

**THE SHERIFF'S CONDITIONS OF SALE  
OF THE MOTOR VESSEL  
"LEWEK PENGUIN"**

- 1 In these Conditions, "the Vessel" refers to the vessel under arrest named in Admiralty in Rem No. **76 OF 2018** and agreed to be sold with all machinery, stores, equipment, spares, parts and everything on board belonging to her but excluding any equipment on hire in Clause 18. References to "the Vessel" do not include the unconsumed bunker fuel and lubricants (if any) on board the Vessel.
- 2 By submitting an offer to purchase of the Vessel ("the offer"), the Buyer agrees that his offer is made on the terms and conditions herein and remains open for acceptance for a period of 3 months from the date the bidding closes. The Buyer agrees to abide by **ALL** terms and conditions herein.

BASIS OF SALE

- 3 The Sheriff of the Supreme Court of Singapore ("the Sheriff") is selling the Vessel ("the sale") pursuant to a **COMMISSION FOR APPRAISEMENT AND SALE** dated **13<sup>th</sup> day of November 2018**, in Admiralty in Rem No. **76 of 2018**.
- 4 The Vessel is sold on an "as is, where is" basis as lying at (i) the date of the acceptance of the offer by the Sheriff or (ii) where the court's approval of the sale is required the date of approval of the sale by the Court, with all her faults and all errors of description whatsoever and without any warranties and/or guarantees whatsoever. The Buyer is deemed to have inspected, approved and accepted the Vessel in submitting the offer. The Buyer shall not be entitled to reject the Vessel, annul the sale, nor to any damages or diminution in price, by reason of any fault of or in the Vessel, any error of description whatsoever, or any representation of any nature whatsoever made or which may have been made by the Sheriff, his agent(s), servant(s) or representative(s). The Sheriff shall not be responsible for any shortage of any machinery, stores, equipment, spares and parts whatsoever that may arise before, during or after the sale.
- 5 By submitting the offer, the Buyer offers to purchase the Vessel together with the quantity and quality of unconsumed bunker fuel and lubricants (if any) remaining on board the Vessel as at the time of delivery. Further, the Buyer agrees to pay for all unconsumed bunker fuel and lubricants (if any) remaining on board the Vessel as at the time of appraisalment of the Vessel in accordance with Clause 9 below.
- 6 The Buyer acknowledges, undertakes, warrants and represents that in submitting the offer, the Buyer has not relied upon any information given or which may have been given by or on behalf of the Sheriff, his agent(s), servant(s) or representative(s) and that the Buyer has relied solely upon its own inquiries and/or inspection of the Vessel.
- 7 These Conditions and the Sheriff's advertisement of the sale contain the entire terms and conditions for the sale. Any representation or warranty made outside of these

Conditions shall not, unless expressly repeated herein, be incorporated in these Conditions or be binding on the Sheriff. Provided that where the Court's approval is obtained under Clause 19 and an Order of Court is made, nothing in these Conditions shall excuse or prevent the Parties from complying with the terms of the Order of Court.

For the avoidance of doubt, these Conditions shall be binding on the Parties:

- (a) Where the approval of Court referred to in Clause 19 is not required to sanction the sale, upon receipt by the Sheriff of the deposit referred to in Clause 8(a) and the Sheriff's acceptance of the offer by notice in writing; or
- (b) Where the approval of Court referred to in Clause 19 is required to sanction the sale, upon receipt by the Sheriff of the deposit referred to in Clause 8(a) and the Sheriff's acceptance of the offer by notice in writing (which acceptance is subject to approval of Court),

unless and until these Conditions are terminated in accordance with the terms and conditions herein.

The Sheriff shall be under no obligation to accept the highest or any offer received. Should the Sheriff choose to accept the Buyer's offer, acceptance will be conveyed by notice in writing to the Buyer. For the avoidance of doubt, **should the approval of Court be required for the sale of the Vessel as provided in Clause 19, the Sheriff's acceptance is subject to the approval of Court being obtained.**

