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Issues with the Saleform's^[1] Payment and Closing Provisions

And a Proposed Solution

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It is fundamental that contracts should clearly state the obligations of each party. The Saleform fails on this point. While it would appear to Sellers that there are no limitations on their right to nominate an account for receipt of the purchase price, a London arbitration decision (discussed below)^[2] shows that this is not the case. If the Sellers' nomination results in the parties' being unable to make a nearly simultaneous exchange of funds for the vessel and title documents, the Sellers will be in breach of the contract. The rule of the decision not only adds a material implied obligation to the Sellers' performance, but it creates uncertainty for both parties as to whether their selections of payment currency, banks and place of closing will enable the use of a payment method that is sufficiently simultaneous.

The simplicity of the Saleform's payment and closing provisions is undoubtedly one of the reasons for its popularity. When one attempts to govern a complex transaction with simple provisions, however, the parties may receive an unpleasant surprise as shown in the case discussed below.

A. The London Arbitration Decision

The London arbitration involved a Memorandum of Agreement (often referred to as an "MOA") on the 1993 Saleform in which the price was to be paid in US Dollars to an account nominated by Sellers. The place of closing was to be in Greece. Sellers nominated a Hong Kong account with Société Générale ("SG") for receipt of the purchase price about 5 days before the intended delivery. The Buyers had little time to make payment arrangements, but it appears that they made diligent efforts to do so.

The Buyers intended to pay for the ship using the "advance deposit method." Under this method, the Buyers deposit the purchase money in an account of the Buyers at the Sellers' bank prior to the closing. On closing, the Buyers direct the bank to transfer the funds to the Sellers' account. A transfer between two accounts at the same bank avoids the delays inherent in transfers between banks, especially when the transfer must be processed through banks in multiple countries.

On the third banking day after the notice of readiness was given (the last day for Buyers to provide payment for the ship), the Buyers ascertained that SG did not offer an "advance deposit" service. The Buyers then requested that Sellers nominate a different bank which would accommodate the advance deposit method, but the Sellers refused.

The Buyers also requested that Sellers correct their notarized and legalized delivery documents because they contained a misspelling of the Buyers' name by one letter. Neither party called for a closing meeting. The sale did not close, and the Buyers commenced arbitration.

The Sellers argued that the Buyers had all the information needed to make the payment by wire transfer. Under the circumstances of the case, however, completion of a wire transfer could not be accomplished in less than three days and might have taken longer due to the location of the Sellers' Bank in Hong Kong, the location of the closing in Greece and the use of Dollars as the payment currency

Hong Kong is 5 hours ahead of Greece and 12 hours ahead of New York. Greece is 7 hours ahead of New York. A wire transfer in dollars from Greece to Hong Kong must go through the Federal Reserve Bank in New York, therefore banks in Greece and New York must be open at the same time to initiate a wire transfer. There is no time, however, when the banks in New York are open at the same time as those

in Hong Kong. Thus, receipt of a wire transfer initiated in Greece on Friday December 21 (which would have been the applicable day in the case) could most likely not be confirmed until the following Monday, assuming that Monday, December 24 was a banking day in Hong Kong. If Monday was not a banking day, confirmation would not be obtained until after Christmas (which was Tuesday) and possibly after Boxing Day (which was Wednesday).

In contrast, had the advance deposit method been used and the Buyers' funds been pre-positioned in Hong Kong, the Buyers in Greece could have directed SG in Hong Kong to transfer the funds during a period of about 2 hours when banks are open in both Greece and Hong Kong. (The bank would need to be open in Greece only if it was necessary to transmit the Buyers' instructions through a Greek branch of the bank.)

The arbitrators relied on English cases requiring that the contract be interpreted as it would be by reasonable commercial persons in the position of the parties. The panel also accepted expert testimony as to the customary practice in international ship purchase transactions.

The arbitrators held that the language of Clause 3 (the price shall be paid "on delivery of the Vessel") and Clause 8 (the delivery documents shall be furnished "in exchange for payment") requires a simultaneous exchange of payment, the vessel and the Sellers' documents. Concerning with these provisions, the arbitrators said:

However, that left open the question as to how the contractual requirement of simultaneity between the payment of the price and the presentation of the documents was to be achieved in practice. On that, the contract was noticeably silent.

