



Between

████████████████████

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

---

**Determination**

---

**Introduction**

1. This matter comes before the Tax Appeal Commission (hereinafter “the Commission”) as an appeal against an assessment to Capital Gains Tax (“CGT”) for 2015 which was raised by the Revenue Commissioners (hereinafter “the Respondent”) on 27<sup>th</sup> April 2018. The Appellant makes his appeal in accordance with the provisions of section 945 Taxes Consolidation Act 1997 (“TCA 1997”).
2. The oral hearing took place before the Commissioner on 12<sup>th</sup> September 2022. Both the Appellant and the Respondent were represented at the hearing by Counsel.
3. The amount of tax at issue is €130,000.

**Background**

4. The Appellant carried on the trade of a fisherman. On 21<sup>st</sup> October 2015 the Appellant entered into a Memorandum of Agreement (“Memorandum”) for the sale of his fishing vessel and its related capacity/tonnage (this refers to the type and amount of fish that a fishing vessel is lawfully allowed to catch).

5. The Appellant submitted his CGT computation on the basis that the disposal took place in the tax year 2016. In that computation, the Appellant claimed entrepreneurial relief under section 597AA TCA 1997. This relief was introduced on 1<sup>st</sup> January 2016 and subject to certain conditions being fulfilled permitted a taxpayer to pay CGT at the reduced rate of 20% (rather than the standard rate of 33%) on the first €1 million of a chargeable gain where the taxpayer has disposed of their business. As the Appellant had disposed of his fishing vessel and related capacity/tonnage, he was deemed to have disposed of his business and had he so done on a date on or after 1<sup>st</sup> January 2016, he would have been entitled to claim entrepreneur's relief in calculating his liability to CGT.
6. On 31<sup>st</sup> January 2017, the Respondent initiated an aspect query in relation to the Appellant's tax affairs and requested the Appellant to provide it with a copy of his financial accounts for the year ended 31<sup>st</sup> December 2015 and a capital gains tax computation in relation to the disposal of assets which occurred in that year.
7. The Appellant's agent replied to this correspondence on 8<sup>th</sup> March 2017 and included a copy of the Appellant's financial accounts for the thirteen month period ended 31<sup>st</sup> January 2016 marked "cessation" and a copy of the Appellant's 2016 capital gains tax computation.
8. On 14<sup>th</sup> March 2017, the Respondent thanked the Appellant's agent for his correspondence of the 8<sup>th</sup> March 2017 and requested-
  - (a) Details of the basis for the claim for Entrepreneur Relief.
  - (b) The date(s) of sale of the assets and supporting documentation.
9. On 25<sup>th</sup> April 2017, the Appellant's agent replied and advised that the Appellant had sold his fishing vessel and associated tonnage. The agent also advised that the Appellant was a "relevant individual" (meaning he fulfilled the legislative requirements for entrepreneur's relief) and they enclosed a copy of the Memorandum which was dated 21<sup>st</sup> October 2015. The agent further advised in that correspondence that "*the disposal took place in January after the conditions of the Memorandum of Agreement had been fulfilled*" and they attached copies of bank statements which showed that the sale proceeds of ██████████ were received on the following dates.
  - 17<sup>th</sup> December 2015            € ██████████
  - 19<sup>th</sup> January 2016            € ██████████
  - 10<sup>th</sup> February 2016            € ██████████

