

STANDARD SECURITY

by

FERGUSON MARINE ENGINEERING LIMITED

in favour of

THE SCOTTISH MINISTERS

Subjects: Newark Works, Castle Road, Port Glasgow, Scotland, PA14 5NG

This standard security is subject to an intercreditor deed with HCC International Insurance Company plc

MACROBERTS

LLP

STANDARD SECURITY

by

- (1) **Ferguson Marine Engineering Limited** (a company incorporated in Scotland with Company No. SC485060) and whose registered office is at 3 Redwood Crescent, Peel Park, East Kilbride, G74 5PA (the "**Chargor**")

in favour of

- (2) **The Scottish Ministers** in terms of the Scotland Act 1998, Victoria Quay, Leith, Edinburgh EH6 6QQ (the "**Scottish Ministers**");

Whereas:

- (A) the Scottish Ministers have provided and will provide certain credit facilities to the Chargor and/or its parent, Ferguson Marine Engineering (Holdings) Limited (Company No. SC485103) ("**Holdings**");
- (B) one of the conditions precedent to the provision of facilities to Holdings and the provision of continuing facilities to the Chargor is that the Chargor grants to the Scottish Ministers this standard security.

NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

1 Definitions and Interpretation

1.1 In this Standard Security:

"**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for general business in Edinburgh;

"**Intercreditor Deed**" means the Intercreditor Deed entered into or to be entered into between (1) the Scottish Ministers (2) the Chargor (3) Holdings (4) HCCI and (5) MacKellar dated on or around the date hereof;

"**Finance Document**" means a "Finance Document" under and in terms of the FMEL Loan Agreement and/or the Holdings Loan Agreement;

"**FMEL Loan Agreement**" means the term loan agreement dated 6 September 2017 between the Chargor and the Scottish Ministers as amended, varied, novated or supplemented from time to time and most recently amended on or around the date hereof;

"**HCCI**" means HCC International Insurance Company Plc, a company registered under the laws of England (registered number 01575839) and whose registered office is at 1 Aldgate, London, England, EC3N 1RE;

"**Holdings**" means Ferguson Marine Engineering (Holdings) Limited, a company incorporated in Scotland (Company No. SC485103) and whose registered office is at Orbital House, 3 Redwood Crescent, Peel Park, East Kilbride, G74 5PA;

"**Holdings Loan Agreement**" means the loan agreement to be entered into between Holdings, the Chargor and the Scottish Ministers dated on or around the date hereof and as the same may be amended, varied, novated or supplemented from time to time;

"**MacKellar**" means MacKellar Sub-Sea Limited a company incorporated in Scotland with Company No. SC486910 and whose registered office is at Orbital House 3 Redwood Crescent Peel Park, East Kilbride, South Lanarkshire, Scotland, G74 5PA;

"Obligor" means the Chargor, Holdings and MacKellar;

"Secured Liabilities" means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly or severally, as principal or surety or in any other capacity whatsoever) of each Obligor to the Scottish Ministers under the Finance Documents, except for any obligation or liability which, if it were so included, would result in this Standard Security contravening any law; and

"Security Subjects" means ALL and WHOLE those subjects known as and forming Newark Works, Castle Road, Port Glasgow, Scotland, PA14 5NG, which subjects are registered in the Land Register of Scotland under Title Numbers REN35224, REN35386, REN78832, REN114396, and REN135798 (tenant's interest), together with (One) the whole buildings and erections thereon (Two) the fittings and fixtures therein and thereon (Three) the parts, privileges and pertinents thereof (Four) the whole rights common, mutual and exclusive effecting thereto and (Five) the Chargor's whole right, title and interest, present and future, therein and thereto.

- 1.2 Unless a contrary indication appears, any reference in this Instrument to:
- 1.2.1 any **"Chargor"**, **"the Scottish Ministers"** or any other person shall be construed so as to include its successors in title, permitted assignees and permitted transferees;
 - 1.2.2 **"assets"** includes present and future properties, revenues and rights of every description;
 - 1.2.3 any **"Loan Agreement"** or **"Finance Document"** any other agreement or instrument is a reference to that Loan Agreement and/ or Finance Document or other agreement or instrument as from time to time amended, novated, supplemented, replaced, extended or restated in whole or in part;
 - 1.2.4 a **"person"** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
 - 1.2.5 a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - 1.2.6 a provision of law is a reference to that provision as from time to time amended or re-enacted;
 - 1.2.7 **"disposal"** includes a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary (and "dispose" shall be construed accordingly);
 - 1.2.8 **"document"** includes any deed, instrument (including negotiable instrument) or other document of any kind;
 - 1.2.9 any matter **"including"** specific instances or examples of such matter shall be construed without limitation to the generality of that matter (and references to **"include"** shall be construed accordingly);
 - 1.2.10 the **"winding-up"**, **"dissolution"** or **"administration"** of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such person is incorporated or established, or any jurisdiction in which such person carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors; and

- 1.2.11 Clauses are to the clauses to this Standard Security.
- 1.2.12 Clause headings are for ease of reference only.
- 1.2.13 Words in the singular shall import the plural and vice versa.
- 1.2.14 Words defined in the Companies Act 2006 have the same meanings in this Standard Security.
- 1.2.15 This Instrument is subject to the terms of the Intercreditor Deed.