The arbitrators went on to say that "the contract would not work without some agreement or arrangement as to the mechanism of payment." In the absence of agreement on this point by the parties, the arbitrators provided the missing term, holding that the "advance deposit" method was the only way the simultaneity requirement of the contract could be satisfied. As a result of this timing requirement, the panel concluded that the Sellers had an implied obligation to nominate a

"Sellers' Bank" which would permit use of the advance deposit method, and the Sellers failure to do so was a breach of the contract.

The panel also held that an overnight delay would not meet the simultaneity requirement of the contract, and the Buyers were not in default for failing to send funds by wire transfer.

Concerning the error in the closing documents, the panel held that Sellers had sufficient notice of the correct spelling of the Buyers' name and that because Sellers did not tender compliant closing documents before the expiration of three banking days after issuance of their notice of readiness, the deposit would be returned to the Buyers. In addition, damages were assessed against the Sellers of about \$2.5 million.

Although the basis of the panel's decision was the simultaneity requirement of the Saleform, they understood that in practice it is not viewed as a literal requirement. In discussing Sellers' argument that Buyers should have sent the funds by wire transfer, the panel noted that this would require an agreement to hold Sellers' closing documents in escrow between the time the payment was initiated and the Sellers confirmed receipt. The panel conceded that even using the advance deposit method might require an escrow agreement for the closing documents, but that "it would not need to last for long."

Therefore, the rule established by the decision is that the Buyers, after initiating payment, cannot be made to wait overnight or longer for delivery of the ship, but that being required to wait for an unspecified shorter period is not a breach of the contract.

B. Issues with the Saleform Payment and Closing Provisions

Under the Saleform, Sellers will have to use great care in future transactions in nominating the account

for receipt of the price. Information about the Buyers' banking arrangements will have to be known to determine whether the account selected will enable the Buyers to make a nearly simultaneous transfer. The location and time zones of the closing, the ship registries involved and those of the Buyers' and Sellers' banks will also have to be considered.

The Saleform treats payment as a single event as if the Buyers were handing over cash at the closing meeting. In fact, payment usually consists of electronic credits between banks and involves four events: the Buyers' initiation of payment, receipt by the Sellers' bank, crediting of Sellers' account, and the Sellers' bank's confirmation of the credit. There can be a delay of several hours or more between these events. "Payment" might be considered to be only the receipt of funds, but when (as in most cases) the Buyers must relinquish control over the purchase money in order to initiate the payment process, "payment" must include the entire process.

If it were attainable, the Saleform's simultaneity requirement would provide ideal protection for both parties. Neither would relinquish control over what it held until it received payment or the vessel in exchange. No cooperation from the Sellers or from banks that are not parties to the contract would be required. However, under most payment methods in use today, initiation and receipt of payment are never simultaneous. As a result, the Buyers must relinquish control of the purchase money before receiving the vessel, thereby losing the protection provided by a simultaneous exchange. Depending on the method of payment used, there are varying lengths of delay between initiation and receipt of payment. Moreover, the parties must rely on the performance of banks to transmit the credit, receive it, credit it to Sellers' account and notify Sellers of the receipt. Current payment methods also require cooperation by the Sellers. The Saleform provides no protection to the Buyers or their lender during this delay, it is silent as to the extent of delay that is permissible, and as to the responsibilities of the parties to facilitate completion of payment.

Negotiations for a ship sale typically proceed at a rapid pace due to the volatility in the prices for second hand ships. The process would be unacceptably slowed if the method of payment were to be included in the initial negotiations. Moreover, the parties would probably prefer not to disclose their banking relationships until the sale is more definite, and would prefer to decide how to close only after agreeing on the main sale terms. Thus, any requirement for an agreement between the parties as to the method of payment should contemplate a further agreement following formation of the contract, as noted by the arbitrators in the London case.