10. The Respondent replied to this correspondence on 26<sup>th</sup> May 2017 and advised that they had forwarded a copy of the Appellant's Memorandum to their legal division for review. The Respondent stated following this review they were advised that as the Memorandum was not subject to any condition which would make it a conditional contract, the date of disposal for CGT purposes was the date of the Memorandum and as such the disposal was deemed to have occurred in the 2015 rather than the 2016 tax year. The Respondent's correspondence further advised as Entrepreneur's relief was only operative for the tax year 2016 onwards that the Appellant was ineligible for the relief and given this position an additional amount of €130,000 was due in respect of CGT.
11. The Appellant's agent wrote to the Respondent on 2<sup>nd</sup> October 2017 and advised that as there were a number of conditions which had to be satisfied as set out in the Memorandum and as the power to satisfy these conditions lay with persons who were not a party to the Memorandum, they were not in agreement that the sale took place in 2015. The Appellant's agent attached a copy of a "*Certificate of Registry of An Irish Fishing Boat*" which was issued by the Licencing Authority for Sea-Fishing Boats. This document showed the Appellant's boat was registered in the new owners name on [REDACTED] [REDACTED] 2016 and as such the Appellant's agent claimed was proof that the disposal took place in 2016.
12. The Respondent replied to that correspondence on 23<sup>rd</sup> October 2017. They advised that details of Bills of Sale, which prove ownership, are maintained in its offices by the Registrar of Shipping. The Respondent advised that they examined the Bill of Sale in relation to the sale of the Appellant's vessel which was signed and dated by the parties on [REDACTED] [REDACTED] 2015. The Respondent stated that this showed that the disposal took place in 2015 and not 2016 as alleged by the Appellant. The Respondent further advised that they had requested their legal department to review the Memorandum a second time in light of the Appellant's agent's letter of October 2<sup>nd</sup> and they reiterated that the contract was not a conditional contract.
13. Further correspondence exchanged between the Appellant's agent and the Respondent throughout early 2018. As the Appellant and the Respondent could not reach agreement on the payment of additional tax, the Respondent issued a Notice of Assessment to CGT on 27<sup>th</sup> April 2018 in the sum of €130,000.
14. The Appellant subsequently exercised their right to appeal that assessment and a notice of appeal was lodged with the Commission on 21<sup>st</sup> May 2018.

## Legislation

15. *The legislation relevant to this appeal is as follows:*

Section 542 TCA 1997

*Time of disposal and acquisition.*

(1) (a) *Subject to paragraph (b) and subsection (2), for the purposes of the Capital Gains Tax Acts, where an asset is disposed of and acquired under a contract, the time at which the disposal and acquisition is made shall be the time at which the contract is made (and not, if different, the time at which the asset is conveyed or transferred).*

(b) *Where the contract is conditional (and in particular where it is conditional on the exercise of an option), the time at which the disposal and acquisition is made shall be the time at which the condition is satisfied.*

...

(2) *[Relates to the receipt of capital sums from compensation payments, etc. and as such, is not applicable to the Appellant's Disposal]*

## Submissions

### Appellant

16. The Appellant's Counsel submitted that the disposal could not have occurred in the tax year 2015 as the written Memorandum entered into between the Appellant and the purchaser contained a number of conditions which had to be satisfied. He stated that as those conditions were not fulfilled until [REDACTED] [REDACTED] 2016, then the correct disposal date was in the tax year 2016.

17. The Appellant's Counsel further submitted that those conditions extended outside the direct reading of the Memorandum and in order for the Memorandum to be binding between the parties regard should be had to the doctrine of business efficacy (this is a doctrine which is invoked to read a term in an agreement so as to achieve the result or consequent of the parties acting as prudent businesspeople).

18. The Appellant's Counsel opened the case of *Murphy O'Toole & Sons Ltd. and another [2014] IEHC 486*. In that case, while the Court refused to employ a condition in relation to the sale of a vehicle that the sale was subject to the purchaser acquiring a loan to purchase the vehicle, (the contract was silent on same), Counsel for the Appellant

submitted that this was proposition for authority that a Court could infer conditions into a contract in order for it to be effective. The Appellant's Counsel distinguished that case from the instant appeal by stating that the case referred to the sale of a vehicle simpliciter whereas the Appellant was disposing of his vessel and the attached fishing rights, that these were inalienable from one another and as such the sale of the vessel could not occur unless the associated fishing rights were also transferred.

19. The Appellant's Counsel advised under the extensive Maritime legislation which exists such as the Merchant Shipping (Regulation of Ships) Act 2014, the Mercantile Marine Act 1955, the Maritime Safety Act 2005, the Sea Fisheries Jurisdiction Act 2006, the Merchant Shipping Act 1894 and various EU Fishing policy Directives (specifically, EU Council Regulation No 1224/2009 and EU Council Regulation No. 1380/2013), that for the sale to complete regard was required to that legislation and the procedural steps involved.

