sub-contractors; (i) with the intent to cause such death or injury; (ii) recklessly and with knowledge that such death or injury would probably result; or (iii) in breach of the obligations applicable under WHS Legislation.

Each Party further agrees to indemnify and hold harmless the other Parties, as regards both liability and legal costs, in the event of claims relating to or resulting from death or personal injury of its Personnel against the Party who is not responsible for them under this Sub-Clause 37(f).

(g) Responsibility for damage to or loss of property

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

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

38. Insurances

(a) Builder’s Insurances

From the time of first steel cutting or equivalent (or delivery of the Buyer’s Supplies,
whichever is earlier) until each the Vessel is completed, delivered to and accepted by the Buyer in accordance with Clause 28 (Delivery), the Builder shall (in the joint names (as assureds) of the Builder and the Buyer) effect and maintain at no cost to the Buyer or the Agent, Builder's Risk insurance for each the Vessel and Buyer's Supplies. Such Builder's Risk insurance shall:

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

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

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

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

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

See also Rider Clause 71 (Insurances)

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

(b) Allocation of Insurance Proceeds

(i) In the event that any the Vessel is at any time prior to or at delivery in accordance with Clause 28 (Delivery) damaged by any insured cause and, provided such damage does not constitute an actual or constructive total loss of such the Vessel, the Builder shall make good such damage and shall apply any amounts recovered under the insurance referred to in Sub-Clause (a) to the costs of any repair or replacement, including repair or replacement of lost or damaged Buyer's Supplies. Such damage shall be made good so as to comply with this Contract and all repairs shall be carried out in compliance with the requirements of the Classification Society and Regulatory Authorities as appropriate without qualification.

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

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

(2) If the Builder and Agent/Buyer are unable to agree within a reasonable time on an extension to the Delivery Date and/or any other necessary amendment to the Contract as provided for in Sub-Clause (b)(ii)(1) the Builder shall:

promptly refund to the Buyer the full amount of sums paid by the Buyer to
the Builder together with interest thereon at a rate per annum as stated in Box 30 from the date of payment to the date of refund, and

make payment to the Buyer of the insured value of the Buyer’s Supplies or alternatively, at the Builder’s cost, deliver the Buyer’s Supplies to the Buyer in undamaged condition.

Once all payments have been made by the Builder to the Buyer in accordance with Sub-Clause (b)(ii)(2) this Contract shall be deemed terminated and all future rights and obligations of each of the Parties to the other shall cease whereupon the Bank Guarantees provided under this Contract shall be returned.

39. Suspension and Termination

(a) AgentBuyer’s Termination

The AgentBuyer shall have the right to terminate this Contract forthwith upon giving notice in the event that:

(i) the Guarantor providing any Refund Bank Guarantee on behalf of the Builder in accordance with this Contract ceases to have the Required Rating with Clause 14(b) (Guarantees – Builder’s Refund Guarantee) is deemed insolvent pursuant to Sub-Clause (d) below, unless the Builder provides a replacement Refund Bank Guarantee acceptable to the AgentBuyer as required by Rider Clause 58.3 (Guarantor ceases to have Required Rating) within 30 days of the Buyer’s notice requiring A replacement Refund Guarantee to be provided, during which period no further payments shall be made to the Builder by the Buyer and provided that notice of termination is given before an acceptable replacement Refund Bank Guarantee is received by the Buyer, or

(ii) the Builder fails to perform any work relating to the construction of any Vessel for a running period of at least the number of days stated in Box 22(i), excluding Permissible Delays and Public Holidays, provided that thereafter the AgentBuyer gives the Builder at least the number of days’ written notice stated in Box 22(ii) of its intention to terminate this Contract under this Clause and within that period the Builder fails to remedy its breach and provided further that the notice of termination is given before the Builder has remedied its breach; or

(iii) (1) the aggregate of delays to the delivery of any Vessel is delayed by more than 180 days by virtue of events that fall within Clause 34(a)(i) (Permissible Delays – Force Majeure events); or

(2) the aggregate of delays to the delivery of any 1 or more Vessels is delayed by more than 180 days by virtue of events which do not fall within Clause 34(a)(i) or 34(a)(ii) (Permissible Delays); or

(3) the aggregate of delays to the delivery of any 1 or more Vessels in (1) and (2) above is more than 270 days.

The Builder may at any time after the right to terminate has occurred give notice requesting that the AgentBuyer either agrees to a new delivery date or terminates this Contract. Such new delivery date shall be a reasonable estimate by the Builder of the date when such the Vessel(s) the subject of the delay will be ready for delivery in accordance with Clause 28 (Delivery). Within fifteen (15) days of the Builder’s request, the AgentBuyer shall notify the Builder of its decision. If the AgentBuyer does not do so...
not terminate this Contract then the new delivery date shall be deemed to be the
Delivery Date provided it does not occur later than thirty (30) days prior to the expiry of the Refund Guarantee (Clause 14(b) (Guarantees – Builder’s Refund Guarantee)). Notwithstanding Clause 34(a)(i) (Permissible Delays – Force majeure events) and this Clause 39(a)(iii)(1), (2) or (3) but subject to Clause 34(a)(ii) (Permissible Delays - Other events), if any/the Vessel is not delivered in accordance with Clause 28 (Delivery) by that agreed date, the Agent/Buyer shall have the right to terminate this Contract. The Builder’s right to request the Agent/Buyer to agree a new delivery date shall operate on each and every occasion the events stated in this Sub-Clause (a)(iii) give rise to the Agent/Buyer’s option to terminate.

(iv) the reduction in speed of any Vessel would entitle the Buyer to a reduction in the Contract Price greater than the amount stated in Box 13(ii); or

The Buyer rejects the main engine and terminates the Contract in accordance with Clause 9(c)(ii)(2); or

The reduction in deadweight would entitle the Buyer to a reduction in the Contract Price greater than the amount stated in Box 15(iii); or

The reduction in cubic capacity would entitle the Buyer to a reduction in the Contract Price greater than the amount stated in Box 16(iii); or

(v) the condition of any the Vessel is deficient in the manner stated in Clauses 12 (Other Deficiencies) and Rider Clause 56 (Other Deficiencies) and Box 17; or

The Builder is in breach of Clause 14 (Guarantees), Rider Clause 58 (Builder’s Bank Guarantee), Rider Clause 59 (Parent Company Guarantees) or Rider Clause 84 (Information Undertakings).

(b) Builder’s Termination

The Builder shall have the right to terminate this Contract forthwith upon giving notice to the Buyer in the event that:

The guarantor providing the Instalment Guarantee or Performance Guarantee on behalf of the Buyer under Clause 14(a) (Buyer’s Instalment/Performance Guarantee) is deemed insolvent pursuant to Sub-Clause (d) below, unless the Buyer can provide a replacement Performance Guarantee acceptable to the Builder within 30 days and provided that notice of termination is given before an acceptable Buyer’s Instalment or Performance Guarantee is received by the Builder, or

the Buyer fails to pay any sums due into the Escrow Account as provided by Clause 15(d)(v) (Payments – Payments Procedures) under this Contract for a period of twenty-one (21) Banking Days provided that the Builder thereafter gives the Buyer at least 5 Banking Days’ notice of its intention to terminate under this Clause, and within that period the Buyer fails to remedy the breach and provided that notice of termination is given before the Buyer pays the outstanding sums due, or

The Buyer fails to take delivery of the Vessel tendered in accordance with this Contract, or

The Buyer is in breach of Clause 14 (Guarantees).

Suspension of Work
Without prejudice to Sub Clause (b) above the Builder shall have the right to suspend work under this Contract if the Buyer fails to pay any instalment stated in Box 11 due for a period of fifteen (15) Banking Days until payment of such outstanding sums.

(c) Deemed Insolvency

A Party or the Guarantor providing the Refund Bank Guarantee shall be deemed insolvent if proceedings are commenced against the insolvent Party or the Guarantor for winding up, dissolution or reorganisation (otherwise than for the purpose of amalgamation or reconstruction), liquidation, the appointment of a receiver, trustee or similar officer, bankruptcy, suspension of payments or similar events.

A Party shall have the right to terminate this Contract forthwith upon giving notice if the other Parties or the Guarantor is deemed insolvent.

(d) Effect of Agent-Buyer’s Termination

If this Contract is terminated by the Agent-Buyer, unless the Buyer elects to take possession of the Vessels under Rider Clause 67.2(3) (Effect of Termination), the Builder shall immediately refund all sums paid by the Buyer to the Builder under Clause 7 (Contract Price) and Clause 15 (Payments) hereof plus interest thereon at the rate stated in Box 30 per annum from the date of payment to the date of refund. The Builder shall also return the Buyer’s Supplies, or if they cannot be returned, the Builder shall pay to the Buyer an amount equal to the Buyer’s cost for such Buyer’s Supplies.

Also see Rider Clause 67 (Effect of Termination)

(e) Effect of Builder’s Termination

If this Contract is terminated by the Builder, the Builder shall have the right to retain the Buyer’s Supplies together with any instalments Instalments paid by the Buyer and shall have the right and power either to complete or not to complete the Vessel as it deems fit but in any event to sell the Vessels (either in their complete or incomplete form), including those Buyer’s Supplies which are installed or have been utilised on board the Vessel, at the best price reasonably obtainable at a public or private sale on reasonable terms and conditions having due regard for the Buyer’s interests.

(i) In the event of the sale of any the Vessels in its complete form the proceeds of the sale received by the Builder shall be applied in the following order:

1. To payment of all expenses incurred by the Builder in respect of the sale and otherwise incurred by the Builder as a result of the Buyer’s default, and
2. To payment of all unpaid instalments of the Contract Price including any which would have been payable after the date of termination and interest on such instalments at the rate of interest stated in Box 30 from the respective due dates thereof to the date of application.

(ii) In the event of the sale of the any Vessels in its incomplete form the proceeds of sale received by the Builder shall be applied in the following order:

1. To payment of all expenses incurred by the Builder in respect of the sale and otherwise incurred by the Builder as a result of the Buyer’s default;
2. To payment of all unpaid instalments of the Contract Price to the extent due but

TfNSW
NEWBUILDCON - Standard Newbuilding Contract - PART II

not yet paid at the date of termination and interest on such instalments at the rate of interest stated in Box 30 from the respective due dates thereof to the date of application;

(3) to payment of all costs of part construction of the Vessel(s) less any paid instalments and less any sums credited under (2) above; and

(4) to payment of the Builder’s reasonable net loss of profit caused by the Buyer’s default.

(iii) In either of the above events if the proceeds of sale exceed the sums to which such proceeds are to be applied as aforesaid the Builder shall promptly pay any such excess to the Buyer without interest thereon, provided that the amount of such payment to the Buyer shall in no event exceed the total amount of instalments paid by the Buyer. The Builder shall at the same time either permit the Buyer to remove the Buyer’s Supplies which are not installed or utilised onboard the Vessel (if any) from the Shipyard for the cost and expense of the Buyer, or give credit to the Buyer for the full value thereof.

(iv) If the proceeds of sale are insufficient to pay the Builder the total amounts due from the Buyer as aforesaid, the Builder shall pay to the Builder the amount of such deficiency, plus interest at the rate stated in Box 30 to cover periods whenever payments from the Buyer became overdue. Builder may sell the Buyer’s Supplies which are not installed or utilised onboard the Vessel (if any) at the best price reasonably obtainable at a public auction or private sale on reasonable terms and conditions, applying the proceeds of such sale toward the unsatisfied amounts due from the Buyer, and giving credit to the Buyer for any excess.

(v) In the event of the sale of any Vessel(s) in complete or incomplete form, the Builder must ensure that all trade marks, trade dress, names, colours or any other branding directly or indirectly associated with the Buyer or the Agent be removed from the Vessel prior to the sale. If the proceeds of sale are still insufficient to pay the Builder the total amounts due from the Buyer as aforesaid, the Buyer shall pay to the Builder the amount of such deficiency, plus interest at the rate stated in Box 30 to cover periods whenever payments from the Buyer became overdue.

40. Copyrights, Trade Marks and Patents

See Rider Clause 72 (Intellectual Property). Where they are owned and supplied by a Party, that Party shall retain all copyright, trade mark, patent or similar rights (hereinafter called “Intellectual Property Rights”) with respect to the Specification, Plans and Drawings, technical descriptions, calculations, Test results and other data, and information and documents concerning the design and construction of the Vessel. Each Party undertakes not to disclose the same or divulge any information contained therein to any third parties without the prior written consent of the first Party, except where it is necessary for usual operation, repair and maintenance of the Vessel and to subsequent owners.

Each Party shall ensure that any manufacture and/or supply according to specifications, drawings, models or other instructions supplied by it shall not infringe any Intellectual Property Rights of third parties. Should claims nevertheless be made against the other Party in respect of Intellectual Property Rights arising out of or in any way related to the performance of the Contract, the first Party shall keep the other Party indemnified against the cost of such claims, including any legal costs in connection therewith.
For the purpose of this Sub-Clause (c), “Information” means technical information relating to the Vessel designated by one Party as confidential, except information which was developed by and in possession of the other Party prior to first receipt from the first Party; and/or at the date hereof or hereafter, through no wrongful act or failure to act on the part of the other Party, enters the public domain.

Where it is necessary during the performance of this Contract for the first Party to make Information available to the other Party, the other Party shall hold all such Information in confidence and not disclose it to any third parties or use it for any purpose other than as provided herein without the prior written consent of the first Party, which shall not be unreasonably withheld.

41. Governing law

This Contract shall be subject to the laws of New South Wales, Australia. English law unless another law is stated in Box 23(a) in which case the law stated in Box 23(a) shall apply.

42. Dispute Resolution

(a) Classification/Regulatory Authorities

Any dispute concerning the Vessel’s compliance or non compliance with the rules, regulations and requirements of the Classification Society or other Regulatory Authorities shall be referred to the Classification Society or other Regulatory Authorities, as the case may be, the final decision of which shall be final and binding upon the Parties hereto. All other disputes shall be referred to expert determination or arbitration in accordance with Sub-Clauses (b) and Rider Clause 76 (Dispute Resolution).