C. A Proposed Solution

The Saleform would be improved by eliminating the Sellers' apparent unfettered discretion in selecting its bank and the unrealistic simultaneity requirement for payment and delivery. As illustrated in the London case, the designation of the Sellers' Bank affects the methods of payment that are available to the parties, and these two key issues should be decided together after the main contract is signed. (In this discussion of the Saleform, capitalized terms have the meanings given to them in the extract of the proposed modifications to the Saleform attached as Annex A. For purposes of this note, the governing law is assumed to be New York. Issues in the Saleform text included in Annex A other than those raised in this note are disregarded.)

Because there are numerous variables involved in selecting the mechanics for payment, including the location of the parties and their bank accounts, the currency of payment and the place of closing, it is impossible to set out in a static standard form a method of payment that would be optimal in every deal. A solution to this problem is to include criteria in the main contract as to acceptable methods of payment and provide that the Sellers' Bank and the method of payment are to be agreed after the contract is signed.

Additions to Clause 3 are proposed that require the parties to attempt in good faith to reach a subsequent agreement as to the Sellers' Bank and the method of payment. The method of payment would have to meet the following criteria: (i) it must provide a reasonable expectation that the confirmation of receipt of payment would be obtained within business hours at the place of closing on the same day that the

payment process is initiated; and (ii) if funds are required to be pre-positioned, the Buyers cannot be required to pre-position the purchase price more than 1 Banking Day before the intended delivery date.

Leaving an issue in a contract open for later agreement can be problematic. Under New York law, the mechanics of payment would probably not be considered a main term of the contract, and deferring agreement on the mechanics would not prevent the agreed main terms from being a binding contract. In other jurisdictions, if the mechanics of payment are not agreed there might not be any contract at all. Nevertheless, to eliminate such a risk, and to avoid having to go to arbitrators if the parties are unable to agree on the mechanics, it is preferable to specify payment mechanics that will apply in the event the parties cannot reach a supplemental agreement.

A simple and reliable default or fall back method of payment is provided by an adaptation of the payment provisions contained in the Nipponsale form in which the "Sellers' Bank" will be the Deposit Holder and the method of payment will be by advance deposit under which the balance of the price shall be paid to the Deposit Account by the day before the closing. This is coupled with a closing procedure in which payment would be deemed completed when the Buyers hand to Sellers irrevocable instructions to the Deposit Holder to pay the Balance of the Purchase Price and the Deposit to the Sellers or their order. The fall back procedures provide the parties with the flexibility to enter into an agreement subsequent to the main contract without enabling a party to frustrate or avoid the contract by simply refusing to agree. To the extent these arrangements are viewed as less than optimal, it will provide an incentive to the parties to enter into a supplemental agreement.

A further addition to Clause 3 is proposed to the effect that if the Buyers are in compliance with their obligations with respect to arranging and initiating payment, there shall be one Banking Day's grace for confirming and receiving payment. The transmission of the payment is carried out by banks over which the parties have limited control. By agreeing on the method of payment, each party should assume some of the risk inherent in the payment method selected. Delays in resolving last minute issues in the sale can result in an overnight delay between the initiation of payment and its receipt. If the Buyers have done all they are supposed to do with respect to payment, it does not seem unfair to permit an additional day for those (hopefully rare) occasions when it is needed.

Clauses 3 and 8 would provide two separate tracks for selecting the Sellers' Bank, the payment method and the closing procedure. The fall back track is described above. The other more realistic track is described below. It presents certain problems that require additional provisions that are not relevant to the simpler fall back track.

The timing of the closing under both tracks remains based on the Sellers's issuance of Notice of Readiness as in the original Saleform, except that instead of payment within the 3 day deadline, the closing procedure set forth in Clause 8 must be commenced.

The closing procedure would be prescribed in Clause 8, providing that the parties would review all the closing documents and the Buyers would then initiate the payment process. The parties would be required to use commercially reasonable good faith efforts to minimize the delay between the Buyers' initiation of the payment process and the Sellers's confirmation of receipt of payment.