20. In outlining these steps, the Appellant's Counsel advised it was first necessary that the vessel be transferred into the purchaser's name as only then could the purchaser request that the associated licence and tonnage be transferred to them in their capacity as the new owners of the vessel.

21. The Appellant's Counsel stated that each of the steps involved could not be taken for granted by either the Appellant or the purchaser as the power to satisfy the necessary steps for the sale to complete was contingent on third party approval and was not an automatic right attaching to the sale of the vessel. In highlighting that the consent was conditional, the Appellant's Counsel opened a letter from the Licencing Authority to the Appellant dated [REDACTED] 2015 which stated:

*"I must now advise you that until this mortgage has been cleared **consideration cannot be given to the removal of Fishing Boat Register [emphasis added]**".*

22. The Appellant's Counsel stated that as there were three main conditions which had to be satisfied after the vessel was transferred to the purchaser before the sale could complete. This steps consisted of the completion of a Bill of Sale, a Certificate of Registration and the transfer of the sea licence. The Appellant's Counsel submitted that as each of these individual requirements could be frustrated at any stage by third parties, who could for example refuse to the transfer the licence if the purchaser was not a "*fit and proper person*", then this meant that the Memorandum entered into between the Appellant and the purchaser equated to a conditional contract.

23. Given the Appellant's Counsel's view that the Memorandum was a conditional contract, he submitted that the provisions of section 542 (1) (b) TCA 1997 were effective. Those provisions state that where a contract is conditional the time at which the disposal is made shall be the time at which the condition is satisfied. As the Appellant's Counsel was of the opinion that some of the Memorandum conditions were not satisfied until [REDACTED] [REDACTED] 2016, he submitted that the correct date for the disposal was 2016 as this represented the year in which the final necessary "paperwork" issued.
24. The Appellant's Counsel advised that while the vessel itself was transferred to the purchaser on [REDACTED] [REDACTED] 2015, that this transfer was required to assist completion of the other procedural matters necessary for the sale to occur. He stated that as the provisions of section 542 (1) (b) TCA 1997 do not treat the disposal as occurring on the date that the asset was transferred, then no regard should be had by the Commission to those provisions.
25. In summation, the Appellants Counsel submitted that the Memorandum contained or inferred conditions precedent (a condition or an event that must occur before a right, claim, duty, or interest arises) and conditions subsequent (which is an event or state of affairs that, if it occurs, will terminate one party's obligation to the other) as the sale of the vessel would not have occurred until the date the licence and fishing rights were assigned to the purchaser. Counsel advised that as the last of the conditions of the Memorandum were not fulfilled until [REDACTED] [REDACTED] 2016, then the disposal date for CGT purposes was 2016 and as such the Notice of Assessment should be vacated by the Commission.

*Respondent*

26. The Respondent's Counsel submitted that as the Appellant was legally advised on the sale of his business, he was especially bound by the terms of the Memorandum and it was not for them or the Commission to infer any conditions into that Memorandum.
27. The Respondent's Counsel submitted that the simple matter to be established by the Commission was the date of the disposal for CGT purposes and while the Appellant's Counsel made numerous submissions in relation to contract law they had little relevance to the issue at hand.
28. The Respondent's Counsel submitted that the only document of relevance to the instant appeal was the Memorandum itself and the terms and conditions of that Memorandum were of essence. The Respondent's Counsel distinguished between conditional clauses and conditions regarding the closing of the sale and submitted that

conditional clauses would prevent the contract from closing (until satisfied) whereas conditions regarding the closing of sale being procedural rather than contractual would not.