- 8 Where the Vessel is stated to be sold in Singapore dollars ("SGD"), the Buyer shall pay the whole of the purchase price in Singapore dollars, and where the Vessel is stated to be sold in United States Dollar ("USD"), the Buyer shall pay the whole of the purchase price in USD. Payment of the purchase price shall be by electronic remittance to an account specified by the Sheriff, bankers' draft or cashier's order addressed to the "The Sheriff of Singapore" as follows:
- (a) At the time of the submission of the offer, a deposit of \$50,000 in the currency in which the Vessel is stated to be sold;
  - (b) Where approval of Court referred to in Clause 19 is not required to sanction the sale:
    - (i) Within three (3) working days upon the acceptance of the offer by the Sheriff or such other time as the Sheriff may in its absolute discretion stipulate in writing, 10% of the purchase price [less the deposit paid under Clause 8(a)];
    - (ii) Within five (5) working days upon the payment under Clause 8(b)(i), or such other time as the Sheriff may in its absolute discretion stipulate in writing;

- A. the balance 90% of the purchase price; and
    - B. the sum payable in respect of unconsumed bunker fuel and lubricants (if any) calculated in accordance with Clause 9.
  - (c) Where approval of Court referred to in Clause 19 is required to sanction the sale:
    - (i) Within three (3) working days upon the approval of the sale by the Court or such other time as the Sheriff may in its absolute discretion stipulate in writing, 10% of the purchase price [less the deposit paid under Clause 8(a)];
    - (ii) Within five (5) working days upon the payment under Clause 8(c)(i), or within such time as the Sheriff may in its absolute discretion stipulate in writing:
      - A. the balance 90% of the purchase price; and
      - B. the sum payable in respect of unconsumed bunker fuel and lubricants (if any) calculated in accordance with Clause 9.
  - (d) For the avoidance of doubt, all costs and expenses relating to any payments under this Clause 8 shall be solely borne by the Buyer.
- 9 The sum (if any) payable in respect of unconsumed bunker fuel and lubricants (if any) remaining on board the Vessel shall be solely determined by the Sheriff, his agent(s), servant(s) or representative(s) and calculated by reference to:
  - (a) the quantities of unconsumed bunker fuel and lubricants (if any) remaining on board; and
  - (b) the current market prices prevailing in Singapore of bunker fuel and lubricants, at the time of appraisalment of the Vessel. For the avoidance of doubt, such determination by the Sheriff, his agent(s), servant(s) or representative(s) shall be final and binding on the Buyer.
- 10 The Sheriff shall not be required to produce or deliver or procure to be delivered to the Buyer any machinery, stores, equipment, spares, parts or documents not in the Sheriff's possession or on board the Vessel and no objection shall be made by the Buyer on the ground of such non-production or non-delivery. Where the Buyer shall be able to prove to the satisfaction of the Sheriff that any such machinery, stores, equipment, spares, parts or documents belong to the Vessel and are situated within Singapore, the Buyer may request and the Sheriff may, at its sole absolute discretion and subject to any rights of third parties, agree to assist the Buyer to obtain possession of any such machinery, stores, equipment, spares, parts or documents at the Buyer's sole cost and expense, and without recourse against the Sheriff.

## DELIVERY

- 11 Upon receipt and clearance of all applicable payments referred to in Clause 8, the Sheriff shall deliver the Vessel by tender of the Sheriff's Bill of Sale and the Buyer shall take delivery of the Vessel (together with the unconsumed bunker fuel and lubricants remaining on board as at the point of delivery of the Vessel to the Buyer). For the avoidance of doubt, the Buyer must take delivery within and no later than three (3) working days after the Sheriff's receipt and clearance of all the payments referred to in Clause 8. In the event that the Buyer fails to take delivery within three (3) working days, all expenses relating to the Vessel thereafter, including but not limited to crew wages, dock, port, anchorage charges and other dues, shall be for the Buyer's account
- 12 If delivery of the Vessel is to be taken by an agent of the Buyer, a letter of authority addressed to the Sheriff and duly executed by the Buyer, to the satisfaction of the Sheriff, shall be produced before taking delivery.
- 13 The Sheriff shall deliver to the Buyer or his authorised agent all documents belonging to the Vessel which are in the Sheriff's possession on delivery.

## PASSING OF RISK AND LOSS OR DESTRUCTION

- 14 The Vessel shall be at the Buyer's risk upon acceptance of the offer by the Sheriff pursuant to Clause 7, or where the Court's approval is required under Clause 19, upon the Court granting approval.
- 15 If the Vessel is lost or destroyed before the risk in the Vessel has passed to the Buyer under Clause 14 the Sheriff may, in his sole discretion, repay to the Buyer, without interest costs or compensation, any sums the Buyer has paid under Clause 8.