As a practical matter, the timing of delivery of the Vessel must turn on the Sellers' confirmation of receipt of payment. However, if for some reason the Sellers cannot obtain confirmation of payment when the funds have actually been credited to its account, the Buyers should be entitled to delivery. The proposed changes to Clause 8 provide that the Buyers are entitled to delivery immediately following a credit to the Sellers' account but the Sellers may defer delivery for a reasonable time in order to obtain confirmation of payment. This arrangement places the risk of failing to obtain confirmation on the Sellers, which is appropriate because, subject to the Buyers cooperating by providing information to track the payment (an obligation which is added to Clause 3), confirmation is made by the Sellers' Bank. In the absence of a confirmation, the parties are unlikely to know if or when the credit was made to Sellers' account, and the Buyers might not be able to prove that funds had been credited until after the closing has been delayed or abandoned. But the result will be appropriate: if the payment was actually received, the Buyers would

have been entitled to delivery. When confirmation is delayed, the Sellers will have to be careful not to declare a default without being certain that their account had not been credited. The Buyers ultimately bear the funds transmission risk, however, and if before reaching Sellers' account the funds are seized by a governmental authority or are attached, it would result in a Buyers' default.

An additional feature of the closing procedure on the realistic track would be that any time after initiating the payment process, the Buyers would be entitled to have the Sellers' Delivery Documents held in escrow by an escrow agent selected by the Buyers and approved by the Sellers (such approval not to be unreasonably withheld). Documents would be released from escrow upon: Sellers' confirmation of receipt of payment, a final arbitration award, or a final court order. Sellers would be obligated to issue the confirmation immediately following receipt of payment in Sellers' account. The governing law and arbitration clauses in the escrow agreement would be the same as those in the contract except that in any dispute with the escrow agent, the Buyers and/or Sellers may appoint only one arbitrator and the second would be appointed by the escrow agent.

For convenience and clarity, "Balance of the Purchase Price," "Closing Procedure," and "Sellers' Delivery Documents" are added to the list of defined terms. Certain conforming changes are made to Clause 13 (Buyers' Default).

Sample revisions to the text of Saleform 2012 incorporating the suggestions made above are attached in Annex A. These changes would result in a more complicated form of contract, but it more closely tracks the actual practice of the parties in most cases and it makes explicit the parties' obligations with respect to the method of payment and the closing procedure.

In considering issues as to methods of payment, variations of the advance deposit method and wire transfers seem the most commonly used. In light of the current difficulty and delays in opening bank accounts, it would be useful to reconsider a neglected method of payment, which is by letter of credit.

Letters of credit are burdened with two issues. The first is that the letter of credit and the drawing documents must be properly drafted. This obstacle can be overcome by using very simple drawing documents. All that is needed are certificates from each party stating that the Sellers are entitled to payment pursuant to the relevant memorandum of agreement. Delivery of the Buyers' certificate to Sellers controls the timing of the drawing, and the certificate from the Sellers will deter an improper drawdown and provide the Buyers with better remedies in the event of a fraudulent drawdown.

The second issue relates to the bank's performance under the letter of credit. Under UCP 600, which usually governs commercial letters of credit, the bank has up to 5 banking days to review the documents submitted (Art. 14(b)). Under ISP98, governing stand-by letters, the bank has 3 to 7 business days (2.01(c)). However, if an agreement can be obtained from the issuing or confirming bank to review the documents submitted immediately, the letter of credit would be a viable method of payment.

Among the advantages to using a letter of credit are that by using a confirming bank, the drawing can be made in the city of the closing, thereby eliminating time difference issues, no new bank accounts are required to be opened, and there is no delay in transmitting funds. In fact, the delivery of the Buyers' certificate to the Sellers could be deemed in the contract to constitute payment, rather than relying on confirmation of a credit to the Sellers' account.

ANNEX A

EXTRACT OF SALEFORM 2012

WITH PROPOSED CHANGES MARKED

Definitions

Balance of the Purchase Price" means the Purchase Price and all other sums payable on the closing date by the Buyers to the Sellers under this Agreement in immediately available funds, excluding the Deposit.