29. The Respondent's Counsel acknowledged that in order for the transfer of the vessel and associated licence and fishing rights to be effective, the Appellant was required to transfer the vessel firstly. However, they submitted that the subsequent procedures required for the sale to complete as outlined in the Memorandum were procedural issues and likened this to the discharge of a mortgage or similar charge on the sale of a property.
30. The Respondent's Counsel drew the distinction between the formation of a legally binding contract and the completion of that contract in submitting that the Appellant's Counsel was not distinguishing between those terms. The latter is defined by Murdoch and Hunt's dictionary on Irish Law as:

*"The final stages in a contract for the sale of land which is affected by the delivery of good title and of actual possession or enjoyment thereof to the purchaser and by the purchaser accepting such title and paying the agreed purchase price."*

31. Counsel for the Respondent opened the United Kingdom ("UK") case of *Hatt v Newman (Inspector of Taxes) 2000 STC 113*. That case concerned the sale of property in which contracts were exchanged on 21 February 1995. The completion date of 20<sup>th</sup> March 1995 was conditional on the granting of planning permission by a local authority. However as planning permission was not granted until 29<sup>th</sup> March 1995, completion of the contract did not occur until 6<sup>th</sup> April 1995. It was held that the contract was a conditional contract within the meaning of TCGA 1992 s.28 (2) [UK equivalent of section 542(1) (b) TCA 1997] and, consequently, the disposal of the property took place when the condition was fulfilled on 29 March 1995. Jonathan Parker J, stated as follows at page 118:

*"In any event, even if on a true analysis the contract was not a conditional contract within the meaning of TCGA 1992 s.28 (2) (on the footing that the condition in relation to planning permission was a condition subsequent, which did not prevent contractual obligations arising when the contract was concluded), the appropriate date would have been the date of the contract."*

32. Counsel for the Respondent submitted that this was authority to suggest that where a contract is entered into between parties and that contract does not contain any

conditions then the appropriate date for CGT purposes is the date on which the parties entered the contract.

33. In determining whether a contract is conditional or not, Counsel for the Respondent referred to the UK case of *Parway Estates Ltd v Commissioners of Inland Revenue* 45 TC 134 where it was held that a contract for the sale of shares was unconditional despite the fact that the transferor was required to perform various obligations prior to the sale. Counsel for the Respondent likened this case to the Appellant's appeal in submitting that as the Memorandum was unconditional the appropriate date for CGT purposes was the date the Appellant and the purchaser signed the Memorandum, [REDACTED] 2015.
34. In relation to the Appellant's Counsel's submission that third party consent was required in order for the sale to complete, Counsel for the Respondent opened the UK case of *Manchester Diocesan Council for Education v Commercial and General Investments Ltd* [1969] 3 All ER 1593. That case involved the sale of land which could only be sold subject "to the approval of the purchase price" by the Secretary of State for Education and Science. It was held that although the power to complete the sale was conditional on prior approval of the price being obtained, this did not affect the power to conclude a contract and accordingly the contract made was not invalidated by a failure to obtain prior consent. Buckley J. stated as follows at p.1598:

*"But it is said that clause 4 of the 1962 scheme conferred only a conditional power of sale and that ministerial approval was necessary before a contract of sale could be made. Reliance is placed on Milner v Staffordshire Congregational Union (Inc) where it was held that it was unlawful for charity trustees to enter into a contract of sale under the Charitable Trusts Amendment Act 1855, s 9, without the prior approval of the charity commissioners. In my judgment, that case is clearly distinguishable from the present case. Section 9 of the Act of 1855 expressly makes any sale by charity trustees—ie, any contract for sale—unlawful unless it is made with the approval of the commissioners. The power to contract is conditional on prior approval. The requirement of clause 4 of the 1962 scheme in the present case is quite different. By that clause the governing body is authorised to sell property comprised in the scheme but any sale—i.e., any contract for sale—is required to be conditional on ministerial approval of the price being obtained. The power to complete a sale is conditional on prior approval, but not the power to contract. The fact that ministerial approval was not obtained until 18 November*



*1964 does not, in my judgment, invalidate the contract, if any, made on 15 September.” [emphasis added]. Similarly, in the present case it is submitted that the fact that certain licencing and registration and other statutory requirements had to be complied with does not mean that the agreement entered into on 21 October 2015 was not a binding unconditional agreement”.*