(b) Expert determination

Unless Sub-Clause (a) applies or Sub-Clauses (c) to (e) apply, in the event that a dispute of a technical nature not governed by Sub-Clause (a), or in relation to valuation under Rider Clause 67.8 (Effect of Termination) arises under this Contract the Parties may agree in writing either Party may require by notice in writing to the other Party that such dispute be referred to an independent third party (an “Expert”) in accordance with this Sub-Clause (b) as the Parties jointly nominate in writing, subject to the following procedure:

(i) if the Parties fail to agree that a dispute should be referred to an Expert in accordance with this Sub-Clause (b) or fail to nominate an Expert within seven (7)-days of the date of the notice-agreement referred to in this Sub-Clause (b), the dispute shall be resolved in accordance with Sub-Clauses (c) to (e) below; Rider Clause 76 (Dispute Resolution);

(ii) in respect of a dispute of a technical nature not governed by Sub-Clause (a), the Expert shall be a member, agreed by the Parties, of the Royal Institution of Naval Architects (Australian Division) or, if such a member is unwilling or unable to act or in the absence of agreement, appointed by the President of the Australian Division Council for the time being of the Royal Institution of Naval Architects (Australian Division);

(iii) in respect of a dispute in relation to valuation under Rider Clause 67.8 (Effect of Termination), the Expert shall be a member, agreed by the Parties, of the Royal Institution...
NEWBUILDCON - Standard Newbuilding Contract - PART II

of Chartered Surveyors (Oceania Division) or, if such a member is unwilling or unable to
act or in the absence of agreement, appointed by the Chairman for the time being of the
Royal Institution of Chartered Surveyors (Oceania Division):

(ii)(iv) the Expert shall act as an expert and not as an arbitrator and his decision shall be
final and binding upon the Parties;

(iii)(v) the Expert’s determination shall be conducted in accordance with the following
rules, unless otherwise agreed by the Parties:

(1) the Parties may make written representations within seven (7) days of the Expert’s
appointment and shall copy in full such written representations to the other Parties
within such time period;

(2) the Parties shall have a further seven (7) days to make written comments on each
other’s representations and shall copy in full such written comments to the other Parties
within such time period;

(3) the Expert may call for such other documents and written evidence from the Parties
as the Expert may reasonably require and the Parties shall provide such documents
and written evidence within the period specified by the Expert. The Parties shall
copy, in full, such documents and written evidence to the other Parties within such
time period provided that if either any Party claims any such information is confidential
to it then, provided that in the reasonable opinion of the Expert that Party has properly
claimed the same as confidential, the Expert shall not disclose the same to the other
Parties or to any third party;

(4) the Expert shall decide whether or not to take oral representations from or on
behalf of either any Party, but if he does so he shall give the other Parties the opportunity
to be present;

(5) the Expert shall have regard to all representations and evidence before him when
making his decision, which shall be in writing, and shall give full reasons for his decision;
and

(6) the Expert shall use all reasonable endeavours to publish his decision within
twenty-eight (28) days of his appointment.

(iv)(vi) Unless the Parties agree otherwise, each Party shall bear its own costs of a
reference to the Expert, and fees and expenses of the Expert shall be borne equally between
the Parties, Buyer and the Builder.

Without prejudice to the rest of this Sub-Clause (b) the Parties shall consider on an
ongoing basis whether or not it would be suitable to refer any dispute to an Expert
or to enter into mediation in accordance with Sub-Clause (e).

(c) Arbitration and Mediation

See Rider Clause 76 (Dispute Resolution)

Unless Sub-Clause (a) or (b) applies and unless Box 23(b) states a place other than
London, any dispute arising out of or in connection with this Contract shall be referred
to arbitration in London in accordance with the Arbitration Act 1996 or any statutory
modification or re-enactment thereof save to the extent necessary to give effect to the

TfNSW
provisions of this Clause.

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

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

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

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

*Unless Sub Clauses (a), (b) or (c) apply, any dispute arising out of or in connection with this Contract shall be referred to arbitration at the place stated in Box 23(b), subject to the procedures applicable there.

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

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

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

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

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

The mediation shall not affect the right of either Party to seek such relief or take such
NEWBUILDCON - Standard Newbuilding Contract - PART II

steps as it considers necessary to protect its interest.

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

Unless otherwise agreed or specified in the mediation terms, each Party shall bear its own costs incurred in the mediation and the Parties shall share equally the mediator's costs and expenses.

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

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

* Sub Clauses (c) and (d) are alternatives; state place of dispute resolution in Box 23(b).

If Box 23(b) is not appropriately filled in, Sub-Clause (c) of this Clause shall apply.
SECTION 6 – SUNDRY

43. Notices

(a) All notices given by either any Party or their agents to the other Parties or their agents in accordance with the provisions of this Contract shall be in writing and shall, unless specifically provided in this Contract to the contrary, be sent to the address, fax number or email address for that other Party as set out in Box 2 or Box 3 as appropriate or to such other address as the other Parties may designate in writing.

(b) A notice may be sent by post, facsimile, electronically or delivered by hand in accordance with Sub-Clause (a).

(c) Any notice given under this Contract shall take effect on receipt by the other Parties and shall be deemed to have been received:

(i) if posted, on the seventh (7th) day after posting;

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

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

And in each case proof of posting, transmission or handing in shall be proof that notice has been given.

44. Effective date of Contract

(a) This Contract shall become effective when the conditions stated in Box 25 have been satisfied. If no conditions are stated in Box 25 then the effective date of the Contract shall be the date stated in Box 1. The Parties shall immediately notify each other when the conditions stated in Box 25 relevant to that Party have been satisfied.

(b) If any of the conditions referred to above have not been satisfied within the number of days stated in Box 26 after the date of this Contract stated in Box 1, this Contract shall be deemed null and void and both all Parties shall immediately be relieved of any obligations or liabilities to the other Parties under this Contract.

45. Assignment

Builder’s assignment
The Builder shall have the right to assign the benefits of this Contract to the Builder’s financiers for the purpose of securing the Builder’s financing.

Buyer’s assignment
(i) The Buyer shall have the right to assign the benefits of this Contract to their Buyer’s financiers for the purpose of securing their Buyer’s financing.

(ii) The Buyer shall have the right, subject to the Builder’s consent which shall not be unreasonably withheld, to assign, transfer or novate this Contract to any other third party.

46. Options

The Buyer shall have the option for the construction by the Builder of additional vessels as stated in Box 27 at the contract price and delivery dates stated in Box 28, but otherwise on the same terms and conditions as this Contract with logical amendments. Such option must be declared by the Buyer to the Builder within the number of months stated in Box 29 following the Effective date of this Contract referred to in Clause 44 (Effective date of...
47. Entire Agreement

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

48. Third party rights

Unless expressly identified in allowed by this Contract, no third parties shall have the right to enforce any term of this Contract.
ANNEX “A” — (GUARANTEES)

BIMCO STANDARD NEWBUILDING CONTRACT

CODE NAME: NEWBUILDCON

ANNEX A(i)

BUYER’S IRREVOCABLE LETTER OF GUARANTEE FOR THE 2ND & 3RD INSTALMENTS

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

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

   ‘Award Interest’ means any interest which may be awarded against the Buyer in connection with the final determination of any dispute notified to us in accordance with paragraph 5 below.

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

   ‘Contractual Interest’ means the sum payable on an Instalment at the Interest Rate in accordance with the terms of the Contract.

   ‘Demand’ means a written demand for payment under this Guarantee.

   ‘Instalment’ means the amount of each of the [here identify the instalments to be guaranteed] payments in respect of the contract price under the Contract (to the extent that it has not been paid) which is made on, before or after the date of this Guarantee to you by the Buyer.

   ‘Interest Rate’ means the rate of interest prescribed by the Contract as applicable to any part of an Instalment which the Buyer is obliged to pay under the terms of the Contract calculated from such date as is prescribed by the Contract to the date of your receipt of the payment.

   ‘Maximum Liability’ means our maximum liability under this Guarantee, including Contractual Interest which shall be [here insert amount] plus any Award Interest.

   ‘Buyer’ means [here insert name and address of Buyer]

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

2. In consideration of you entering into the Contract, agreeing to construct the Vessel in accordance with the terms of the Contract, and agreeing to accept this Guarantee pursuant to the Contract, at the request of the Buyer we irrevocably and unconditionally guarantee (but as primary obligor and not by way of secondary liability only) that in the event that the Buyer fails punctually to pay to you any Instalment we shall, upon receipt by us from you of a Demand for the same (together with a copy of a demand made by you against the Buyer for payment), pay to you or to your order upon the expiry of thirty (30) days from receipt of such Demand the sum demanded by you by way of the payment of any Instalment together with Contractual Interest and Award Interest (if any) provided that our total liability shall not exceed the Maximum Liability.

   This Guarantee shall become effective in the amount corresponding to the amount of each Instalment with effect from the date when it becomes due to you under the Contract together with Contractual Interest, if any.

3. This Guarantee shall not be affected by any indulgence or delay allowed to the Buyer nor by any amendment to, or variation of the Contract whether as to time or otherwise that may be agreed between you and the Buyer nor by any circumstances that would otherwise discharge our liability as guarantor.

4. Subject to paragraph 5 below, this Guarantee shall remain in force until the first to occur of (a) due delivery of the Vessel to, and acceptance of the Vessel by, the Buyer, (b) the payment to you by the Buyer or by us of all sums secured by this Guarantee, and (c) the Buyer’s valid and lawful cancellation and/or rescission of the Contract pursuant to the terms of the Contract. However, notwithstanding the foregoing, if within twenty-eight (28) days of our receipt of a Demand we receive a written notice from you or the Buyer that your claim for payment of the sums referred to in the Demand has been disputed and that such dispute will be resolved in accordance with the Contract, the period of validity of this Guarantee shall be extended until thirty (30) days after the dispute has been finally determined in accordance with paragraph 5 below.
NEWBUILDCON - Standard Newbuilding Contract – PART II

5. Notwithstanding the other terms of this Guarantee, if within twenty-eight (28) days of our receipt of a Demand we receive written notice from you or from the Buyer stating that your claim for payment of the same referred to in the Demand has been disputed and that such dispute will be resolved in accordance with the Contract (including, as may be, by Class, an Expert, a Mediator or in arbitration), then we shall not be obliged to make any payment to you under this Guarantee until thirty (30) days after the dispute has been finally determined or in the event of an appeal from an arbitration award, until thirty (30) days after delivery of the final unappealable judgment; or in the event that the court remits the matter to the arbitrator, until thirty (30) days after the publication of the revised final award or in the event of an appeal from the award, until thirty (30) days after delivery of the final unappealable judgment.

6. All payments to be made under this Guarantee shall be made without any set off or counterclaim and without deduction or withholding for or on account of any taxes, duties or charges whatsoever unless we are compelled by law to deduct or withhold the same in which case we shall make the minimum deduction or withholding permitted and will pay such additional amounts as may be necessary in order that the amount received by you after such deductions or withholdings shall be equal to the amount which would have been received had no such deduction or withholding been made.

7. All payments to be made under this Guarantee shall be made in [here insert currency].

8. Notwithstanding any provision in the Contract, this Guarantee shall be freely assignable by you and by any assignee.

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

10. Any notice, claim or Demand to be given or made by you under this Guarantee shall be in writing signed by one of your officers and may be served on us either by post or by tested telex/authorised SWIFT or equivalent, and if sent by post to [here insert address] or such other address as we may notify to you in writing and if by tested telex at [here insert number] or if by SWIFT or equivalent at [here insert number] via your bank and shall be effective only upon actual receipt.

11. To the extent that we may be or may hereafter become entitled, in any jurisdiction, to claim for ourselves or our property, assets or revenue immunity (whether by reason of sovereignty or otherwise) in respect of our obligations under this Guarantee from service of process, suit, jurisdiction, judgment, order, award, attachment (before or after judgment or award), set-off, execution of a judgment or other legal process and to the extent that any such immunity there may be attributed to us or any of our property, assets or revenue such an immunity (whether or not claimed) we hereby irrevocably agree not to claim and hereby irrevocably waive such immunity to the fullest extent permitted by the laws of such jurisdiction.

12. We hereby warrant that we are permitted by any relevant law to which we are subject (including, where relevant, the laws of the place or places of each of our incorporation, establishment, regulation, registration and residence) to:
   12.1 issue a guarantee in this form;
   12.2 make payment under this Guarantee in a currency other than that of the place of (where relevant) each of our incorporation, establishment, regulation, registration and residence in case of a Demand for payment under this Guarantee; and
   12.3 designate the place stated in paragraph 9 above as the forum and the place of jurisdiction to which we irrevocably submit.

13. We hereby warrant that this Guarantee has been, or will be, duly registered with the relevant State authority in any legal jurisdiction in which such registration is required for any reason.

14. We hereby warrant that we have obtained all necessary approvals and authorisations to issue this Guarantee.

Dated the ____ day of __________

.......................................................... (signature)

for and on behalf of [here insert name of Guarantor]
ANNEX A(iii)(a)

SYDNEY FERRIES FERRY PROCUREMENT PROJECT

BUILDER’S BANK GUARANTEE

(Note: A Bank Guarantee will be required in respect of each advance payment made by the Buyer as well as in respect of defects under Clauses 27(d)(iv) and Rider Clauses 58 and 64.5(4))

IRREVOCABLE LETTER OF GUARANTEE FOR PERFORMANCE OF BUYER’S OBLIGATIONS

This deed poll (Undertaking) made the day of _20_

In favour of: Sydney Ferries, a New South Wales Government agency constituted under the Transport Administration Act 1988 (NSW) of Level 6, 18 Lee Street, CHIPPENDALE, NSW 2000 (Beneficiary)

Given by: [*] (Guarantor)

RECITALS

A. By a contract dated [*] (Contract) between [*] (Builder), the Beneficiary and the Agent, the Builder agreed to design, construct, test and survey, launch, equip, complete, sell and deliver the Vessels (as defined in the Contract).

B. Under the provisions of the Contract, the Builder is required to provide this Undertaking to the Beneficiary.

DEFINITIONS

Agent means Transport for New South Wales, a New South Wales Government agency constituted under the Transport Administration Act 1988 (NSW) of Level 5, Zenith Centre, Tower A, 821 Pacific Highway, CHATSWOOD, NSW 2067

OPERATIVE

1. The Guarantor unconditionally undertakes and covenants to pay to the Beneficiary on demand without reference to the Builder and notwithstanding any notice given by the Builder to the Guarantor not to do so, any sum or sums which may from time to time be demanded in writing by the Beneficiary to a maximum aggregate sum of ($ ).

2. The Guarantor’s liability under this Undertaking will be a continuing liability and will continue until payment is made under this Undertaking of the maximum aggregate sum or until the Beneficiary notifies the Guarantor that this Undertaking is no longer required.