Banking Days" are days on which banks are open both in the country of the currency stipulated for the Purchase Price in Clause 1 (Purchase Price) and in the place of closing stipulated in Clause 8 (Documentation and Closing Procedure) and (add additional jurisdictions as appropriate).

Buyers' Nominated Flag State" means _____ (state flag state).

Class" means the class notation referred to above.

Classification Society" means the Society referred to above.

Closing Procedure" is defined in Clause 8(b).

Deposit" shall have the meaning given in Clause 2 (Deposit).

Deposit Holder" means _____ (state name and location of Deposit Holder) or, if left blank, the Sellers' Bank, which shall hold and release the Deposit in accordance with this Agreement.

In writing" or written" means a letter handed over from the Sellers to the Buyers or vice versa, a registered letter, e-mail or telefax.

Parties" means the Sellers and the Buyers.

Purchase Price" means the price for the Vessel as stated in Clause 1 (Purchase Price).

Sellers' Account" means the _____ (state details of bank account) at the Sellers' Bank identified in the addendum referred to in Clause 3(a) if such an addendum is entered into, or if Clause 3(c) is applicable, the Sellers' Account shall be the account in which the Deposit is held.

Sellers' Bank" means the bank (including identification of the _____ (state name of bank, branch or subsidiary thereof), to which the Balance and details) or, if left blank, the bank notified by the Sellers to the Buyers for receipt of the balance of the Purchase Price is to be paid, named as Sellers' Bank in the addendum referred to in Clause 3(a) if such an addendum is entered into, or if Clause 3(c) is applicable, the Sellers' Bank shall be the Deposit Holder.

Sellers' Delivery Documents" means the documents listed in Clause 8(c).

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3. Payment

The Parties shall attempt in good faith to conclude an addendum to this Agreement covering the designation of the Sellers' Bank, a method of payment of the Balance of the Purchase Price, and a method of payment of the Deposit to Sellers' Account within _____ (state number of days), or if left blank, nine (9) Banking Days after the Deposit has been lodged, which will meet the criteria set forth below:

(i) there is a reasonable expectation that the confirmation of receipt of payment would be obtained within business hours at the place of closing on the same day that the payment process is initiated; and

(ii) if the Buyers will be required to pre-position the Balance of the Purchase Price such pre-positioning shall not be more than one Banking Day before the intended delivery date.

If the Parties reach agreement on the matters described in Clause 3(a), the Parties shall cooperate by exchanging information and making arrangements in order to minimize the time between Buyers' initiation of payment and Sellers' receipt of confirmation that credits have been made to Sellers' account. Sellers shall arrange to obtain confirmation as soon as practicable of all credits to its account that are initiated by Buyers. Provided that Buyers have not breached any of their obligations under this Agreement with respect to arranging and initiating payment or release of the Balance of the Purchase Price and the Deposit: (i) if confirmation of receipt of such payments cannot be obtained on the day the Closing Procedure is commenced, receipt of such confirmation prior to the end of the next succeeding Banking Day shall be timely; and (ii) a credit to the Sellers Account prior to the end of such next succeeding Banking Day shall be timely payment.

If the Parties are unable to reach agreement on the matters described in Clause 3(a), by _____ (state number of days), or if left blank, twelve (12) days prior to the Vessel's intended date of readiness for delivery as notified by the Sellers pursuant to Clause 5(b) of this Agreement, the Sellers' Bank shall be the Deposit Holder, and the Balance of the Purchase Price in full free of bank charges shall be lodged by the Buyers with the Deposit Holder before delivery, but Buyers will not be required to pre-position the Balance of the Purchase Price more than one Banking Day before the intended delivery date.

On a Banking Day On delivery of the Vessel, but not later than three (3) Banking Days after the date that Notice of Readiness has been given in accordance with Clause 5 (Time and place of delivery and notices), the applicable Closing Procedure set forth in Clause 8 (Documentation and Closing Procedure) shall be commenced.):

1. the Deposit shall be released to the Sellers; and the balance of the Purchase Price and all other sums payable on delivery by the Buyers to the Sellers under this Agreement shall be paid in full free of bank charges to the Sellers' Account.