35. Counsel for the Respondent stated that in order for a contract to be deemed conditional in nature the courts held in the UK case *Lee Parker and another v Izzet and others (no. 2) [1972] 2 All ER 800* (“Parker”) that the terms of the condition in question must be clear and certain. In *Parker* the contract contained a special condition which provided: *‘This sale is subject to the purchaser obtaining a satisfactory mortgage’*. It was held that the condition was void for uncertainty since the concept of a satisfactory mortgage was too indefinite for the court to give it practical meaning. The Respondent’s Counsel submitted that if the Memorandum contained any conditions that they were unclear and uncertain and as such should be disregarded by the Commission.
36. The Respondent’s Counsel stated that the various clauses in the Memorandum related purely to procedural issues concerning the consideration, completion and delivery. The Respondent’s Counsel submitted that as none of the clauses contained any express condition to the effect that performance was conditional, such as “subject to” the issuance of the licence or “subject to” the entry of the vessel in the Register of Irish Fishing Boats or the Shipping Register, then the date of the disposal was the date of the signing of the Memorandum by the Appellant and the Purchaser which put the transaction into the 2015 tax year. As such the Respondent’s Counsel requested that the Commission uphold the assessment in the sum of €130,000.

#### **Documentation Presented to the Commission**

37. The following documentation was presented to the Commission:

- 37.1 The Memorandum of Agreement dated [REDACTED] [REDACTED] 2015 [**Appendix 1**].
- 37.2 A letter from the Department of Agriculture, Food and Marine (“the Department”) to the Appellant dated [REDACTED] [REDACTED] 2015. This letter states that the Department will not de-register the vessel until the associated mortgage and certain sum due to the Respondent are discharged.
- 37.3 A Bill of Sale dated [REDACTED] [REDACTED] 2015 showing the transfer of the vessel to the purchaser.

- 37.4 A letter from the Department dated [REDACTED] [REDACTED] 2016 showing a non-operative licence in respect of the vessel being issued to the purchaser. That correspondence states that the purchaser is eligible for an operative licence provided an application is made within a period of three months.
- 37.5 A certificate of Registry of an Irish Fishing Boat issued by the Licencing Authority for Sea-Fishing Boats in respect of the vessel issued to the purchaser on [REDACTED] [REDACTED] 2016.
- 37.6 An extract from the Transcript of Register issued by the Respondent to the purchaser recording the sale from the Appellant to the purchaser dated [REDACTED] [REDACTED] 2016.
- 37.7 A copy of the Sea-Fishing Boat Licence issued in respect of the vessel in the purchaser's name dated [REDACTED] [REDACTED] 2016.

### **Material Facts**

38. The Commissioner finds the following material facts:-

- 38.1 The Appellant entered into a Memorandum of Agreement for the sale of his vessel and related capacity/tonnage on [REDACTED] [REDACTED] 2015.
- 38.2 The Appellant submitted his CGT computation to the Respondent which recorded the date of disposal as occurring in the 2016 tax year.
- 38.3 A dispute has arisen between the Appellant and the Respondent as to whether the sale occurred in the 2015 or 2016 tax year.
- 38.4 The vessel and the related capacity/tonnage were required to be disposed of together for the sale to be effective.
- 38.5 A number of steps were required to be undertaken to ensure that the vessel, licence and fishing rights were transferred to the purchaser.
- 38.6 If those steps were not fulfilled, it is likely that the Memorandum entered into between the parties would have become frustrated.

### **Analysis**

39. The provisions of section 542 (1) (a) TCA 1997 provide that the relevant date for the disposal of an asset is the date that the contract is made and not the date that the asset is transferred. Subsection (1) (b) further provides that where the contract is

subject to conditions, the relevant date for a disposal is the date(s) those conditions are satisfied.