3. The liability of the Guarantor under this Undertaking must not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Guarantor) in any of the stipulations or provisions of the Contract or the acts or things to be executed, performed and done under the Contract or by reason of any breach or breaches of the Contract by the Builder, the Beneficiary or the Agent.

4. The Guarantor may at any time without being required so to do pay to the Beneficiary the maximum aggregate sum less any amount or amounts it may previously have paid under this Undertaking and thereupon the liability of the Guarantor hereunder will immediately cease.

5. This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of New South Wales.

Executed as a deed poll To: [here insert name and address of the Builder]

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

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

   * ‘Buyer’ means [here insert name and address of Buyer]
NEWBUILDCON - Standard Newbuilding Contract – PART II

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

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

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

Dated the day of 2

................................................................. (signature)

for and on behalf of [here insert name of Guarantor]
To: [here insert name and address of the Buyer]

REFUND GUARANTEE

ANNEX A(iii)

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

'Award-Interest' means any interest which may be awarded against the Builder in connection with the final determination of any dispute notified to us in accordance with paragraph 5 below.

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

'Contractual Interest' means the sum payable on an Instalment at the Interest Rate in accordance with the terms of the Contract.

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

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

'Interest Rate' means the rate of interest prescribed by the Contract as applicable to any part of an Instalment which the Builder is obliged to repay under the terms of the Contract calculated from the date on which the Builder received the Instalment to the date of the repayment.

'Maximum Liability' means our maximum liability under this Guarantee, including Contractual Interest which shall be [here insert amount] plus any Award-Interest.

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

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

2. In consideration of you entering into the Contract, agreeing to pay an Instalment or Instalments to the Builder, and agreeing to accept this Guarantee pursuant to the Contract, at the request of the Builder we irrevocably and unconditionally guarantee (but as primary obligor and not by way of secondary liability only) that if the Builder becomes liable under the Contract to repay any part of any Instalment we shall, upon receipt by us from you of a Demand for the same (together with a copy of a demand made by you against the Builder for repayment), pay to you or to your order upon the expiry of thirty (30) days from receipt of such Demand the sum demanded by you by way of the repayment of any Instalment together with Contractual Interest and Award-Interest (if any) provided that our total liability shall not exceed the Maximum Liability.

This Guarantee shall become effective in the amount corresponding to the amount of each and every Instalment paid to the Builder under the Contract together with Contractual Interest as and when each such Instalment has been received by the Builder.

3. This Guarantee shall not be affected by any inducement or delay allowed to the Builder nor by any amendment to, or variation of, the Contract whether as to time or otherwise that may be agreed between you and the Builder nor by any circumstances that would otherwise discharge our liability as guarantor.

4. Subject to paragraph 5 below, this Guarantee shall remain in force until the first to occur of (a) due delivery of the Vessel to, and acceptance of the Vessel by, you (b) the payment to you by the Builder or by us of all sums secured by this Guarantee, and (c) three-hundred (300) days after the Contractual Date of Delivery. However, notwithstanding the foregoing, if within twenty-eight (28) days after our receipt of a Demand we receive a written notice from you or the Builder that your claim for the repayment of any sums referred to in the Demand has been disputed and that such dispute will be resolved in accordance with the Contract, the period of validity of this Guarantee shall be extended until thirty (30) days after the dispute has been finally determined in accordance with paragraph 5 below.

5. Notwithstanding the other terms of this Guarantee, if within twenty-eight (28) days after our receipt of a Demand we receive a written notice from you or from the Builder stating that your claim for repayment of any sums referred to in the Demand has been disputed and that such dispute will be resolved in accordance with the Contract (including, as may be, by Class, an Expert, a Mediator or in arbitration), then we shall not be obliged to make any payment to you.
under this Guarantee until thirty (30) days after the dispute has been finally determined or in the event of an appeal from an arbitration award, until thirty (30) days after delivery of the final unappealable judgment; or in the event that the court remits the matter to the arbitrator, until thirty (30) days after the publication of the revised final award or in the event of an appeal from the award, until thirty (30) days after delivery of the final unappealable judgment.

6.— All payments to be made under this Guarantee shall be made without any set off or counterclaim and without deduction or withholding for or on account of any taxes, duties or charges whatsoever unless we are compelled by law to deduct or withhold the same in which case we shall make the minimum deduction or withholding permitted and will pay such additional amounts as may be necessary in order that the amount received by you after such deductions or withholdings shall be equal to the amount which would have been received had no such deduction or withholding been made.

7.— All payments to be made under this Guarantee shall be made in [here insert currency].

8.— Notwithstanding any provision in the Contract, this Guarantee shall be freely assignable by you and by any assignee. Upon assignment, all references in this Guarantee to "you" shall be read as references to the assignee or subsequent assignees.

9.— This Guarantee is governed by the laws of [here state applicable law. In the absence of any statement the laws of England and Wales shall apply] and we hereby submit to the exclusive jurisdiction of the High Court of England and Wales [whether in personal or service of process, suit, jurisdiction, judgment, order, award, attachment (before or after judgment or award), set-off, execution of a judgment or other legal process and to the extent that in any such jurisdiction there may be attributed to us or any of our property, assets or revenue such an immunity (whether or not claimed) we hereby irrevocably agree not to claim and hereby irrevocably waive such immunity to the fullest extent permitted by the laws of such jurisdiction.

10.— Any notice, claim or Demand to be given or made by you under this Guarantee shall be in writing signed by one of your officers and may be served on us either by post or by tested telex/authorised SWIFT or equivalent, and if sent by post to [here insert address] (or such other address as we may notify to you in writing) and if by tested telex at [here insert number] or if by SWIFT or equivalent at [here insert number] via your bank and shall be effective only upon actual receipt.

11.— To the extent that we may be or may hereafter become entitled, in any jurisdiction, to claim for ourselves or our property, assets or revenue immunity (whether by reason of sovereignty or otherwise) in respect of our obligations under this Guarantee from service of process, suit, jurisdiction, judgment, order, award, attachment, set-off, execution of a judgment or other legal process and to the extent that in any such jurisdiction there may be attributed to us or any of our property, assets or revenue such an immunity (whether or not claimed) we hereby irrevocably agree not to claim and hereby irrevocably waive such immunity to the fullest extent permitted by the laws of such jurisdiction.

12.— We hereby warrant that we are permitted by any relevant law to which we are subject (including, where relevant, the laws of the place or places of each of our incorporation, establishment, regulation, registration and residence) to:

12.1 issue a guarantee in this form;
12.2 make payment under this Guarantee in a currency other than that of the place of (where relevant) each of our incorporation, establishment, regulation, registration and residence in case of a Demand for payment under this Guarantee; and
12.3 designate the place stated in paragraph 9 above as the forum and the place of jurisdiction to which we irrevocably submit.

13.— We hereby warrant that this Guarantee has been, or will be, duly registered with the relevant State authority in any legal jurisdiction in which such registration is required for any reason.

14.— We hereby warrant that we have obtained all necessary approvals and authorisations to issue this Guarantee.

Dated the day of 2

...................................................(signature)

for and on behalf of [here insert name of Guarantor]
ANNEX A(ii)(b)

PARENT COMPANY GUARANTEE

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

This deed poll (Parent Company Guarantee) made the ___ day of ___ 20

In favour of Sydney Ferries, a New South Wales Government agency constituted under the Transport Administration Act 1988 (NSW) of Level 9, 37 Pitt Street, SYDNEY, NSW 2000 (Buyer)

Given by [*] (Guarantor)

RECITALS

A. By a contract dated [*] (Contract) between [*] (Builder), the Buyer and the Agent, the Builder agreed to design, construct, test and survey, launch, equip, complete, sell and deliver the Vessels (as defined in the Contract).

B. Under the provisions of the Contract, the Builder is required to provide this Undertaking to the Buyer.

DEFINITIONS

Agent means Transport for New South Wales, a New South Wales Government agency constituted under the Transport Administration Act 1988 (NSW) of Level 5, Zenith Centre, Tower A, 821 Pacific Highway, CHATSWOOD, NSW 2067.

OPERATIVE
To request access to information contained in Annex B Specification, please contact the Project Information Officer in writing.
Table of Contents

PART A  SCOPE OF WORK........................................................................................................... 6
A.1  General .......................................................................................................................... 6
A.2  Builder's Reference Design ......................................................................................... 6
A.3  Final General Arrangement ......................................................................................... 6
A.4  Preliminary Design ....................................................................................................... 6
A.5  Mock-Up ........................................................................................................................ 7
A.6  Detailed Design ............................................................................................................. 7
A.7  Build ............................................................................................................................... 8
A.8  Testing ............................................................................................................................. 9
A.9  Handover ......................................................................................................................... 10
A.10 Management and Documentation ................................................................................. 11
A.11 Vessel 2 Commencement ................................................................. .................................. 12
A.12 Technical terms ........................................................................................................... 12

PART B  PERFORMANCE REQUIREMENTS ............................................................................. 13
B.1  General .......................................................................................................................... 13
B.2  Speed ............................................................................................................................. 13
B.3  Displacement ................................................................................................................ 13
B.4  Vessel wash .................................................................................................................. 13
B.5  Passenger capacity ....................................................................................................... 14
B.6  Fuel efficiency .............................................................................................................. 14
B.7  Manoeuvrability .......................................................................................................... 15
B.8  Noise Levels .................................................................................................................. 15
B.9  Particulates .................................................................................................................... 16
B.10 Vibration levels ............................................................................................................ 16
B.11 Wharf Interface .......................................................................................................... 17
B.12 Availability .................................................................................................................. 17
B.13 Reliability ..................................................................................................................... 17

PART C  TECHNICAL SPECIFICATION ................................................................................. 18
C.1  General .......................................................................................................................... 18
C.1.1 Basic Vessel Requirements ......................................................................................... 18
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>C.1.2</td>
<td>Vessel Description</td>
<td>19</td>
</tr>
<tr>
<td>C.1.3</td>
<td>Design Load Condition</td>
<td>20</td>
</tr>
<tr>
<td>C.1.4</td>
<td>Sea Trials Environmental Conditions</td>
<td>20</td>
</tr>
<tr>
<td>C.1.5</td>
<td>Target Operating Environmental Conditions</td>
<td>20</td>
</tr>
<tr>
<td>C.2</td>
<td>Vessel Structure</td>
<td>21</td>
</tr>
<tr>
<td>C.2.1</td>
<td>Materials and Workmanship</td>
<td>21</td>
</tr>
<tr>
<td>C.2.2</td>
<td>Hull and Main Deck Material</td>
<td>21</td>
</tr>
<tr>
<td>C.2.3</td>
<td>Anodized aluminum</td>
<td>22</td>
</tr>
<tr>
<td>C.2.4</td>
<td>Fasteners</td>
<td>22</td>
</tr>
<tr>
<td>C.2.5</td>
<td>Tanks</td>
<td>22</td>
</tr>
<tr>
<td>C.2.6</td>
<td>Bulkheads</td>
<td>22</td>
</tr>
<tr>
<td>C.2.7</td>
<td>Main Engine Bed Frames and Machinery Foundations</td>
<td>22</td>
</tr>
<tr>
<td>C.2.8</td>
<td>Freeing Ports</td>
<td>22</td>
</tr>
<tr>
<td>C.2.9</td>
<td>Welding</td>
<td>23</td>
</tr>
<tr>
<td>C.2.10</td>
<td>Engine Hatches</td>
<td>23</td>
</tr>
<tr>
<td>C.2.11</td>
<td>Void Spaces</td>
<td>23</td>
</tr>
<tr>
<td>C.2.12</td>
<td>Interceptors</td>
<td>24</td>
</tr>
<tr>
<td>C.2.13</td>
<td>Hatches and Manholes</td>
<td>24</td>
</tr>
<tr>
<td>C.2.14</td>
<td>Mast / Faux Funnel</td>
<td>24</td>
</tr>
<tr>
<td>C.2.15</td>
<td>Lifting lugs</td>
<td>24</td>
</tr>
<tr>
<td>C.3</td>
<td>Vessel Systems</td>
<td>25</td>
</tr>
<tr>
<td>C.3.1</td>
<td>General</td>
<td>25</td>
</tr>
<tr>
<td>C.3.2</td>
<td>Pipe work</td>
<td>25</td>
</tr>
<tr>
<td>C.3.3</td>
<td>Machinery and Instrumentation</td>
<td>26</td>
</tr>
<tr>
<td>C.3.4</td>
<td>Fire/Bilge and General Service System</td>
<td>28</td>
</tr>
<tr>
<td>C.3.5</td>
<td>Fuel Oil System</td>
<td>29</td>
</tr>
<tr>
<td>C.3.6</td>
<td>Fresh Water System</td>
<td>30</td>
</tr>
<tr>
<td>C.3.7</td>
<td>Sullage and Toilet System</td>
<td>31</td>
</tr>
<tr>
<td>C.3.8</td>
<td>Shafting and Propellers</td>
<td>31</td>
</tr>
<tr>
<td>C.3.9</td>
<td>Rudders</td>
<td>32</td>
</tr>
<tr>
<td>C.3.10</td>
<td>Steering</td>
<td>33</td>
</tr>
<tr>
<td>C.3.11</td>
<td>Ventilation and Air-conditioning</td>
<td>33</td>
</tr>
</tbody>
</table>
C.3.12 Anchors and Mooring ................................................. 34
C.3.13 Fire Fighting System .................................................. 35
C.3.14 Security system .......................................................... 35
C.3.15 Life Saving Appliances ................................................. 35
C.3.16 Miscellaneous Equipment ............................................ 35
C.3.17 Electrical ................................................................. 36
C.4 Outfitting ........................................................................... 39
C.4.1 Scope ............................................................................ 39
C.4.2 Materials ......................................................................... 40
C.4.3 Cabin Layout ................................................................. 40
C.4.4 Internal Deckheads & Ceilings ........................................ 40
C.4.5 Internal Deck Coverings and Flooring .............................. 41
C.4.6 Side and Bulkhead Linings ............................................... 42
C.4.7 Internal Doors and Hatches ............................................... 42
C.4.8 Internal Seating and Tables ............................................. 42
C.4.9 Internal Handicapped Spaces ........................................... 43
C.4.10 Pillars and Handrails ...................................................... 43
C.4.11 Window Posts and Sills .................................................. 43
C.4.12 Toilets ............................................................................ 43
C.4.13 Internal signage .............................................................. 44
C.4.14 Passenger electronic device charging station ................... 44
C.4.15 WiFi ............................................................................. 44
C.4.16 CCTV system ............................................................... 45
C.4.17 Audio Playback and Public Address System and Crew Intercom Stations ................................................. 45
C.4.18 Hearing Augmentation of Audio Playback and Public Address System ......................................................... 46
C.4.19 Fresh water drinking fountain ........................................ 46
C.4.20 MOB ladder ................................................................. 47
C.4.21 Waste bins ..................................................................... 47
C.4.22 Wheelhouse ..................................................................... 47
C.4.23 Flat Screen Displays ....................................................... 48
C.4.24 Storage ......................................................................... 48
C.5 External Fit Out ................................................................. 49
To request access to information contained in Annex B Specification, please contact the Project Information Officer in writing.