* * * *

8. Documentation and Closing Procedure

(a) The place of closing: _____

(b) The closing procedure (the "Closing Procedure") shall be as follows. At the place of closing, the Parties shall be permitted to examine all of the original closing documents (other than item (iv) below which may be a facsimile or email, or if a mortgage is being discharged using the purchase money, it may be provided after In exchange for payment of the Purchase Price); and:

1. If the Parties have reached agreement as to the Sellers' Bank and the method of payment, then (except to Sellers shall provide the extent otherwise provided in such agreement) when the Parties are ready to close, the Buyers shall initiate payment or release of the Balance of the Purchase Price in full free of bank charges to the Sellers' Account and cause the Deposit to be released to Sellers. Buyers shall be entitled to delivery of the Vessel and the Sellers' Delivery Documents immediately Buyers with the following the crediting to Sellers' account of the Balance of the Purchase Price and the Deposit, but Sellers may defer such delivery for a reasonable time in order to obtain confirmation that such payments have been received in its account. Upon Seller's receipt of such confirmation or the expiration of a reasonable time after such credit to Sellers' Account, the Vessel shall be delivered and Sellers shall provide Buyers with the Sellers' Delivery Documents; or documents:

2. If Clause 3(c) is applicable, Buyers shall deliver to Sellers signed irrevocable instructions to the Deposit Holder to pay the Balance of the Purchase Price and the Deposit in full free of bank charges to the Sellers

or their order, whereupon the Vessel shall be delivered and Sellers shall provide Buyers with the Sellers' Delivery Documents.

(c) Sellers shall provide the following documents on delivery (the Sellers' Delivery Documents"):

1. Legal Bill(s) of Sale in a form recordable in the Buyers' Nominated Flag State, transferring title of the Vessel and stating that the Vessel is free from all mortgages, encumbrances and maritime liens or any other debts whatsoever, duly notarially attested and legalised or apostilled, as required by the Buyers' Nominated Flag State;
2. Evidence that all necessary corporate, shareholder and other action has been taken by the Sellers to authorise the execution, delivery and performance of this Agreement;
3. Power of Attorney of the Sellers appointing one or more representatives to act on behalf of the Sellers in the performance of this Agreement, duly notarially attested and legalised or apostilled (as appropriate);
4. Certificate or Transcript of Registry issued by the competent authorities of the flag state on the date of delivery evidencing the Sellers' ownership of the Vessel and that the Vessel is free from registered encumbrances and mortgages, to be faxed or e-mailed by such authority to the closing meeting with the original to be sent to the Buyers as soon as possible after delivery of the Vessel;
5. Declaration of Class or (depending on the Classification Society) a Class Maintenance Certificate issued within three (3) Banking Days prior to delivery confirming that the Vessel is in Class free of condition/recommendation;
6. Certificate of Deletion of the Vessel from the Vessel's registry or other official evidence of deletion appropriate to the Vessel's registry at the time of delivery, or, in the event that the registry does not as a matter of practice issue such documentation immediately, a written undertaking by the Sellers to effect deletion from the Vessel's registry forthwith and provide a certificate or other official evidence of deletion to the Buyers promptly and latest within four (4) weeks after the Purchase Price has been paid and the Vessel has been delivered;
7. A copy of the Vessel's Continuous Synopsis Record certifying the date on which the Vessel ceased to be registered with the Vessel's registry, or, in the event that the registry does not as a matter of practice issue such certificate immediately, a written undertaking from the Sellers to provide the copy of this certificate promptly upon it being issued together with evidence of submission by the Sellers of a duly executed Form 2 stating the date on which the Vessel shall cease to be registered with the Vessel's registry;
8. Commercial Invoice for the Vessel;
9. Commercial Invoice(s) for bunkers, lubricating and hydraulic oils and greases;
10. A copy of the Sellers' letter to their satellite communication provider cancelling the Vessel's communications contract which is to be sent immediately after delivery of the Vessel;
11. Any additional documents as may reasonably be required by the competent authorities of the Buyers' Nominated Flag State for the purpose of registering the Vessel, provided the Buyers notify the Sellers of any such documents as soon as possible after the date of this Agreement; and
12. The Sellers' letter of confirmation that to the best of their knowledge, the Vessel is not black listed by any nation or international organisation.