40. While both Counsel for the Appellant and the Respondent made submissions in relation to the date the vessel was transferred from the Appellant to the purchaser, the Commissioner having regard to the provisions of section 542 (1) (a) TCA 1997 finds these submissions unhelpful and discounts them accordingly.
41. It therefore follows that the central issue to be determined by the Commissioner is whether the Memorandum entered into between the Appellant and the purchaser on ■■■■■ 2015 was subject to conditions and if so whether those conditions were satisfied in the 2015 or 2016 tax year.
42. While not binding in this jurisdiction, the UK case of *L'Estrange v Graucob* {1934} 2 KB 394 ("*L'Estrange*") is of assistance as it states that a person who signs a contract may not generally dispute his agreement to any of the terms which it contains.
43. The Commissioner notes that the Memorandum annexed at Appendix One is poorly drafted in that it contains an error (Clause 3 – "Completion" states that the Completion shall take place subject to the provisions of Clause 1.2, while the Memorandum itself does not contain any such clause) and while a completion date is referred to under Clause 3 same has not been populated. It is also noted by the Commissioner that Clause 2 "Consideration" specifies how the purchase price was to be paid and while the full consideration was ultimately paid by the purchaser it was not in the manner prescribed by the Memorandum.
44. That having said, having regard to *L'Estrange* and noting that the sale ultimately completed, the Appellant was subject to the terms of that Memorandum. In examining the terms of the Memorandum and having particular regard to the documentation required under Schedule 2 of that document, the Commissioner agrees with the Respondent's submission that those requirements were procedural rather than conditional in nature and given this position does not find that the wording of the Memorandum gives rise to any express conditions.
45. In forming the above position, the Commissioner is aware that completion of the agreement could not have occurred until all of the relevant documentation was furnished by the Appellant to the purchaser and the Statutory Regulations were complied with. However had the agreement not completed for one reason or another, there would have been no disposal for CGT purposes and the date of disposal would not be in issue.

46. While Counsel for the Appellant likened the sale of the Appellant's vessel to that of a property sold "subject to planning permission", the Commissioner was not convinced of such argument as the Memorandum does not contain any "subject to" or similar contingent conditions. Furthermore, the language used in the Memorandum and the actions of the parties up to the closure of the sale reinforce the Commissioner's belief that the Memorandum does not contain any express conditions.

47. The criteria for implying a term into a contract were expressed succinctly by the Privy Council in the UK in the case of *B.P. Refinery (Westernport) Pty Ltd -v- Shire of Hastings (1978) 52 ALJR 20* where it was held:

*(1) it must be reasonable and equitable;*

*(2) it must be necessary to give "business efficacy" to the contract, so that no term will be implied if the contract is effective without it;*

*(3) it must be so obvious that 'it goes without saying';*

*(4) it must be capable of clear expression;*

*(5) it must not contradict any express term of the contract."*

48. The business efficacy test was confirmed in the more recent UK Supreme Court case of *Marks and Spencer plc -v- BNP Paribas Securities Services Trust Company (Jersey) Ltd and another [2015] UKSC 72* where it confirmed that a term will only be implied if a reasonable reader of the contract, knowing all its provisions and the surrounding circumstances at the time the contract was made, would consider the term to be so obvious as to go without saying or to be necessary for business efficacy.

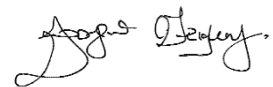
49. While Counsel for the Appellant submitted that the Memorandum entered into between the Appellant and the purchaser required implied terms to be inferred into the sale of the Appellants vessel and its associated rights for business efficacy purposes, the Commissioner is not in agreement with this. The Commissioner considered the outcome of inserting inferred terms of a type suggest by the Appellant's Counsel into the Memorandum and noted that the only tangible effect of this scenario is that the Appellant would be liable to pay less CGT owing to the availability of Entrepreneur's Relief. While this would have been ultimately beneficial for the Appellant, the Commissioner does not agree that this outcome would satisfy the business efficacy test and discounts the Appellant's Counsel Submissions in this regard. Furthermore, the Commissioner does not see any additional circumstances which would warrant the

inclusion of any inferred conditions into the Memorandum drafted by the Appellant's solicitor.