| C.5.1  | External Layout                           | 49  |
| C.5.2  | External Deckhead and Ceilings            | 49  |
| C.5.3  | External Deck Coverings                   | 49  |
| C.5.4  | External Finish / Markings                | 49  |
| C.5.5  | External Doors and Hatches                | 51  |
| C.5.6  | Bulwarks and Handrails                    | 52  |
| C.5.7  | Boarding Stations                         | 52  |
| C.5.8  | GPH Station                               | 52  |
| C.5.9  | External Seats                            | 52  |
| C.5.10 | External Handicapped Spaces               | 53  |
| C.5.11 | Bike Storage                              | 53  |
| C.5.12 | Pillars and Handrails                     | 53  |
| C.5.13 | Windows                                   | 53  |
| C.5.14 | Zinc Anodes                               | 53  |
| C.5.15 | Destination Signage                       | 54  |

**PART D**

| D.1   | **ASSURANCE REQUIREMENTS**                | 55  |
| D.2   | General                                   | 55  |
| D.3   | Regulatory Assurance                      | 55  |
| D.4   | Contract Assurance                        | 56  |
| D.4.1 | Assurance Documentation                   | 57  |
| D.4.2 | General                                   | 57  |
| D.4.3 | Project Management Plan                   | 58  |
| D.4.4 | Quality Management System                 | 58  |
| D.4.4 | Competency Management Plan                | 58  |

**PART E**

| E.1   | **Specification Appendices**              | 65  |
| E.2   | PART A SPECIFICATION APPENDICES           | 65  |
| E.3   | PART B SPECIFICATION APPENDICES           | 83  |
| E.4   | PART C SPECIFICATION APPENDICES           | 84  |
| E.4   | PART D SPECIFICATION APPENDICES           | 118 |
| E.5   | PART E SPECIFICATION APPENDICES           | 120 |
| E.6   | BUILDER'S REFERENCE DESIGN PLANS          | 127 |
| E.6   | PROTOCOL OF DELIVERY AND ACCEPTANCE       | 127 |
### Annex C Delivery Schedule

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Contractual Date of Delivery</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Completion of Detailed Design</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Delivery of Vessel 1</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Delivery of Vessel 2</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Delivery of Vessel 3</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Delivery of Vessel 4</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Delivery of Vessel 5</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Delivery of Vessel 6</td>
<td></td>
</tr>
</tbody>
</table>
Annex D Payment Schedule

Please note the amounts provided in this schedule are to include profit and overhead but exclude GST.

Invoice requirements:

A. All Invoices shall:
   1. be addressed to the Buyer care of the Agent;
   2. be a valid tax invoice;
   3. include the Contract Number and the Payment Identification Number;
   4. identify the relevant Instalment and Instalment Number (identified below) in respect of which the invoice is issued;
   5. include a running total of the Instalments and amounts invoiced to date (not including the current invoice);
   6. where the invoice is in respect of a Final Instalment, itemise amounts due or refundable as a result of modifications and changes made under Clauses 24 and 26 of the Contract;
   7. itemise in detail the items purchased during the invoice period; and
   8. itemise in detail the works undertaken and works in progress commenced during the invoice period.

B. All invoices shall be accompanied by the following information and/or documents:
   1. evidence (satisfactory to the Agent) that the Instalment is due;
   2. where the invoice is in respect of a Guaranteed Instalment, a draft of the Bank Guarantee proposed to be provided under Clause 14(a)(ii);
   3. where the invoice is in respect of a Final Instalment and includes amounts due or refundable as a result of modifications and changes made under Clauses 24 and 26 of the Contract, evidence of the amounts due or refundable;
   4. such other information and/or documents as might be reasonably requested by the Agent from time to time.

Table 1 – Instalment Amounts – Preliminaries

<table>
<thead>
<tr>
<th>No</th>
<th>Instalment</th>
<th>Amount (AUD$) (ex-GST)</th>
<th>When the Instalment becomes due</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Preliminaries</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0.0</td>
<td>First Instalment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>Instalment</td>
<td>Amount (AUDS) (ex-GST)</td>
<td>When the Instalment becomes due</td>
</tr>
<tr>
<td>----</td>
<td>----------------------------------------</td>
<td>------------------------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>1.</td>
<td>Vessel 1 Build</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1</td>
<td>First Instalment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.2</td>
<td>2nd instalment - material and equipment procurement</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 2 – Instalment Amounts – Vessel 1 Build
### Table 3 – Instalment Amounts – Vessel 2 Build

<table>
<thead>
<tr>
<th>No</th>
<th>Instalment</th>
<th>Amount (AUD$) (ex-GST)</th>
<th>When the Instalment becomes due</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Vessel 2 Build</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1</td>
<td>First Instalment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.2</td>
<td>2nd Instalment - material and equipment procurement</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2.3 3rd Instalment – for construction of the hull

2.4 4th Instalment – for engineering and systems

2.5 5th Instalment – completion of Builder’s Sea Trials

2.6 Final Instalment – including payment for spares, training, operations and maintenance manuals and other deliverables

Vessel 2 Build subtotal [C]

<table>
<thead>
<tr>
<th>No</th>
<th>Instalment</th>
<th>Amount (AUD) (ex-GST)</th>
<th>When the Instalment becomes due</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.</td>
<td>Vessel 3 Build</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>First Instalment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.2</td>
<td>2nd instalment - material and equipment procurement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.3</td>
<td>3rd instalment – for construction of the hull</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Table 5 – Instalment Amounts – Vessel 4 Build

<table>
<thead>
<tr>
<th>No</th>
<th>Instalment</th>
<th>Amount (AUD$) (ex-GST)</th>
<th>When the Instalment becomes due</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>Vessel 4 Build</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1</td>
<td>First Instalment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.2</td>
<td>2nd Instalment - material and equipment procurement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.3</td>
<td>3rd Instalment – for construction of the hull</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.4</td>
<td>4th Instalment – for engineering and systems</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.5</td>
<td>5th Instalment – completion of Builder’s Sea Trials</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
4.6 Final Instalment – including payment for spares, training, operations and maintenance manuals and other deliverables

<table>
<thead>
<tr>
<th>No</th>
<th>Instalment</th>
<th>Amount (AUD) (ex-GST)</th>
<th>When the Instalment becomes due</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.</td>
<td>Vessel 5 Build</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.1</td>
<td>First Instalment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.2</td>
<td>2nd instalment - material and equipment procurement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.3</td>
<td>3rd instalment – for construction of the hull</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.4</td>
<td>4th instalment – for engineering and systems</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.5</td>
<td>5th instalment – completion of Builder’s Sea Trials</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.6</td>
<td>Final Instalment – including payment for spares, training, operations and maintenance manuals and other deliverables</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Vessel 5 Build subtotal [F]
### Table 7 – Instalment Amounts – Vessel 6 Build

<table>
<thead>
<tr>
<th>No</th>
<th>Instalment</th>
<th>Amount (AUD$) (ex-GST)</th>
<th>When the Instalment becomes due</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Vessel 6 Build</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.1</td>
<td>First Instalment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.2</td>
<td>2nd Instalment - material and equipment procurement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.3</td>
<td>3rd Instalment – for construction of the hull</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.4</td>
<td>4th Instalment – for engineering and systems</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.5</td>
<td>5th Instalment – completion of Builder’s Sea Trials</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.6</td>
<td>Final Instalment – including payment for spares, training, operations and maintenance manuals and other deliverables</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Vessel 6 Build subtotal [G]</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Table 8 – Payment Amounts – Totals

<table>
<thead>
<tr>
<th>No</th>
<th>Description</th>
<th>Payment Amounts (AUD$) (ex-GST)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Preliminaries [A]</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Vessel 1 Build [B]</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>-------------------</td>
<td>---</td>
</tr>
<tr>
<td>2.</td>
<td>Vessel 2 Build [C]</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Vessel 3 Build [D]</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Vessel 4 Build [E]</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Vessel 5 Build [F]</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Vessel 6 Build [G]</td>
<td></td>
</tr>
</tbody>
</table>

| Contract Price \[A+B+C+D+E+F+G\] | $37,456,600.00 |

TfNSW
Annex E Schedule of Rates

[Note: For the purpose of valuing variations]

Please note the amounts provided in this schedule are to include profit and overhead but exclude GST. The rates are to be inclusive of vehicles, small tools and miscellaneous items.

<table>
<thead>
<tr>
<th>Description</th>
<th>Hourly Rate (ex GST)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Guarantee Engineer</td>
<td></td>
</tr>
<tr>
<td>2. Trainer</td>
<td></td>
</tr>
<tr>
<td>3. Designer – Senior</td>
<td></td>
</tr>
<tr>
<td>4. Designer – Junior</td>
<td></td>
</tr>
<tr>
<td>5. Quality Assurance &amp; Control</td>
<td></td>
</tr>
<tr>
<td>6. Labourer/unskilled</td>
<td></td>
</tr>
<tr>
<td>7. Tradesman – fabricator/welder/mechanical/fitout</td>
<td></td>
</tr>
<tr>
<td>8. Tradesman – electrical/electronic</td>
<td></td>
</tr>
<tr>
<td>9. Supervisor – fabricator/welder/mechanical/fitout</td>
<td></td>
</tr>
<tr>
<td>10. Supervisor – electrical/electronic</td>
<td></td>
</tr>
<tr>
<td>11. Production works coordinator</td>
<td></td>
</tr>
<tr>
<td>12. Procurement officer</td>
<td></td>
</tr>
</tbody>
</table>
## Annex F Insurance

<table>
<thead>
<tr>
<th>Insurance Type</th>
<th>Insurance Company</th>
<th>Policy No.</th>
<th>Extent Of Cover</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers Compensation</td>
<td></td>
<td></td>
<td>In accordance with State legislation</td>
</tr>
<tr>
<td>Builder's Risk</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cargo</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Liability, Products Liability and Professional Indemnity (including Excess Liability Cover)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Project Specific Professional Indemnity</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ship Repairers Liability</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Industry Special Risks</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Annex G - Option Schedule

Please note the amounts provided in this schedule are to include profit and overhead but exclude GST. Unless otherwise specified, the amounts in the table below are for 6 Vessels.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
<th>Latest Date to Exercise</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Shaft line: Replace stainless steel stern tube liner with FRP stern tube liner</td>
<td></td>
<td>8 weeks from the effective date of Contract</td>
</tr>
<tr>
<td>2.</td>
<td>Shaft line: Replace specified PSS shaft seals with flange mounted Wartsila (John crane) PSE shaft seals</td>
<td></td>
<td>8 weeks from the effective date of Contract</td>
</tr>
<tr>
<td>3.</td>
<td>Main Engine: Replace tendered MAN main engines with Yanmar main engines</td>
<td></td>
<td>12 weeks from the effective date of Contract</td>
</tr>
<tr>
<td>4.</td>
<td>Gear boxes: Gearboxes to be sourced fitted with trailing pumps.</td>
<td></td>
<td>12 weeks from the effective date of Contract</td>
</tr>
<tr>
<td>5.</td>
<td>Interceptors: Replace static interceptor with Humphree system with automatic trim control</td>
<td></td>
<td>12 weeks from the effective date of Contract</td>
</tr>
<tr>
<td>6.</td>
<td>Domestic Systems: Supply and fit dual redundant fresh water pump arrangement</td>
<td></td>
<td>12 weeks from the effective date of Contract</td>
</tr>
<tr>
<td>7.</td>
<td>Electrical: Supply and fit battery conditioning chargers to machinery start batteries</td>
<td></td>
<td>12 weeks from the effective date of Contract</td>
</tr>
<tr>
<td>8.</td>
<td>Full redundancy in the main engine and gear box control system</td>
<td></td>
<td>12 weeks from the effective date of Contract</td>
</tr>
<tr>
<td>9.</td>
<td>Static trim tab</td>
<td></td>
<td>12 weeks from the effective date of Contract</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Amount</td>
<td>Latest Date to Exercise</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
<td>--------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>10.</td>
<td>Dynamic trim tab</td>
<td></td>
<td>12 weeks from the effective date of Contract</td>
</tr>
<tr>
<td>11.</td>
<td>Additional engine as part of Spare Parts supply</td>
<td></td>
<td>20 weeks from the effective date of Contract</td>
</tr>
<tr>
<td>12.</td>
<td>Vinyl wrap paint application to customer facing superstructure as per Annex B, Specification clause C5.4(i).C.ii &amp; C5.4(i).C.v ii) Inner Bulwarks v) external deck heads</td>
<td></td>
<td>6 months from effective date of Contract</td>
</tr>
<tr>
<td>13.</td>
<td>Salt Water cooling: Supply and fit low flow alarms to main engine, generator and stern tube seal/bearing raw water supplies</td>
<td></td>
<td>6 months from the effective date of Contract</td>
</tr>
<tr>
<td>14.</td>
<td>Paint: Coat bare aluminium in tunnel area with Nyalic</td>
<td></td>
<td>6 months from the effective date of Contract</td>
</tr>
<tr>
<td>15.</td>
<td>Safety: Supply &amp; install safety harness track on roof and other fall risk areas</td>
<td></td>
<td>6 months from the effective date of Contract</td>
</tr>
<tr>
<td>16.</td>
<td>Additional Yanmar 6AYEM-GT engine as part of Spare Parts supply</td>
<td></td>
<td>6 months from the effective date of Contract</td>
</tr>
<tr>
<td>17.</td>
<td>Polyurethane paint application to customer facing superstructure as per Annex B, Specification clause C5.4(i).C.ii &amp; C5.4(i).C.v ii) Inner Bulwarks v) external deck heads</td>
<td></td>
<td>6 months from the effective date of Contract</td>
</tr>
<tr>
<td>18.</td>
<td>Hull &amp; closures - Upgrade hatches from lift out oval to square, with hinges and gas struts.</td>
<td></td>
<td>8 months from effective date of Contract</td>
</tr>
</tbody>
</table>
## Annex H Key Personnel

