



NEW FORM ON THE BLOCK – SHIPSALE 22 A BIMCO STANDARD CONTRACT FOR SALE AND PURCHASE OF VESSELS

On 21 April 2022, BIMCO released the new “SHIPSALE 22” Memorandum of Agreement; a standard form of contract on which parties can sell and purchase their vessels. This is a much-needed addition to the BIMCO family and it provides a logical and comprehensive approach to sale and purchase transactions.

It has taken the drafting committee two years to complete the work on SHIPSALE 22 and it is noteworthy that it attracted more than 800 comments at consultation stage from more than 200 entities in the shipping industry.



Structure

The new form will be familiar to BIMCO users as it introduces the well-known BIMCO box format in Part I whereby all of the key terms such as vessel details, price, notices and choice of law are inserted in a similar way to other BIMCO forms (such as BARECON, SHIPMAN, etc.).

A very important notion of the new SHIPSALE 22 is that it is drafted in a logical sequence that follows that of a normal sale and purchase transaction together with dedicated clauses for each relevant topic. This provides a methodical overview and makes the contract easier to navigate.

New features

SHIPSALE 22 contains several new and welcome features, including:

Subjects. This is an often-used concept specifying any conditions and their deadlines which will need to be satisfied in order for the agreement to become effective. This adds clarity and may assist in speeding up the signing of the contract. If the subjects are not met by the prescribed deadline, the agreement becomes null and void.

Guarantors. The form emphasises the possibility of using guarantors, with the option for both sellers and buyers to have an entity on

the hook for the performance of a party. It is recommended to have a separate instrument spelling out the terms of any guarantee.

Sanctions. SHIPSALE 22 places a spotlight on sanctions, with its own dedicated clause (being an amended BIMCO sanction provision), requiring a warranty from each party on the matter. This is a logical response to a very important topic and certainly one that will not lose its importance in the near future.

Anti-corruption. This additional boiler plate provision, requires the parties to warrant that they will comply with any applicable anti-corruption legislation and set out the consequences in case of a violation.

Confidentiality. In most sale and purchase transactions you will see a confidentiality clause, which has now been introduced as a standard provision. Importantly, the provision clarifies that a breach of the clause does not entitle a party to terminate, thereby avoiding an excuse for parties trying to escape the contract.

Electronic Meetings and Signatures. During the pandemic and the new-normal that follows, closing meetings are increasingly being held remotely, offering all parties a cost-effective and efficient alternative to physical meetings. SHIPSALE 22 has not

ignored this and adds the option in Part I for specifying a physical closing location or stating the electronic method of closing. In a similar vein, the contract expressly refers to the ability to exchange signed copies electronically, exchanging P&I letters of indemnity electronically and most importantly signing the agreement by way of an electronic signature whilst recognising that some documents may still be required in “wet-ink” (for example some registries will only accept “wet-ink” signed bills of sale).

Welcome updates

Part II, which now contains the nitty-gritty clauses, sees some welcome updates, including:

Deposit. In relation to deposit, both a Deposit Holding Agreement and a concept of Disruptive Bank Events have been included. Both are useful as the Deposit Holding Agreement certainly reflects the reality of how the market works with third-parties often holding the deposit pursuant to a distinctive agreement. The Disruptive Banking Event is a complementary buyer-friendly notion reflecting the challenges one may face when transferring large sums through the modern-day banking system.

Sale without inspection. In addition to the usual options, buyers can now choose to purchase a vessel without any inspection. This will save lawyers from free-drafting these clauses in situations where, for example, there may be market reasons for parties wishing to act swiftly or where buyers are currently chartering the vessel.

Underwater inspection. Some modernisation has been introduced to this important practical provision including tightening the buyers' obligations towards commencing an underwater inspection to a maximum of two days, so that buyers cannot use delaying tactics.

Drydocking. Again, some modernisation has been introduced and, for example, buyers can no longer insist on having the tail shaft drawn unless required by class.

What is not in the contract

Covid-19 and Force Majeure. Both concepts were carefully considered and while Covid-19 has undoubtedly been important to regulate in any recent sale and purchase transaction, it was intentionally omitted, since it would likely be a temporary event. Force majeure was also considered and left out, since a sale and purchase transaction does not have the long-term relationship characteristics where force majeure provisions are often found to be relevant.

Recycling / Further Trading. This notion was carefully considered and its importance was emphasised by many commenting in the consultation round. It was ultimately left out, as it was determined it would not be relevant at all for many transactions and there was a fear that the generality would be a false protection and not fully capture all aspects. BIMCO has initiated a separate initiative in relation to recycling that may assist the parties.

In conclusion, the BIMCO SHIPSALE 22 introduces a new and logical structure that, in time, should be a great benefit for practitioners. The innovation presented and the ever-moving landscape of vessel sale and purchase will mean that SHIPSALE 22 will eventually become the primary form for ship sale and purchase transactions.

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