2 **Bond**

The Chargor undertakes to the Scottish Ministers that it will pay or discharge to the Scottish Ministers all the Secured Liabilities on demand in writing when the Secured Liabilities become due for payment or discharge (whether by acceleration or otherwise).

3 **Charge**

The Chargor hereby in security of the Secured Liabilities grants a standard security in favour of the Scottish Ministers over the Security Subjects.

4 **Standard Conditions**

The Standard Conditions specified in Schedule 3 to the Conveyancing and Feudal Reform (Scotland) Act 1970, and any lawful variation thereof operative for the time being, shall apply. And we agree that such Standard Conditions shall be varied to the effect that (a) the Chargor shall not create or agree to create any subsequent security over the Security Subjects or any part thereof except with the prior written consent of the Scottish Ministers and (b) the insurance to be effected in terms of Standard Condition 5(a) shall provide cover to the extent of the reinstatement value of the Security Subjects and not their open market value.

5 **Notice of Subsequent Charge**

If the Scottish Ministers receives notice of any subsequent charge or other interest affecting all or any part of the Security Subjects the Scottish Ministers may open a new account or accounts in the name of the Chargor and, if or insofar as the Scottish Ministers does not open a new account or accounts, it shall nevertheless be treated as if it had done so at the time when it receives such notice and as and from that time all payments made by the Chargor to the Scottish Ministers shall, notwithstanding any instructions by the Chargor to the contrary, be credited or treated as having been credited to the new account or accounts and shall not operate to reduce the amount due by the Chargor to the Scottish Ministers at the time the notice was received.

6 **Application of Enforcement Proceeds**

- 6.2 All monies received by the Scottish Ministers under or by virtue of this Instrument following enforcement of the security hereby granted or of any security interest constituted pursuant hereto shall be applied, in accordance with the provisions of the Intercreditor Deed.
- 6.3 Nothing contained in this Instrument shall limit the right of the Scottish Ministers (and the Chargor acknowledges that the Scottish Ministers are so entitled) if and for so long as the Scottish Ministers, in their discretion, shall consider it appropriate, to place all or any monies arising from the enforcement of the security interest hereby granted or any security created pursuant to this Instrument into a suspense account, without any obligation to apply the same or any part thereof in or towards the discharge of any of the Secured Liabilities.

7 **Transfers**

7.2 The Chargor may not assign or transfer its rights and/or obligations under this Standard Security.

7.3 The Scottish Ministers may assign or transfer its rights and/or obligations under this Standard Security to a Permitted Transferee (as defined in the Holdings Loan Agreement) in accordance with the terms of clause 17.2 (*Assignment and Further Assurance*) of the Holdings Loan Agreement.

8 **Notices**

8.2 Communications in writing

Any communication to be made under or in connection with this Standard Security shall be made in accordance with clause 21 (Notices) of the Intercreditor Deed.

8.3 English language

Any notice given under or in connection with this Instrument must be in English.

9 **Governing Law and Jurisdiction**

This Instrument shall be governed by, and construed in all respects in accordance with, the law of Scotland and, for the benefit of the Scottish Ministers, the Chargor irrevocably submits to the non-exclusive jurisdiction of the Scottish Courts but without prejudice to the ability of the Scottish Ministers to proceed against the Chargor in any other appropriate jurisdiction.

10 **Warrandice and Consent to Registration**

10.2 The Chargor hereby grants warrandice but excluding from warrandice:

10.2.1 the standard security granted by the Chargor in favour of Clydeport Operations Limited registered under Title Number REN78832 dated 10 September 2014;

10.2.2 the standard security by the Chargor in favour of HCCI in respect of the subjects at Newark Works, Castle Road, Port Glasgow, Scotland PA14 5NG registered under Title Numbers REN35224, REN35386, REN78832, REN114396 and REN135798 dated 2 November 2016; and

10.2.3 the standard security by the Chargor in favour of HCCI in respect of the subjects at Newark Works, Castle Road, Port Glasgow, Scotland PA14 5NG registered under Title Numbers REN35224, REN35386, REN78832, REN114396 and REN135798 dated 14 February 2018.

10.3 A certificate signed by any official, manager or equivalent account officer of the Scottish Ministers shall, in the absence of manifest error, conclusively determine the Secured Liabilities at any relevant time and shall constitute a balance and charge against the Chargor, and no suspension of a charge or of a threatened charge for payment of the balance so constituted shall pass nor any sist of execution thereon be granted except on consignment. The Chargor hereby consents to the registration of this Instrument and of any such certificate for preservation and execution: IN WITNESS WHEREOF these presents consisting of this and the preceding four pages are executed as follows:

SUBSCRIBED for and on behalf of the said
FERGUSON MARINE ENGINEERING LIMITED

at GLASGOW

on 22 JUNE 2018

by



Director / ~~Authorised Signatory~~

GERARD MARSHALL

Print name

in the presence of:

Witness: 

Full Name: RACHEL O'REILLY

Address: BRODIES LUR

110 QUEEN ST

GLASGOW G1 3BX