*(Clause 83)*

<table>
<thead>
<tr>
<th>Position</th>
<th>Name</th>
<th>Period Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Manager</td>
<td></td>
<td>100% from Effective Date of Contract to handover</td>
</tr>
<tr>
<td>Design Manager</td>
<td></td>
<td>10% from Effective Date of Contract to completion of vessel 1</td>
</tr>
<tr>
<td>Shipyard Manager</td>
<td></td>
<td>10% from start production</td>
</tr>
<tr>
<td>Shipyard Supervisor</td>
<td></td>
<td>20% from start production to completion Vessel 6</td>
</tr>
<tr>
<td>Safety &amp; Environment Manager</td>
<td></td>
<td>20% from start production to completion Vessel 6</td>
</tr>
<tr>
<td>Quality Manager</td>
<td></td>
<td>20% from start production to completion Vessel 6</td>
</tr>
<tr>
<td>Purchasing Manager</td>
<td></td>
<td>80% for ordering period</td>
</tr>
</tbody>
</table>
NEWBUILDCON PART III

Builder: Incat Tasmania Pty Ltd (ABN 93 054 616 410)
Buyer: Sydney Ferries
Agent: Transport for NSW

RIDER CLAUSES TO APPEND TO THE BIMCO NEWBUILDCON FORM

49 Definitions .................................................................................................................. 2
50 Conditions Precedent ................................................................................................. 7
51 Agency ......................................................................................................................... 7
52 Subcontracting ........................................................................................................... 7
53 Compliance ................................................................................................................. 8
54 Contract Price ............................................................................................................ 8
55 Goods and Services Tax ............................................................................................. 8
56 Other Deficiencies ...................................................................................................... 9
57 Substitution of Materials ........................................................................................... 9
58 Builder’s Bank Guarantees .......................................................................................... 9
59 Parent Company Guarantees ...................................................................................... 11
60 Approvals .................................................................................................................. 11
61 Licences, authorisations and security clearances ....................................................... 11
62 Government Approvals ............................................................................................. 12
63 Classification, Rules and Regulations ......................................................................... 12
64 Sydney Harbour Sea Trials ........................................................................................ 12
65 Guarantee Engineer ..................................................................................................... 14
66 Termination for convenience ...................................................................................... 14
67 Effect of Termination .................................................................................................. 14
68 Liquidated Damages ................................................................................................... 15
69 Liquidated Damages for Guarantee Defects ................................................................ 16
70 Liability for Design Defects ....................................................................................... 16
71 Insurances .................................................................................................................... 16
72 Intellectual Property .................................................................................................... 17
73 Anti-corruption .......................................................................................................... 19
74 Rights to follow the Vessels ....................................................................................... 19
75 PPSA .......................................................................................................................... 20
76 Dispute Resolution ..................................................................................................... 21
77 Confidentiality ............................................................................................................ 21
78 Information Documents .............................................................................................. 24
79 Information Access under the GIPA Act ................................................................... 25
80 The Buyer and Agent’s Capacity ............................................................................... 25
81 Transfer of Functions ................................................................................................. 25
82 Vessel Options .......................................................................................................... 25
83 Builder’s Key Personnel ............................................................................................. 26
84 .................................................................................................................................. 26
49 Definitions

49.1 In this Contract:

(1) **3D Fly Through Model** means the 3D fly through model referred to in Appendix D1 of the Specification.

(2) **ACICA** means the Australian Centre for International Commercial Arbitration.

(3) **Applicable Laws** means any law, statute, rule, regulation, proclamation, order in council, ordinance, by law, code, whether national, federal, provincial, state, territorial or local, either in Australia or elsewhere which is relevant to and applies to this Contract.

(4) **Applicable Corruption Law** means all of the laws, rules, regulations and other legally binding measures relating to bribery, corruption, money laundering, fraud or similar activities:
   (a) of Australia;
   (b) of the country of incorporation of the Builder; and
   (c) the provisions of the United Kingdom Bribery Act 2010 and the United States Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations issued thereunder or, where there is no direct jurisdictional application of either or both of the Acts, then the principles of the Acts, and where there is a conflict, the most onerous provision will prevail.

(5) **Agent** means the body stated in Box 3(ii), organised and existing under the laws of the country or countries stated in Box 3(ii) having its principal office at the address stated in Box 3(ii) and including its Personnel.

(6) **Assurance Documentation** means the documents set out in Part D.4 of the Specification.

(7) **Background IP** means any Intellectual Property:
   (a) owned by a Party prior to the date of this Contract; or
   (b) conceived, originated or generated by a Party following the date of this Contract but not arising out of or in connection with this Contract.

(8) **Bank Bill Swap Reference Rate** means, in relation to any amount on which interest for a given period is to accrue, the daily 10 am, bank bill swap reference rate, as sourced from Reuters.

(9) **Bank Guarantee** means an irrevocable bank guarantee callable by the Buyer issued by a Guarantor with a Required Rating approved in writing by the Buyer and payable at an office of the Guarantor in Sydney (or such other place as the Buyer may approve).

(10) **Builder's Key Personnel** means the key personnel listed in "Annex H".

(11) **Builder's Sea Trials** has the meaning set out in Appendix A1 of the Specification.

(12) **Certificate of Operation** means the certificate of operation referred to and required under the Marine Safety (Domestic Commercial Vessel) National Law 2012 (Cth), as incorporated under Part 1A of the Marine Safety Act 1998 (NSW).

(13) **Confidential Information** includes, but is not limited to, the following:
   (a) information of every kind that is by its nature confidential;
(b) information or data of every kind and documents that are designated by the Agent as confidential;

(c) any information, documents or materials that the Builder is given by the Agent;

(d) any materials produced by the Builder under this Contract;

(e) notes which relate to, summaries and copies of, and extracts from any information referred to whether in documentary, visual, machine readable or other form and which in the course of negotiations or during the course of the performance of this Contract:

(f) is disclosed in writing, orally or by any other means by the Agent or by any person on the Agent's behalf to the Builder or an employee, officer or agent of the Builder; or

(g) comes to the knowledge of or is created by the Builder or an employee, officer or agent of the Builder.


(15) Consequential Loss means any Loss (other than loss arising in the usual course of things) which is consequential upon other loss including loss of income or revenue; loss of opportunity or goodwill; loss of profits; loss of reputation; loss of access to markets; loss of value of any equipment; and loss of anticipated savings or business and any costs or expenses in connection with the foregoing.

(16) Contract IP means any Intellectual Property rights subsisting in the Contract Materials or otherwise conceived, originated or generated by the Builder or its Sub-contractors for the purpose of or as a result of performing its obligations under this Contract.

(17) Contract Materials means each Vessel, all parts of each Vessel and all documentation or other material in whatever form which is the subject matter of any Intellectual Property rights, including but not limited to the Plans and Drawings, any reports, drawings, specifications, user manuals, guides, instructions, information, software, firmware, cut files, approved drawings, 3-D models, construction plans, film or videos created by the Builder or its Sub-contractors for the purpose of or as a result of performing its obligations under this Contract and includes any advancements, adoptions or modifications of any such materials.

(18) Deed of Disclaimer means the deed executed by the Builder relating to non-reliance on the Information Documents and submitted as part of the Builder's tender on 2 March 2015.

(19) Design Defects means any deficiencies or defects caused or contributed to by inadequate or erroneous design of the Vessels on the part of the Builder or its Sub-contractors.


(21) Escrow Account means an account held by an independent third party acceptable to the Agent and the Builder whereby funds may be held in the joint names of the Buyer and the Builder subject to release in accordance with the joint instructions of the Builder and the Buyer, on such terms to be agreed between the Agent, the Builder and the escrow account holder.

(22) First Instalment means the Instalment nominated as such in the Annex "D" (Payment Schedule).

(24) **Governmental Entity** means and includes (whether having a distinct legal personality or not) any national or local government authority, board, commission, department, division, organ, instrumentality, court or agency and any association, organisation or institution of which any of the foregoing is a member or to whose jurisdiction any of the foregoing is subject or in whose activities any of the foregoing is a participant.

(25) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations.

(26) **Guarantee Defects** means the Defects referred to as such in Clause 35(a) (**Builder’s Guarantee**).

(27) **Guarantee Engineer** means the person appointed pursuant to Clause 65.1 (**Guarantee Engineer**).

(28) **Guaranteed Instalments** means all Instalments payable by the Buyer under Clause 15(a) (**Payments-Instalments**) excluding the First Instalment and the Final Instalment for each Vessel.

(29) **Guarantor** means a financial institution that at all times maintains the Required Rating and is regulated by the Australian Prudential Regulation Authority.

(30) **Hold Points** means the points referred to as such in Appendix D1 of the Specification.

(31) **Information Documents** means the documents the subject of the Deed of Disclaimer.

(32) **Intended Trade** means the operational purpose, location and limits as set out in the Specification.

(33) **Intellectual Property** means:

- (a) copyright, patent, trade mark, design, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for);
- (b) trade, business, company or domain name;
- (c) trade secret, know how, inventions, processes, confidential information, recipes and formulae (whether in writing or recorded in any form);
- (d) Moral Rights;
- (e) any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields;
- (f) any associated goodwill in respect of the items specified in paragraphs (a) to (e) (inclusive) above;
- (g) any application or right to apply for registration of any of the rights referred to in paragraph (a) to (f); and
- (h) all rights of a similar nature to any of the rights referred to in paragraphs (a) and (g) which may subsist in Australia or elsewhere.

(34) **Loss** means any loss recoverable at law including any damage, action, suit, claim, demand, cost, expense, legal expenses on a full indemnity basis, charge, fee, payment or liability
incurred, however arising, whether it is present or future, fixed or ascertained, actual or contingent.


(36) **Mock-up** means each mock-up of the Vessels referred to in Appendix A8 of the Specification.

(37) **Moral Rights** means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the *Copyright Act 1968* (Cth).

(38) **Parent Company Guarantee** means the Parent Company Guarantee referred to in Clause 59.1 (Parent Company Guarantees).

(39) **Power** means any power, right, authority, discretion or remedy, whether express or implied.

(40) **PPS Law** means:

(a) the PPSA and any regulations made under the PPSA, as amended from time to time; and

(b) any amendment made to any other legislation as a consequence of the PPSA or any regulations made under the PPSA, including, without limitation, amendments to the *Corporations Act 2001* (Cth).

(41) **PPSA** means the *Personal Property Securities Act 2009* (Cth).

(42) **Public Holiday** means a day gazetted in New South Wales or Tasmania as a public holiday.

(43) **Public Official** means:

(a) any officer, employee, director, principal, consultant, agent, or representative, whether appointed or elected, of any government (whether central, federal, state or provincial), ministry, body, department, agency, instrumentality or part thereof, of any public international organisation, or any state owned or state controlled entity, agency or enterprise or joint venture/partnership (including a partner or shareholder of such an enterprise); or

(b) any person acting in an official capacity for or on behalf of:

(i) any government, ministry, body, department, agency, instrumentality or part thereof;

(ii) any public international organisation;

(iii) any political party or political party official or candidate for office,

and for the purposes of this definition, references to the term "public international organisation" include (without limitation) organisations such as the World Bank, the International Finance Corporation, the International Monetary Fund and the Inter-American Development Bank.

(44) **Required Rating** means a credit rating of at least "A" (as assessed by Standard and Poors) or at least "A2" (as assessed by Moody's Investors Service, Inc) or at least "A" (as assessed by Fitch Ratings) (or such other credit rating as the Buyer may approve in writing from time
to time) or, if no rating is provided by Standard and Poors or by Moody's Investors Service, Inc or by Fitch Ratings, an equivalent rating with another reputable rating agency.

(45) **Schedule of Rates** means the Builder's and Sub-contractors' agreed rates and/or prices contained in "Annex E".

(46) **Subcontract** means any agreement or contract by which the Builder engages a Sub-contractor.

(47) **Sydney Harbour Sea Trials** means the trials conducted pursuant to Clause 64.

(48) **Third Party Materials** means all documentation or other material in whatever form which is the subject matter of any Intellectual Property rights owned by a third party that is:

(a) included, embodied in or attached to the Contract Materials; or

(b) used directly for the purpose of or as a result of performing its obligations under this Contract.

(49) **Transport Administration Act** means the *Transport Administration Act 1988 (NSW).*

(50) **WHS Legislation** means the following:

(a) the *Work Health and Safety Act 2011 (NSW)* and the *Work Health and Safety Regulations 2011 (NSW)*; and

(b) all other acts, regulations and codes of practice relating to work health and safety which apply or may apply in the place where the work is carried out by the Builder or Sub-contractors.

49.2 **Interpretation**

(1) Reference to:

(a) one gender includes the others;

(b) a person includes a body corporate;

(c) a party includes the party's successors and permitted assigns;

(d) a thing includes the whole and each part of it separately;

(e) a statute, regulation, code or other law or a provision of any of them includes:

(i) any amendment or replacement of it; and

(ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced;

(f) dollars means Australian dollars unless otherwise stated;

(g) a number of days means consecutive calendar days unless the context otherwise requires; and
(h) Contract Price when used in the context of a particular Vessel means the Contract Price for that Vessel as set out in Annex “D” (Payment Schedule) as may be adjusted in accordance with the terms of the Contract.

(2) “Including” and similar expressions are not words of limitation.

(3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(4) A provision of this Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Contract or the inclusion of the provision in this Contract.

49.3 Parties

(1) A power or discretion granted in favour of more than 1 person need not be exercised by them jointly but may be exercised by any 1 or more of them separately.

50 Conditions Precedent

50.1 This Contract (other than this Clause and Clauses 72, 73, 76 and 77) has no effect until all conditions precedent have been satisfied or waived.

50.2 For the purposes of this Contract the following are conditions precedent:

(1) the provision by the Builder to the Agent of written and binding contracts with all Subcontractors on terms satisfactory to the Agent; and

(2) the provision by the Builder to the Agent of written acknowledgement and consent in a form satisfactory to the Agent by each landlord and/or mortgagee of the Shipyard of the Agent’s licence to enter the Shipyard under Clause 67.3.

51 Agency

51.1 The Agent will perform, on behalf of the Buyer, all administrative and management actions required under this Contract.