50. Given this position the Commissioner determines that the Memorandum entered into between the Appellant and the purchaser did not contain any express or implied conditions regarding the sale and as such that the relevant date of the disposal is ■■■■■ 2015. As this finding places the disposal into the 2015 tax year it follows that entrepreneur's relief must be denied to the Appellant and the assessment in the sum of €130,000 is upheld.

### **Determination**

51. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in treating the disposal as occurring in the 2015 tax year. Accordingly, the assessments are upheld and the appeal is denied. It is understandable that the Appellant might be disappointed with the outcome of this appeal. The Appellant was correct to check to see whether his legal rights were correctly applied
52. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, section 949AK thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Andrew Feighery  
Appeal Commissioner  
06th October 2022

**The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997**

## **APPENDIX 1 – The Memorandum**

**MEMORANDUM OF AGREEMENT** made this [REDACTED] [REDACTED] 2015 between [APPELLANT] (hereinafter called “the Vendor”) One Part and [The purchaser] (hereinafter called “the Purchaser”) of the Other Part.

### **WHEREAS:**

The Vendor is the registered owner of the vessel [REDACTED] as described in the First Schedule hereto (hereinafter referred to as “the Vessel”).

The Vendor has agreed to sell the Vessel together with the equipment thereon as viewed and all spare parts in the possession of Vendor and agreed by the parties hereto together with the Capacity of the Vessel to the Purchaser for the price or sum of [REDACTED] (the “Purchase Price”) on the following terms and conditions:-

### **NOW IT IS HEREBY AGREED between the parties as follows:**

#### **1. PURCHASE**

1.1 Subject to the provisions of this agreement, the Vendor agrees to sell and the Purchaser agrees to purchase the Vessel and Capacity, together with all of the equipment thereon as viewed and agreed by the Parties hereto including all spare parts in the ownership of Vendor and with all Plans and Certificates relating to the Vessel in the Vendor’s possession or under its control, at the date of delivery of the Vessel.

#### **2. CONSIDERATION**

2.1 Upon signing of this Agreement, the Purchaser shall pay a 10% deposit in the amount [REDACTED] (the “Deposit”) to be held by [REDACTED] solicitors pending completion of this Agreement.

2.2 On completion as detailed below (in Clause 3 hereof) the Purchaser will pay the balance of [REDACTED] in exchange for the completion documentation set out in the Second Schedule hereto.

2.3 The total amount of the consideration herein will be held, in trust. pending receipt by the Purchaser of a validly executed Bill of Sale by the Vendor transferring ownership of the Vessel and Capacity Assignment together with all of the equipment thereon as viewed and agreed by the parties hereto and including all

spare parts in the ownership of Vendor and all plans and certificates relating to the Vessel in the Vendor's possession or under its control at the date of delivery of the Vessel to the Purchaser, as evidenced by the Bill of Sale. In addition, the Vendor shall deliver all documents relating to the Vessel set out in the Second Schedule hereto, on completion.

2.4 On completion, the Vendor shall hand to the Purchaser the keys of the Vessel.

2.5 The Vendor will maintain the insurance cover as exists at the date of this Agreement in respect of the Vessel until the completion date as specified in Clause 3.1.

### **3. COMPLETION**

3.1 Completion of this Agreement shall take place following:-

- a. Receipt by the Vendor of the balance purchase monies;
- b. Receipt by the Purchaser's Solicitor of the documentation set out in the Second Schedule hereto:

and completion shall take place on the day of

2015, subject to the provisions in Clause 1.2 hereof.

On completion, the Vendor shall deliver the Vessel to the Purchaser at [REDACTED].

### **4. AFTER COMPLETION**

After completion and delivery as detailed above in Clause 3 hereof the Vessel with everything belonging to her shall be at the Purchaser's risk and expense and the Vendor shall have no responsibility for any possible default or deficiency of any description.