## DEFAULT OF BUYER

- 16 If the Buyer fails to or does not promptly make any one of the payments referred to in Clause 8 or in any other respect whatsoever breaches any terms or conditions herein, the Buyer shall be deemed to be in default and the Sheriff, his successors or assigns, may exercise any or all of the following rights –
  - (a) rescind or accept the Buyer's repudiation of the sale by notice in writing;
  - (b) forfeit all payments made by the Buyer pursuant to Clause 8;
  - (c) resell the Vessel;
  - (d) recover from the Buyer all claims, losses, damages, costs and expenses whatsoever resulting or arising from the Buyer's default including, in the event

of any resale, any loss, costs and expenses whatsoever thereby suffered or incurred. It is expressly provided that in addition to the Sheriff, his successors or assigns, Claimants *in rem* and/or the owner of the Vessel may, in their own right, enforce and seek the remedies under this Clause 16(d); and/or

- (e) retain the whole or any part of any further payments made by the Buyer in addition to that referred to in Clause 8 in satisfaction or part satisfaction of the right of recovery pursuant to Clause 16(d) above without prejudice to any other means of enforcing such right.

Nothing contained herein shall restrict limit or prejudice any right power or remedy in law or equity of the Sheriff, his successors or assigns in respect of such default by the Buyer.

- 17 The Sheriff, his successors or assigns shall not be liable to the defaulting Buyer nor shall the defaulting Buyer have any claim against the Sheriff, his successors or assigns in respect of the Vessel or any part of the proceeds in the event of a resale of the Vessel.

#### EQUIPMENT ON HIRE

- 18 If any equipment of any kind on board the Vessel is on hire, it shall not be included in the sale and the Buyer shall make its own arrangements with the owners of the equipment for return of such equipment after delivery of the Vessel by the Sheriff, and if the Buyer fails to do so, the Buyer shall indemnify the Sheriff against all claims losses, damages, costs and expenses whatsoever resulting or arising from such failure.

#### COURT'S APPROVAL FOR SALE BELOW APPRAISED VALUE

- 19 Where the Court's approval is required for the sale of the Vessel, by reason of the accepted bid being lower than the appraised value or otherwise, the Sheriff may request that the Buyer or the party that filed the **COMMISSION FOR APPRAISEMENT AND SALE** dated **13th day of November 2018**, apply to the Court for such approval within four (4) weeks of the notice in writing **issued by the Sheriff** and inform the Sheriff of the filing of such an application. The Buyer unequivocally agrees that all terms of such Order(s) approving the sale below appraised value shall be incorporated into these Conditions as if they were expressly set forth hereunder.
- 20 Where the Court refuses/declines to approve the sale of the Vessel, these Conditions shall automatically terminate, and neither party shall be bound by anything herein contained nor be entitled to claim any losses, damages, costs and expenses from each other. The Buyer shall also be entitled to a refund of all sums paid under Clause 8 in the currency that the payments were made.

- 21 Following the Court's approval of the sale of the Vessel, the Buyer shall make payment of the sums referred to in Clause 8(c). Clauses 11 to 13 shall continue to apply.

#### NO ASSIGNMENT BY BUYER

- 22 The Buyer shall not assign or transfer these Conditions or the benefits, rights or obligations or any part thereof without the prior written consent of the Sheriff.

#### TAXES, FEES AND DUTIES

- 23 The Buyer shall be responsible for making payment of any taxes (including but not limited to the Singapore Goods and Services Tax if chargeable), fees, duties, fines, and levies payable under the laws of Singapore.

#### APPLICABLE LAW

- 24 These Conditions shall be subject to, governed by and interpreted in accordance with the laws of the Republic of Singapore for every purpose.

#### CONDITIONS NOT TO BE WAIVED

- 25 No waiver of any breach of these Conditions shall be deemed to be a waiver of any other or subsequent breach. The failure of the Sheriff to enforce at any time any of these Conditions shall in no way be interpreted as a waiver.

#### NO LIABILITY TO THE SUPREME COURT

- 26 The sale is made and effected without any liability of whatsoever nature to the Supreme Court of Singapore, its officers, employees, servants, agents or representatives.