51.2 Any notices or other actions issued or performed by the Agent shall be accepted by the Builder as duly issued or performed for and on behalf of the Buyer, and the Builder shall not separately communicate or otherwise deal with the Buyer in respect of this Contract except as expressly provided in this Contract or as otherwise directed in writing by the Buyer.

52 Subcontracting

52.1 The Builder must ensure that any Subcontract contains terms consistent with:

(1) Clause 38(a) (Insurances);

(2) Clause 53 (Compliance);

(3) Clause 62 (Government Approvals);

(4) Clause 71 (Insurances);

(5) Clause 72 (Intellectual Property);

(6) Clause 75 (PPSA); and
(7) **Clause 77 (Confidentiality).**

and must obtain written approval from the Agent regarding the terms of any Subcontract prior to entering into any such Subcontract.

52.2 The terms of any Subcontract referred to in clause 52.1 must not be varied without the Agent’s prior written approval.

**53 Compliance**

53.1 The Builder must comply with all Applicable Laws and WHS Legislation.

53.2 The Agent may, at the Buyer’s cost and on reasonable notice, conduct an audit for the purpose of assessing the Builder’s compliance as required by Clause 53.1 above. The Agent may appoint auditors (including the Buyer’s Technical Representative) to conduct such an audit. The auditors shall have access to all premises, plant, facilities and information as the auditors may require. For the purposes of this clause, Information includes all documents, data, records, computer systems and accounts. The auditors may, at the Buyer’s cost, obtain copies of such Information.

**54 Contract Price**

54.1 The Contract Price is fixed and not subject to escalation, price increase, currency adjustment or the like of any nature whatsoever and for whatever reason save as explicitly provided for in this Contract.

54.2 The Contract Price includes the equipment listed in the Specification, all costs and expenses for the design and design development of the Vessels complying with the requirements of the Specification and this Contract and supplying all necessary Plans and Drawings as stipulated in the Specification.

54.3 The Contract Price excludes GST.

**55 Goods and Services Tax**

55.1 In this Clause 55:

(1) words or expressions used in this Clause which have a particular meaning in the GST law (as defined in the GST Act), any applicable legislative determinations and Australian Taxation Office public rulings, have the same meaning, unless the context otherwise requires;

(2) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member; and

(3) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member.

55.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Contract for any supply made under or in connection with this Contract does not include GST.

55.3 The Parties acknowledge their understanding that the supply made by the Builder under this Contract is a taxable supply, and the Builder warrants that it will be registered for GST in Australia before the due date of the First Instalment in accordance with Clause 15(a)(i) (Payments – Instalments), regardless of whether the Builder is based in Australia or elsewhere.

55.4 The Builder shall, within 7 days after the signing of this Contract and before the due date of the First Instalment in accordance with Clause 15(a)(i) (Payments – Instalments), give written notice to the Buyer and the Agent of the Builder’s Australian Business Number (ABN).
55.5 To the extent that any supply made under or in connection with this Contract is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time as the GST exclusive consideration is to be paid or provided.

55.6 A party’s right to payment under clause 55.5 is subject to a valid tax invoice being delivered by the supplier to the recipient of the taxable supply.

55.7 To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST or any equivalent tax levied in a jurisdiction outside Australia for which that other party is entitled to claim an input tax credit or equivalent tax credit.

55.8 To the extent that any consideration payable to a party under this Contract is determined by reference to a cost incurred by a party, or to a price, value, sales, revenue or similar amount, the amount of that cost, price, value, sales, revenue or similar amount does not include any amount in respect of GST or any equivalent tax levied in a jurisdiction outside Australia.

56 Other Deficiencies

56.1 Passenger Capacity

(1) The passenger capacity of each Vessel shall be no less than the figure set out in the Specification and Box 17(a).

(2) If the actual passenger capacity of a Vessel determined in accordance with the Specification is less than the figure set out in the Specification then for each passenger that the passenger capacity of the Vessel is deficient the Contract Price for that Vessel shall be reduced by the sum of AUD10,000.

56.2 Design Load Displacement

(1) The Design Load Displacement of each Vessel shall be no more than the figure stated in the Specification and Box 17(b).

(2) If the actual Design Load Displacement for a Vessel determined in accordance with the Specification exceeds the figure stated in the Specification then for each tonne or part thereof that the Design Load Displacement exceeds the specified figure the Contract Price for that Vessel shall be reduced by AUD10,000.

(3) If the excess Design Load Displacement exceeds the specified figure by more than [space], the Agent shall have the option to terminate this Contract forthwith in accordance with Clause 39(a)(v) (Suspension and Termination).

57 Substitution of Materials

57.1 If, in spite of the Builder’s careful advance planning, any materials, machinery or equipment required for the construction of the Vessels by the Specification, the Maker’s List, the Plans and Drawings or otherwise under this Contract cannot be procured in time to meet the Builder’s construction schedule in accordance with the Delivery Date, the Builder, after having used its best efforts to overcome such unavailability, may supply, subject to the Agent’s prior approval, which shall not be unreasonably withheld, other materials.

58 Builder’s Bank Guarantees

58.1 In addition to the Builder’s Bank Guarantee required by Clause 14(a) (Builder’s Bank Guarantee), to secure the Builder’s obligation to rectify Guarantee Defects and to pay liquidated damages to the Buyer under Clause 69, at the time of delivery of each Vessel in accordance with Clause 28, the
Builder must provide to the Agent a Bank Guarantee acceptable to the Agent issued in favour of the Buyer by the bank or party named in Box 32 substantially in the form and substance set out in ANNEX A(iii)(a), for 10% of the Contract Price of the Vessel, failing which the Agent shall have the option to terminate this Contract in accordance with Clause 39(a)(vi) (Suspension and Termination).

58.2 Conversion of the security

(1) The Buyer may convert into money any Bank Guarantee that does not consist of money at any time and from time to time.

(2) The Builder must not take steps to injunct or otherwise restrain:
   (a) the Guarantor from paying the Buyer amounts pursuant to any Bank Guarantee;
   (b) the Buyer from taking any steps for the purpose of making a demand under any Bank Guarantee;
   (c) the Buyer from receiving payment under any Bank Guarantee; and/or
   (d) the Buyer from using the proceeds of any payment under any Bank Guarantee for any purpose.

(3) The Builder acknowledges and agrees that the Buyer is not obliged to pay interest to the Builder on any Bank Guarantee or the proceeds of any Bank Guarantee, and the Buyer does not, and will not, hold any proceeds of any Bank Guarantee on trust for the Builder.

58.3 Guarantor ceases to have Required Rating

(1) If the Guarantor ceases to have the Required Rating and, at that time, another bank or insurance company acceptable to the Agent maintains the Required Rating and is regulated by the Australian Prudential Regulation Authority, then:
   (a) the Builder must promptly notify the Agent of that circumstance;
   (b) within 30 days of the Agent’s notice requiring a replacement Bank Guarantee acceptable to the Agent, the Builder must procure the issue of a replacement security which must have a face value equal to that of the Bank Guarantee being replaced and in a form acceptable to the Agent; and
   (c) the Agent must surrender the original Bank Guarantee to the Builder following the issue of the replacement Bank Guarantee.

(2) If the Guarantor ceases to have the Required Rating and, at that time, no Major Australian Bank has the Required Rating, then:
   (a) if the Guarantor has a rating of less than the second highest rated Major Australian Bank, the Builder must procure the issue to the Buyer and provide to the Agent a Bank Guarantee from a Guarantor which has a rating equal to or higher than the second highest rated Major Australian Bank which must have a face value equal to that of the Bank Guarantee being replaced and in a form acceptable to the Agent;
   (b) the Builder must monitor the credit rating of the Guarantor of the replacement Bank Guarantee and the credit rating of the Major Australian Banks and procure a replacement Bank Guarantee from a Guarantor which has the Required Rating within 15 days after any Major Australian Bank regains a rating equal to or greater than the Required Rating; and
the Agent must surrender the original Bank Guarantee to the Builder following the issue of the replacement Bank Guarantee.

59 Parent Company Guarantees

59.1 Where the Builder is a corporation that is related to or is a subsidiary of another corporation as defined in the Corporations Act, the Builder must, within the number of days stated in Box 19(b)(i) after the signing of this Contract and before the due date of the First Instalment in accordance with Clause 15(a)(i) (Payments – Instalments), arrange for its ultimate parent company or any other parent company as the Agent may approve in its absolute discretion to provide a Parent Company Guarantee substantially in the form and substance set out in ANNEX A(iii)(b), failing which the Agent shall have the option to terminate this Contract in accordance with Clause 39(a)(vi) (Suspension and Termination).

59.2 If such parent company or holding company is not incorporated in Australia, then the Builder must deliver to the Agent together with the Parent Company Guarantee, a certificate from an attorney lawfully practising in the country of the Guarantor’s incorporation certifying:

(a) that the attorney is independent of the parent company;

(b) that the parent company is empowered to enter into the Parent Company Guarantee and has validly done so.

59.3

60 Approvals

60.1 Upon provision of the Plans and Drawings by the Builder under Clause 20(b) (Approvals), the Agent shall within the time agreed by the Parties in the Design Management Plan notify the Builder that the Agent:

(1) elects not to proceed with the construction and delivery of the Vessels and to terminate this Contract in accordance with Rider Clause 66;

(2) requests reasonable modifications or changes to the Specification and/or Plans and Drawings in accordance with Clause 24 (Modifications and Changes); or

(3) approves the Plans and Drawings and shall send to the Builder one (1) set of the Plans and Drawings with the Agent’s approval or approval with comments, amendments or reservations.

61 Licences, authorisations and security clearances

61.1 This Clause will apply in relation to the importation of each Vessel if applicable.

61.2 The Builder will obtain, at its risk and expense, any export and import licence and any other official authorisation associated with the importation of the Vessel.

61.3 The Builder will undertake, at its risk and expense, all customs formalities which are necessary for:

(1) the export of the Vessel;

(2) the Vessel’s passage through any country; and
(3) the Vessel's import into Australia.

62 Government Approvals

The Builder shall be responsible (at its sole risk and expense) for obtaining and keeping in force at all times a construction permit and export licence for the Vessels if and as required, as well as all Australian governmental licences and approvals required or appropriate as of and after the date of this Contract, for the design of the Vessels and the Vessels' sale to the Buyer and its import into Australia.

63 Classification, Rules and Regulations

63.1 Save as expressly provided in the Specification, should there exist any discrepancies between the standards and rules of the Classification Society and any of the Regulatory Authorities, the Builder shall complete the Vessels to the most stringent of those standards. All such rules, regulations and requirements shall be complied with without condition, qualification or recommendation.

63.2 The Classification Society and the Regulatory Authorities shall at all times be allowed to communicate directly with the Agent. The Agent may review relevant correspondence between the Classification Society and/or Regulatory Authorities and the Builder and require copies of the same.

64 Sydney Harbour Sea Trials

64.1 This Clause will apply to each of the Sydney Harbour Sea Trials which will be conducted in respect of each Vessel. The times and numbers specified in this Clause shall apply unless otherwise stated in the Specification.

64.2 Attendance of Buyer's Technical Representative

   (1) The Buyer's Technical Representative, together with a suitable number of assistants, officers and crew, shall have the right to be present at the Sydney Harbour Sea Trials.

   (2) If neither the Buyer's Technical Representative nor any authorised assistants attend the Sydney Harbour Sea Trials for any reason after notice to the Agent is given under Clause 27(d)(i), such absence shall be deemed to be a waiver by the Buyer of its right to be present. The Builder may then conduct the Sydney Harbour Sea Trials without the Buyer's Technical Representative being on board.

64.3 Weather Conditions

The Sydney Harbour Sea Trials shall be conducted in weather conditions as described in the Specification. If the Sydney Harbour Sea Trials are interrupted or prevented by weather conditions in excess of the stated conditions, any resulting delay in delivery of the Vessel in accordance with Clause 28 (Delivery) shall be deemed a Permissible Delay in accordance with Clause 34 (Permissible Delays). In such an event, the Sydney Harbour Sea Trials shall be discontinued or postponed until the first favourable day thereafter when weather conditions permit.

64.4 Conduct of Sydney Harbour Sea Trials

   (1) The Sydney Harbour Sea Trials shall be conducted in the presence of representatives from the Buyer and/or the Agent and in the manner described in this Contract and/or the Specification. The Sydney Harbour Sea Trials shall be of sufficient scope and duration to enable all Parties to verify and establish that the Vessel conforms in all respects with the performance requirements of this Contract and/or the Specification. The Agent shall have the right to demand that the Builder repeat any Sydney Harbour Sea Trials, subject to appropriate notice.
The Builder shall be responsible for the conduct and navigation of the Vessel at all times during the Sydney Harbour Sea Trials notwithstanding the Buyer or its agent may have control of the Vessel.

All expenses in connection with the Sydney Harbour Sea Trials, including the provision of bunkers, lubricating oil, grease, fresh water and stores needed to undertake the Sydney Harbour Sea Trials shall be for the Builder's cost and expense. Together with the Final Instalment for that Vessel, the Buyer shall reimburse the Builder at cost price for any quantities of bunkers and unbroached lubricating oil, grease, fresh water and stores remaining on board on the date of delivery in accordance with Clause 28 (Delivery).

64.5 Method of Acceptance or Rejection

(1) Upon completion of the Sydney Harbour Sea Trials the Builder shall give the Agent the results of the Sydney Harbour Sea Trials in writing and giving no less than twenty (20) Banking Days' notice of the proposed date of delivery of the Vessel in accordance with Clause 28 (Delivery). If the Agent considers the results demonstrate that the Vessel conforms to the requirements of the Contract and/or the Specification, the Agent shall give the Builder a written notice of completion stating acceptance of the Vessel for delivery in accordance with Clause 28 (Delivery) and its agreement or otherwise in relation to that proposed date of delivery.

(2) If the results of the Sydney Harbour Sea Trials in respect of the Vessel demonstrate that the Vessel or any part or equipment does not conform to the requirements of this Contract and/or the Specification or if the Agent rejects the Vessel for other reasons which the Builder accepts as valid, the Builder shall take all necessary steps to rectify such non-conformity and shall prove the fulfilment of this Contract and the Specifications by such additional tests or trials as may be necessary. Upon demonstration by the Builder that the deficiencies have been corrected, the procedure set out in this Clause 64.5 shall apply.