### **5. REPRESENTATIONS AND WARRANTIES**

5.1 In respect of the Vessel, the Vendor represents, declares and warrants as follows:

- a. The Vessel is sold "as is where is" and no representation, declaration, or warranty is or has been given by the Vendor to the Purchaser, in respect of the condition of the Vessel. her tackle, apparel, furniture and stores, including machinery and appurtenances, and the Purchaser shall on completion, be deemed to have inspected the Vessel and hereby undertakes that it has not relied on any information (including the contents of the Schedule hereto) which

it may have been given by or on behalf of the Vendor and that it shall have relied solely on its own enquiries and inspections.

b. Subject to the above, the Vendor warrants that the Vessel is free of any debts or encumbrances and that the equipment, gear and items being sold with the Vessel as viewed and agreed by the Parties are not subject to any lease, rental, hire purchase agreement or chattel mortgage.

## **6. LOSS**

Should the Vessel be lost or become a constructive or compromised total loss before completion of this Agreement, this Agreement shall become null and void in which event the Deposit in the sum of ██████ shall be returned in full to the Purchaser without any claim or deduction being made in respect of interest, costs or compensation.

If any damage is occasioned of the Vessel between the date of this agreement and the date of completion of this agreement which in the reasonable opinion of the vendor would cost more than €10,000 (ten thousand euros) to correct, Vendor will advise Purchaser before completion of this Agreement and the Purchase Price will be reduced by an amount equal to the cost of correcting the damage.

If any damage is occasioned to the Vessel between the date of this Agreement and the date of completion of this Agreement which in the reasonable opinion of Vendor would cost more than €50,000 (fifty thousand completion euros) to correct, Vendor will advise Purchaser before and Purchaser shall be at liberty to rescind this Contract, in which event the deposit shall be refunded, in full to the Purchaser, without any claim being made in respect of interest, loss or damage.

If Vendor and Purchaser do not agree on Vendor's estimate of the extent of damage, an Independent Marine Surveyor, will engage in good faith to agree on the estimate of the extent of damage. If agreement cannot be reached between Purchaser's agent and Vendor's agent on the estimate of the extent of damage, then the provisions of Clause 9 of this Agreement shall prevail.

## **7. VENDORS' RISK AND PURCHASER'S RISK:**

The Vessel with everything belonging to her shall be at the Vendor's risk and expense until completion, but subject to the terms and conditions of this



Agreement, the Vessel with everything belonging to her shall be delivered on completion and taken over as she is at the time of delivery, after which the Vendor shall have no responsibility for any possible default or deficiency of any description.

**8. VENDOR'S DEFAULT:**

If Vendor fails to execute a legal transfer or to deliver the Vessel with everything belonging to her in the manner or within the time specified in Clause 3, Purchaser shall have the right to cancel this contract in which case the deposit in full shall be returned to Purchaser, together with interest at the rate of 2% per annum. The Vendor shall make due compensation for the loss caused to Purchaser by failure to execute a legal transfer or to deliver the vessel in the manner and within the time specified in Clause 3 if same are due to the proven negligence of Purchaser

**9. ARBITRATION:**

This Agreement shall in all respects be interpreted in accordance with the Laws of the Republic of Ireland. Any dispute arising from this Agreement shall be submitted to arbitration by an arbitrator to be agreed by the Parties, or in default of agreement, to be nominated by the President of the Incorporated Law Society of Ireland.

**FIRST SCHEDULE**

Name of Vessel - [REDACTED]

Official number - [REDACTED]

Number, date and Port of Registry) — [REDACTED]

Length OA. — [REDACTED]

Gross tonnage — [REDACTED]

**SECOND SCHEDULE**

1. Up to date Transcript of the Register
2. Certificate of Registry
3. Bill of Sale
4. Discharged Marine Mortgage

5. Up to date copies of vendor's Licences from MSO
6. Explanation of all acts appearing on Searches against the Vendor and against the Vessel
7. All other documents in the Vendor's Control and possession relating to the Vessel.
8. Satisfactory Survey
9. Confirmation of Fishing Entitlements

[Signature affixed]  
SIGNED AND DELIVERED  
By the said [APPELLANT]  
In the presence of [WITNESS]

[Signature affixed]  
SIGNED AND DELIVERED  
By the said [PURCHASER]  
In the presence of [WITNESS]