(d)___At the time of delivery the Buyers shall provide the Sellers with:

1. Evidence that all necessary corporate, shareholder and other action has been taken by the Buyers to authorise the execution, delivery and performance of this Agreement; and
2. Power of Attorney of the Buyers appointing one or more representatives to act on behalf of the Buyers in the performance of this Agreement, duly notarially attested and legalised or apostilled (as appropriate).

(e)___If any of the documents listed in Sub-clauses (~~ea~~) and (~~eb~~) above are not in the English language they shall be accompanied by an English translation by an authorised translator or certified by a lawyer qualified to practice in the country of the translated language.

(f)___ If the Closing Procedure described in Clause 8(b)(i) is applicable, at any time after the Buyers have initiated payment of the Balance of the Purchase Price, they may require that the Sellers' delivery documents be placed in escrow with an escrow agent selected by Buyers and approved by Sellers (Sellers' approval not to be unreasonably withheld). Said documents shall be released from escrow upon: (i) Sellers' confirmation of receipt of payment, (ii) Sellers' written consent, (iii) a final arbitration award, or (iv) a final court order.

(g)___The Parties shall to the extent possible exchange copies, drafts or samples of the documents listed in Sub-clauses (c), (d), (~~clause (a)~~) and (j)Sub-clause (b) above for review and comment by the other Party ~~party~~ not later than _____ (state number of days), or if left blank, nine (9) days prior to the Vessel's intended date of readiness for delivery as notified by the Sellers pursuant to Clause 5(b) of this Agreement. If one or more mortgages are to be discharged using the proceeds of the Purchase Price, Sellers shall also not later than said date deliver to Buyers a certificate or transcript of registry issued by the competent authorities of the flag state evidencing the Sellers' ownership of the Vessel and that the Vessel is free from registered encumbrances other than the mortgages to be discharged using the proceeds of the Purchase Price.

(h)___ Concurrent with the exchange of documents in Sub-clauses (~~ea~~) and (~~eb~~) above, the Sellers shall also hand to the Buyers the classification certificate(s) as well as all plans, drawings and manuals, (excluding ISM/ISPS manuals), which are on board the Vessel. Other certificates which are on board the Vessel shall also be handed over to the Buyers unless the Sellers are required to retain same, in which case the Buyers have the right to take copies.

(i)___Other technical documentation which may be in the Sellers' possession shall promptly after delivery be forwarded to the Buyers at their expense, if they so request. The Sellers may keep the Vessel's log books but the Buyers have the right to take copies of same.

(j)___The Parties shall sign and deliver to each other a Protocol of Delivery and Acceptance confirming the date and time of delivery of the Vessel from the Sellers to the Buyers.

* * * * *

13. Buyers' default

Should the Deposit not be lodged in accordance with Clause 2 (Deposit), the Sellers have the right to cancel this Agreement, and they shall be entitled to claim compensation for their losses and for all expenses incurred together with interest.

Should the Purchase Price not be paid in accordance with Clause 8 (Documentation and Closing Procedure3 (Payment)), the Sellers have the right to cancel this Agreement, in which case the Deposit together with interest earned, if any, shall be released to the Sellers. If the Deposit does not cover their loss, the Sellers shall be entitled to claim further compensation for their losses and for all expenses incurred together with interest.

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[1]The Norwegian Saleform or “NSF,” has been published by the Norwegian Shipbrokers Association since 1956 in several revisions, and is widely used for the sale and purchase of second hand ships.

[2]A 2011 London arbitration was reported (without naming the ship or the parties) at 828 Lloyd’s Maritime Law Newsletter, August 19, 2011. The decision dealt with Saleform 1993. The payment and closing provisions of Clauses 3 and 8 contained in Saleforms 1966, 1983, 1993 and 2012 are substantially identical.