(3) If the Agent rejects the Vessel following the Sydney Harbour Sea Trials, the Agent shall in its notice of rejection state in which respects the Vessel does not conform to the requirements of this Contract and/or the Specification (hereinafter “Sydney Harbour Sea Trials Defects”).

(4) If there are Sydney Harbour Sea Trials Defects of minor importance and which do not affect Class or the Buyer’s unrestricted use and safe operation of the Vessel in its Intended Trade but the Builder is unable to rectify the matter within a reasonable time and in any event before the accrual of the Agent’s right to terminate in accordance with Clause 39 (Suspension and Termination), the Builder may nevertheless require the Buyer to take delivery of the Vessel in accordance with Clause 28 (Delivery) on condition that the Builder first:

(a) undertakes to remedy the Sydney Harbour Sea Trials Defects for its own cost and expense as soon as possible;

(b) agrees in writing to indemnify the Buyer and the Agent for any Loss incurred as a consequence thereof, including loss of time; and

(c) provides the Agent with a Bank Guarantee issued in favour of the Buyer by the party named in Box 32 substantially in the form and substance set out in Annex A(iii)(a) for a sum which the Agent reasonably requests to cover (a) and (b) above, failing agreement such sum to be resolved in accordance with Clause 42 (Dispute Resolution).

(5) If the Builder disputes the rejection of the Vessel by the Agent, the dispute shall be resolved in accordance with Clause 42 (Dispute Resolution).
64.6 Effect of Acceptance

Acceptance of the Vessel upon completion of the Sydney Harbour Sea Trials shall preclude the Buyer from refusing formal delivery of the Vessel in accordance with Clause 28 (Delivery).

65 Guarantee Engineer

65.1 The Builder must appoint a well-qualified and experienced English speaking Guarantee Engineer to attend on board each Vessel for a period up to seven (7) days during the Sydney Harbour Sea Trials at its cost. If the Agent deems it necessary to keep the Guarantee Engineer to attend on board a Vessel after completion of the Sydney Harbour Sea Trials, then the Guarantee Engineer must remain on board that Vessel for any such period as required by the Agent, for the account of the Buyer, at the monthly lump sum stated in Box 24, or pro rata thereof for part of a month, as compensation for part of the cost and charges to be borne by the Builder in connection with the Guarantee Engineer.

66 Termination for convenience

66.1 Without prejudice to any of the Agent’s other rights, entitlements or powers under this Contract, the Agent may at any time for the Buyer’s sole convenience, and for any reason whether or not the Builder is in breach of this Contract, terminate this Contract effective from the time stated in the written notice or if no such time is stated, at the time the written notice was given to the Builder.

67 Effect of Termination

67.1 Except where expressly provided by this Contract, neither the Buyer nor the Agent will, in any circumstance, be liable for any Consequential Loss suffered by the Builder as a result of the termination of this Contract.

67.2 In the event that this Contract is terminated for any reason (including for the Buyer’s convenience), then:

1. the Builder must immediately hand over to the Agent all copies of documents provided by the Agent to the Builder and all Contract Materials (excluding the Vessels, parts of the Vessels or their machinery, equipment and appurtenances in respect of which Sub-Clause (3) shall apply) and Contract IP (whether complete or not) and any other documents reasonably required by the Agent to facilitate completion of the Vessels under this Contract;

2. the Buyer may without payment of compensation to the Builder take an assignment or novation of the Builder’s rights and benefits under any subcontracts including any warranties and guarantees and the Builder must do all things necessary to effect such an assignment or novation; and

3. the Buyer may elect to take possession of the Vessels (including all parts thereof while it is under construction), the machinery, equipment and appurtenances that are to be installed in the Vessels and any of the materials and equipment used or intended to be used in the construction of the Vessels and are reasonably required to facilitate the construction of the Vessels under this Contract.

67.3 The Builder grants an irrevocable licence to the Agent to enter and to remain at the Shipyard at any time for as long as the Agent considers necessary for the purposes of exercising the Buyer’s rights under Clause 67.2(3).

67.4 If the Buyer elects to take possession of the Vessels under Clause 67.2(3) then, provided the Buyer has paid:

1. any outstanding payment due to the Builder under this Contract prior to the date of termination; and
(2) the value of work done calculated in accordance with Clause 67.8 and the cost of items installed to the date of termination, provided that payments have not already been made for that work or those items; then

(3) the Builder must execute, stamp and register any bill of sale or other instrument necessary to transfer property and title in each Vessel to the Buyer.

67.5 If the Agent terminates this Contract under Clause 39 (Suspension and Termination) and the right under Clause 67.2(3) is exercised, the Builder must pay to the Buyer the difference between the cost to the Buyer of completing the Vessels in accordance with this Contract and the Contract Price.

67.6 For the purposes of Clause 67.5, the cost to the Buyer of completing the Vessels includes all:

(1) costs incurred by the Buyer in exercising its rights under Clause 67.2(3) (including the amounts paid by the Buyer under Clause 67.4) and delivering the Vessels to another shipyard to complete the Vessels; and

(2) all monies paid to the new builder to complete the Vessels at the new shipyard.

67.7 If the Agent terminates this Contract in accordance with Clause 66, the Buyer must pay to the Builder only the following:

(1) any outstanding payment due to the Builder under this Contract prior to the date of termination; plus

(2) the cost of items reasonably ordered by the Builder and for which it is legally bound to pay provided that payments have not already been made for those items and title in the items vests in the Buyer upon payment; plus

(3) the value of the work done calculated in accordance with Clause 67.8 and the cost of items installed to the date of termination, provided that payments have not already been made for that work or those items, plus

(4) of the sums paid or payable by the Buyer to the Builder under this Contract to the date of termination being liquidated damages for all overheads and profit associated with the Contract.

67.8 Valuation under Clauses 31, 67.4(2) and 67.7(3) shall be made as follows:

(1) the rates or prices in the Schedule of Rates shall be used to the extent that it is reasonable to use them; and

(2) to the extent that Clause 67.8(1) does not apply, reasonable rates or prices shall be used.

67.9 In the event of a dispute in relation to a valuation done under Clauses 67.4(2) or 67.7(3) the dispute shall be resolved in accordance with Clause 42 (Dispute Resolution).

67.10 The termination of this Contract for any reason does not affect any accrued right of a Party against the other Party in addition to any other rights, powers or remedies provided by law.

68 Liquidated Damages

In the event that liquidated damages are payable under this Contract, the Parties agree that the liquidated damages payable constitute a genuine pre-estimate by them of the Loss suffered and is not a penalty.
69 Liquidated Damages for Guarantee Defects

In addition to the remedies available to the Buyer under Clause 35 (Builder’s Guarantee), in the event that any Guarantee Defects impair or delay the operation or working of any Vessel for a period greater than three (3) days then the Builder shall be liable to pay to the Buyer liquidated damages in the sum of [redacted] while the operation or working of that Vessel is impaired or delayed.

70 Liability for Design Defects

In addition to the remedies available to the Buyer under Clause 35 (Builder’s Guarantee), the Builder shall guarantee each Vessel against, and shall indemnify the Buyer in respect of all Loss in connection with Design Defects for a period of 6 years after that Vessel is delivered to the Buyer in accordance with Clause 28 (Delivery).

71 Insurances

71.1 Professional Indemnity

(1) From the effective date of the Contract, the Builder shall effect and maintain professional indemnity insurance and ensure that any Sub-contractor (including naval architects) shall each effect and maintain professional indemnity insurance with levels of cover of [redacted] per year in the annual aggregate.

(2) The professional indemnity insurance referred to in Clause 71.1(1) shall be maintained for a period of 6 years after each Vessel is completed, delivered to and accepted by the Buyer in accordance with Clause 28 (Delivery).

71.2 Public Liability

The Builder shall (in the joint names (as assureds) of the Builder, the Buyer and the Agent) effect and maintain public liability insurance. Such public liability insurance shall:

(1) cover the respective rights, interests and liabilities to third parties of the Builder, the Buyer and the Agent and Sub-contractors engaged by the Parties from time to time;

(2) cover the Parties’ respective liability to each other for loss or damage to property and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy); and

(3) provide insurance cover for an amount in respect of any one occurrence of not less than [redacted].

71.3 Workers’ Compensation Insurance

(1) The Builder shall insure against statutory and common law liability for death of or injury to persons employed by the Builder.
Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the Buyer's and the Agent's statutory liability to the Builder's employees.

The Builder shall ensure that all consultants and Sub-contractors engaged by it have similarly insured their employees.

**71.4 Cargo Insurance**

The Builder shall obtain cargo insurance complying at least with the minimum cover provided by Clauses A of the Institute Cargo Clauses (LMA/IUA) or any similar Clauses. The insurance shall:

1. entitle the Buyer or the Agent to claim directly from the insurer;
2. provide insurance cover for an amount in respect of any one occurrence of not less than the cost price of the Vessels plus and
3. cover the carriage of each Vessel from their place of export to a safe place at or near Sydney Harbour as nominated by the Agent.

**71.5 Insurance generally**

1. All insurances obtained by the Builder under Clause 38(a) (Insurances) and Clause 71 (Insurances) must be provided by insurers and on terms reasonably acceptable to the Agent and contain a waiver of subrogation against the Buyer and the Agent and their Personnel.
2. The Builder must use reasonable endeavours to ensure that all contracts of insurances which the Builder effects in compliance with this Contract contains a term that requires the insurer to notify the Buyer and the Agent, in writing, whenever the insurer gives the Builder a notice of cancellation or any other notice in respect of the policies or prior to any material amendments of the policies.
3. If the Builder has used reasonable endeavours as required by Clause 71.5(2) but despite this, the contracts of insurances effected in compliance with this Contract do not contain the term as required by Clause 71.5(2), the Builder must immediately notify the Agent in writing if the insurer gives the Agent a notice of cancellation or any other notice in respect of the policy, including particulars of that notice from the insurer.
4. The Builder must provide prior written notice to the Agent of any intended cancellation of insurances effected in compliance with this Contract by the Builder.
5. The Builder shall provide the Agent with certified copies of all insurance policies relevant to this Contract, as placed, within after the signing of this Contract and will provide to the Agent certificates of currency within
6. The Builder indemnifies the Buyer and the Agent on demand for and against any Loss incurred or sustained to the extent that any insurance required by this Contract is not available.
7. The Builder undertakes that the insurances obtained by the Builder and listed in Annex “F” (Insurances) meet all of the requirements of this Contract.

**72 Intellectual Property**

**72.1 Background IP**

1. Each Party exclusively owns and is entitled to the exclusive benefit of its Background IP except to the extent otherwise provided by this Contract.
(2) The Builder grants the Agent a permanent, exclusive, irrevocable, world-wide, royalty-free license to use, sublicense, and authorise the use of the Builder’s Background IP to the extent that Background IP is a component of the Contract Materials.

(3) The Agent grants the Builder a non-exclusive, non-transferable, royalty-free license to use the Agent’s Intellectual Property for the purposes of meeting its obligations under this Contract.

72.2 Third Party IP

(1) The Builder must obtain all necessary Intellectual Property licences, authorisations or permissions as may be required before making any Third Party Materials available for the purposes of meeting its obligations under this Contract.

(2) To the extent that the Buyer or the Agent needs to use any of the Third Party Materials provided by the Builder, the Builder grants, or must obtain, a permanent, exclusive, irrevocable, world-wide, royalty-free license to use, sublicense, and authorise the use of the Third Party Materials to the extent that any Third Party Materials have been made available to the Buyer or the Agent.

72.3 Contract IP

(1) The Builder hereby assigns to the Agent all current and future right, title and interest in the Contract Materials and Contract IP from the date the Contract Materials and/or Contract IP comes into existence.

(2) To the extent permitted by Applicable Laws, the Builder must obtain all necessary waivers of, or consents in relation to, the Moral Rights subsisting in the Background IP and Contract Materials. Such waivers and consents must include an irrevocable consent to the Agent doing any acts or any omissions that constitute an infringement of Moral Rights in any of the Contract Materials, including:

(a) not naming the Personnel as the author of the Contract Materials; or

(b) amending, changing, adding to, deleting or removing any part from the Contract Materials;

whether any such acts or omissions occur before, on or after the date of this Contract.

72.4 Upon request by the Agent, the Builder will take any action that may be necessary to confirm the assignment of the Contract Materials and Contract IP to the Agent, including executing any documents.

72.5 The Builder must not use or reproduce, and will ensure its Personnel do not use or reproduce, the Agent’s Intellectual Property without the Agent’s written authorisation.

72.6 The Builder:

(1) warrants that the Contract Materials do not infringe any Intellectual Property rights belonging to any third party;

(2) warrants that it has the necessary rights to grant the assignments and licences provided for in this clause 72;

(3) will indemnify, hold harmless and defend the Buyer, the Agent and their Personnel from and against any Loss arising from any actual or alleged infringement of any Intellectual Property rights belonging to a third party; and
(4) will, if a claim is made, or any Party reasonably believes that a claim is likely to be made, that all or part of the Contract IP infringes a person’s Intellectual Property rights:

(a) use all reasonable endeavours to secure the Intellectual Property rights for the Agent to continue to use the Contract IP free of any claim or liability for infringement; or

(b) replace or modify the Contract IP so that the use of them does not infringe the Intellectual Property rights of any other person without degradation of the performance or quality of the Contract IP;

in addition to the indemnity under this Contract and at its own expense.

72.7 The Builder must take, and ensure that its Sub-contractors take, any action that may be necessary to give full effect to this Clause, including executing any documents.

72.8 This Clause continues to apply after the completion or termination of this Contract.

73 Anti-corruption

73.1 The Builder, in the performance of its duties under this Contract, will:

(1) take no action that will violate any Applicable Corruption Law; and

(2) maintain policies and procedures designed to promote and achieve compliance with all Applicable Corruption Laws.

73.2 The Builder represents, warrants and covenants, that no money, gift or any other items of value, whether or not reimbursable under this Contract, will be paid, promised, offered or authorised by the Builder to any Public Official or any person acting for or on behalf of the Agent for the purpose of or having the effect of:

(1) bribery, kickback or other corrupt practices;

(2) influencing any act or decision of such person or agency; or

(3) inducing any such person or agency to do any act in violation of their lawful duty.

73.3 The Builder will also procure that its Personnel, affiliates, shareholders, officers, and directors will also comply with the above Clause 73.1.

73.4 The Builder will conduct its business in material compliance with all applicable financial record-keeping and reporting requirements, all applicable anti-money laundering statutes, and any rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity in connection therewith.

74 Rights to follow the Vessels

74.1 All rights, remedies, warranties and guarantees available in relation to Guarantee Defects and Design Defects shall follow the Vessels and in respect of:

(1) Guarantee Defects shall thus apply in all respects to and for the benefit of any subsequent purchaser or bareboat charterer of the Vessels; and

(2) Design Defects shall thus apply in all respects to and for the benefit of any subsequent purchaser of the Vessels.
75 PPSA

75.1 A term defined in the PPS Law has the same meaning when used in this Clause.

75.2 The Builder must not grant any security interest in the following property without the prior written approval of the Agent:

1. all copies of documents provided by the Agent to the Builder and all Contract Materials and Contract IP and any other documents to facilitate completion of the Vessels;
2. the Builder’s rights and benefits under any subcontracts for the completion of the Vessels including any warranties and guarantees; and
3. Vessels (including all parts thereof while it is under construction), the machinery, equipment and appurtenances that are to be installed in the Vessels and any of the materials and equipment used or intended to be used in the construction of the Vessels.

75.3 The approval of the Agent under Clause 75.2 may be given on conditions including (without limitation) a condition that the person to be granted a security interest enter an agreement with the Agent enabling the Agent to exercise rights under Clause 67.

75.4 The Builder agrees and acknowledges:

1. the Agent or the Buyer may be entitled to register any relevant interest under this Contract as a security interest (at the Agent or the Buyer’s discretion) on the register established under the PPS Law; and
2. the Agent and the Buyer provided consideration for that security interest, by delivery of their promises under this Contract.

75.5 The Agent may, by notice to the Builder at any time, require the Builder to take all steps, provide information (including serial numbers) or do any other thing that the Agent considers necessary or desirable to:

1. ensure that this Contract (or any related document) or any security interest arising under it, is enforceable against the Builder or any third party;
2. protect, perfect, record or better secure, or obtain or preserve the priority of, the security position of the Buyer or the Agent under this Contract (or any related document); or
3. overcome any defect or adverse effect arising from the PPS Law on the Buyer or the Agent’s security position or the rights or obligations of the Buyer or the Agent under or in connection with this Contract or any encumbrance or document contemplated by this Contract.

75.6 The Builder must comply with the requirements of a notice under Clause 75.5 within the time stated in the notice at the cost of the Builder.

75.7 Subject to Clauses 75.5 and 75.6, but despite any other Clause of this Contract which expressly permits the disclosure of such information, the Parties agree that no Party will disclose any information of the kind mentioned in section 275(1) of the PPSA. The Builder waives any right it has under section 275(7)(c) of the PPSA to authorise disclosure of such information. This Clause 75.7 survives the termination of this Contract.

75.8 To the extent that Chapter 4 of the PPSA would otherwise apply to enforcement by the Buyer or the Agent of any security interest under this Contract, the Parties agree that the following provisions of the PPSA are excluded: sections 95, 118(1)(b), 121(4), 129(2) & (3), 130(1), 132(3)(d), 132(4), 134(1), 135 and 157 of the PPSA.
75.9 If the Buyer or the Agent seizes any collateral, the Buyer or the Agent may delay a decision to dispose of or retain any of the collateral seized by the Buyer or the Agent for as long as the Buyer or the Agent considers reasonable in the circumstances, in accordance with section 125(3)(a) of the PPSA.

75.10 The Builder agrees that it will not either redeem the collateral under section 142 of the PPSA or reinstate the security agreement under section 143 of the PPSA.

76 Dispute Resolution

76.1 Unless Clause 42(a) or Clause 42(b) apply, any dispute, controversy or claim arising out of, relating to, or in connection with this Contract including any question regarding its existence, validity or termination, shall be resolved by mediation in accordance with the Australian Centre for International Commercial Arbitration (ACICA) Mediation Rules. The mediation shall take place in Sydney, Australia and be administered by ACICA.

76.2 If the dispute has not been settled pursuant to the said Rules within 30 days following the written invitation to mediate or within such other period as the Parties may agree in writing, the dispute shall be referred to and finally resolved by arbitration in accordance with the ACICA Arbitration Rules.

76.3 The Parties agree that:

(1) the seat of arbitration shall be Sydney, Australia;

(2) the language used in the arbitral proceedings shall be English; and

(3) unless the Parties agree otherwise in writing, all hearings shall take place in private.

76.4 The Parties, arbitrators and ACICA must treat as confidential all matters and documents relating to the arbitration (including the existence of the arbitration), award and documents (and information contained within documents) created for the purpose of the arbitration or produced by another party in the course of the arbitration proceedings which are not in the public domain, except where disclosure is required of a party by a legal duty, to protect or pursue a legal right or to enforce or challenge an award in legal proceedings before a state court or other judicial authority.

77 Confidentiality

77.1 The Builder must:

(1) maintain and take all steps necessary to maintain all Confidential Information in strictest confidence;

(2) ensure that proper and secure storage is provided for the Confidential Information while in the possession or under the control of the Builder;

(3) take all precautions necessary to prevent accidental disclosure or unauthorised publication of any of the Confidential Information;

(4) not disclose any of the Confidential Information to any person other than:

(a) those of the Builder's Personnel, and officers who, due to their nature of their duties, have a specific need to know or have access to the information;

(b) the Builder's legal advisers, banks, insurance companies; and

(c) those persons the Agent approves in writing;
(5) not use the Confidential Information for any reason or purpose except as directed by the Agent;

(6) keep a record of what copies have been made of Confidential Information and supply this information to the Agent on request;

(7) keep confidential the fact that Confidential Information has been provided by the Agent to the Builder;

(8) not expressly or impliedly disclose the existence of Confidential Information; and

(9) comply with any security measures in connection with Confidential Information that may be required by the Agent.

77.2 Clause 77.1 does not impose obligations on the Builder concerning Confidential Information which the Builder proves to the reasonable satisfaction of the Agent:

(1) is publicly available at the date of this Contract;

(2) becomes publicly available subsequent to the date of this Contract without breach of this Contract;

(3) the Builder obtained from a third party without breach by that third party of any obligation of confidence concerning that Confidential Information;

(4) was already in the Builder's possession (as evidenced by written records) when provided by or on behalf of the Agent.

77.3 As part of the process of proving to the reasonable satisfaction of the Agent that Confidential Information comes within the exceptions in Clause 77.2 the Builder must give the Agent 14 days' notice that the Builder alleges that specified Confidential Information comes within the exceptions and the basis of the allegation. The Builder must comply with Clause 77.1 in relation to the Confidential Information until that period has elapsed, unless in the meantime the Agent advises the Builder that the Agent is satisfied that the Confidential Information comes within the exceptions.

77.4 Subject to Clause 77.8, it is not a breach of Clause 77.1 for the Builder to disclose Confidential Information which it is obliged by law to disclose to the person to whom it is disclosed.

77.5 If the Agent approves in writing the disclosure of Confidential Information, the Builder may disclose the Confidential Information in accordance with the terms of that approval.

77.6 Unless otherwise agreed, the Builder must:

(1) ensure that all of its Personnel and officers who will receive or will have access to Confidential Information are bound, before they receive or are granted access to any of the Confidential Information, in the same manner and to the same extent as the Builder is bound by this Contract, as though they were the Builder, by a deed in favour of the Agent which applies to all Confidential Information;

(2) use its best endeavours to cause all of its Personnel and officers who receive or have access to Confidential Information to observe all of the Builder's obligations and undertakings contained in this Contract;

(3) nominate an officer, agent or senior employee to receive on behalf of the Builder any documents containing Confidential Information, being the person who will be in charge of the safe custody of the documents and other Confidential Information;
(4) give notice to the Agent, before allowing any other Personnel or officers to have access to Confidential Information, of their identity;

(5) when requested by the Agent, immediately supply the Agent with a list of the persons to whom Confidential Information has been disclosed, confirmation that those persons have entered into written agreements as provided by Clause 77.6(1) and, if requested by the Agent, copies of those agreements; and

(6) not disclose Confidential Information to any person, including any person to whom the Builder may otherwise disclose it under this Contract, if the Agent objects to its disclosure to that person.

77.7 When requested by the Agent, the Builder must:

(1) promptly return all documents and other media which contain Confidential Information to the Agent:

(2) if any Confidential Information is in a form that cannot be detached from valuable equipment (including, but not limited to, Confidential Information stored by electronic, electromagnetic or other means), the Builder must permanently delete and erase the Confidential Information; and

(3) provide a statutory declaration to the Agent confirming that all those records and any copies have been returned or deleted and erased, as appropriate.

77.8 If the Builder is required, or anticipates or has cause to anticipate that it may be required, by law or court order to disclose Confidential Information, the Builder must immediately notify the Agent of the actual or anticipated requirement and use its best endeavours (without breach of applicable law) to delay and withhold disclosure until the Agent has had a reasonable opportunity to oppose disclosure by lawful means.

77.9 The Builder must:

(1) notify the Agent immediately upon discovering any apparent unauthorised use or disclosure of any Confidential Information; and

(2) take all reasonable steps to enforce the confidentiality obligations imposed or required to be imposed by this Clause 77 including:

(a) diligently prosecuting at its cost any breach or threatened breach of the confidentiality obligations by any person to whom it has disclosed or allowed access to the Confidential Information; or

(b) at the option of the Agent making all reasonable efforts to assist the Agent to regain possession of the Confidential Information and prevent any further unauthorised disclosure or use.

77.10 The Builder acknowledges that:

(1) all of the Confidential Information is at all times the property of the Agent;

(2) a breach of this Clause 77 would be harmful to the interests of the Agent and the Buyer;

(3) monetary damages alone would not be a sufficient remedy for a breach of this Clause 77; and
in addition to any other remedy which may be available in law or equity, the Agent is entitled to interim, interlocutory and permanent injunctions or any of them to prevent breach of this Clause 77 and to compel specific performance of it.

77.11 This Clause continues to apply after the completion or termination for any reason of this Contract.

78 Information Documents

78.1 Prior to the date of this Contract, the Builder executed the Deed of Disclaimer.

78.2 The Builder acknowledges that

(1) the Information Documents do not form part of this Contract and that Clause 78.4 applies to the Information Documents; and

(2) where Information Documents or any part thereof are referred to in this Contract it is for the purposes of identification of that document or part only.

78.3 Without limiting Clause 78.4 or the warranties or acknowledgements in the Deed of Disclaimer:

(1) the Builder acknowledges that neither the Buyer nor the Agent warrants, guarantees, assumes any duty of care or other responsibility for or makes any representation about the accuracy, adequacy, suitability or completeness of the Information Documents; and

(2) neither the Buyer nor the Agent will be liable to the Builder in respect of (and the Builder shall indemnify the Agent and Buyer against) any claim arising out of or in any way connected with:

(a) the provision of, or the purported reliance upon, or use of the Information Documents to or by the Builder or any other person to whom the Information Documents are disclosed; or

(b) a failure by the Buyer or the Agent to provide any other information, data or documents to the Builder.

78.4 The Builder:

(1) warrants that it did not and will not in any way rely upon:

(a) any information, data, representation, statement or document made by, or provided to the Builder, by the Buyer or the Agent or anyone on behalf of the Buyer or the Agent or any other information, data, representation, statement or document for which the Buyer or the Agent is responsible or may be responsible whether or not obtained from the Buyer or the Agent or anyone on behalf of the Buyer or the Agent; or

(b) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,

(2) for the purposes of entering into this Contract except to the extent that any such information, statement or document forms part of this Contract;

(a) warrants that it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations; and

(b) acknowledges that it is aware that the Buyer and the Agent have entered into this Contract relying upon the warranties, acknowledgements and agreements in this subclause and in the Deed of Disclaimer.
79 Information Access under the GIPA Act

79.1 The Builder acknowledges that the Buyer and the Agent are subject to the provisions of the GIPA Act.

79.2 The Builder acknowledges and agrees that the Buyer and the Agent may be required to disclose information about this Contract:

(1) in accordance with the requirements of the GIPA Act in response to an access application under Part 4 of that Act or as part of its disclosure obligations for government contracts in the disclosure log of contracts that the Buyer and the Agent are required to maintain;

(2) under any similar or replacement legislation to the GIPA Act; or

(3) as required by the Auditor-General or Parliament.

79.3 Within seven (7) days of receiving a written request by the Buyer or the Agent, the Builder must at its own expense, provide the requesting party with:

(1) full and immediate access to the following information which the requesting party may reasonably require in order to meet its obligations under the GIPA Act; and

(2) such other assistance as the requesting party may reasonably require in order to meet its obligations under the GIPA Act.

80 The Buyer and Agent's Capacity

80.1 The Buyer and Agent enter into this Contract on behalf of the Crown in right of the State of New South Wales pursuant to the Transport Administration Act and an obligation or Power of the Buyer and/or the Agent under this Contract is an obligation or Power of the Buyer and/or Agent in that capacity.

80.2 The Contract or any other document connected with the performance of this Contract does not unlawfully restrict or otherwise affect the Buyer's and the Agent's unfettered discretion to exercise their statutory Powers.

80.3 The Buyer and/or the Agent may delegate any Power, function or responsibility that the Buyer and/or the Agent has under the Contract or under any other document connected with the performance of this Contract to any person to whom the Buyer and/or the Agent may delegate Powers, functions or responsibilities under the Transport Administration Act.

81 Transfer of Functions

81.1 The Builder acknowledges that the Buyer or the Agent may be reconstituted, renamed or replaced and that some or all of the Powers of the Buyer or the Agent may be transferred to or vested in another Governmental Entity.

81.2 If the Buyer or the Agent is reconstituted, renamed or replaced or if some or all of the Buyer's or the Agent's Powers are transferred to or vested in another Governmental Entity, references in this Contract or to any other document connected with the performance of this Contract must be deemed to refer, as applicable, to that reconstituted, renamed or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those Powers.

82 Vessel Options

82.1 The Buyer shall have the right to exercise the options as set out in Annex G (Options) at the contract price stated therein. Such options must be declared by the Agent to the Builder within the timeframes stated in Annex G.
83 Builder's Key Personnel

83.1 The Builder must:

(1) employ the Builder’s Key Personnel, in the position, for the percentage of their time and for the period set out in Annex “H” (Key Personnel);

(2) subject to paragraph (3), not replace the Builder’s Key Personnel without the Agent’s prior written approval; and

(3) if any of the Builder’s Key Personnel die, become seriously ill or resign from the employment of the Builder, replace them with persons approved by the Agent of at least equivalent experience, ability and expertise.