

**PROCLAMATION OF SALE**

**IN THE HIGH COURT IN SABAH AND SARAWAK AT MIRI**

**ADMIRALTY IN REM NO. MYY-27NCC-3/2-2021 (HC)**

Admiralty Action in Rem against:

Ship or vessel **"ATLAS SWIFT"** (IMO No. 8924240)

**BETWEEN**

**SARAWAK RIVERS BOARD**

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Floor,  
Electra House, Power Street,  
93000 Kuching, Sarawak

**... PLAINTIFF**

**AND**

**THE OWNERS AND/OR ANY OTHER  
PERSON INTERESTED IN THE SHIP  
OR VESSEL "ATLAS SWIFT" (IMO No. 8924240)**

**... DEFENDANT**

In pursuance of the Order of Court dated the 11<sup>th</sup> day of November, 2021, a Licensed Real Estate Agent from M/s. C. H. Williams, Talhar, Wong & Yeo Sdn. Bhd. will sell by

**PUBLIC TENDER**

On **Thursday, the 16<sup>th</sup> day of December, 2021 at 10:00 a.m.** at the Auction Room, 1<sup>st</sup> Floor, Kompleks Mahkamah Miri and in the presence of the Court Bailiff, the said Vessel specified in the schedule thereunder: -

**SCHEDULE**

**Crew Boat Vessel**

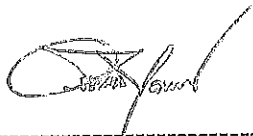
<b>Name</b>	<b>: ATLAS SWIFT</b>
<b>IMO No.</b>	<b>: 8924240</b>
<b>Built</b>	<b>: 1996</b>
<b>Shipbuilder</b>	<b>: Breaux Bros Enterprises Inc.</b>
<b>Engine Builder</b>	<b>: Cummins Engine Company</b>
<b>Ship Owner</b>	<b>: Atlas OffShore Services Pte Ltd</b>
<b>Dimensions</b>	<b>: Length-36.7936 m Breadth-8.255 m Depth-3.5306 m</b>
<b>Tonnage</b>	<b>: Gross-250 Net-75</b>

Tender documents will be received from the 2<sup>nd</sup> day of December, 2021 at 8:30 a.m. until the 16<sup>th</sup> day of December, 2021 at 10:00 a.m. The Tender documents including Conditions of Sale are available from High Court Registry, Miri, Messrs. Reddi & Co., Advocates, Kuching or Messrs. C. H. Williams, Talhar, Wong & Yeo Sdn. Bhd., Miri during the tender period.

The above vessel will be sold subject to the reserve price of **RM570,000.00** fixed by the Court and subject to the Conditions of Sale set forth below.

For further particulars, please apply to Messrs. Reddi & Co., Advocates, Reddi Building, No. 393, Jalan Datuk Abang Abdul Rahim, Kuching, Sarawak, Telephone Nos.: 082-484466 or Messrs. C. H. Williams, Talhar, Wong & Yeo Sdn. Bhd., Lot 1139, Waterfront Commercial Centre, P. O. Box 1121, 98008 Miri, Telephone Nos.: 085-432821/432480.

Dated this 23<sup>rd</sup> day of November, 2021.



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Licence Real Estate Agent from

**C H WILLIAMS TALHAR WONG & YEO SDN BHD (24706-T)**

# CONDITIONS OF SALE BY TENDER

## 1.0 TENDER DOCUMENTS

- 1.1 Tenders shall be enclosed in a sealed envelope with the words on top marked “ADMIRALTY IN REM NO. MYY-27NCC-3/2-2021 (HC)” and addressed to The Registrar, High Court in Sabah and Sarawak at Miri and deposited into the tender box at the Registry of the High Court, Miri personally or by his/her representative. Tenders received by post of hand and not deposited in the Tender Box will be rejected.
- 1.2 The tenders should consist of the following particulars: -
  - (a) Name and identity card number or business registration number or company number of the tenderer;
  - (b) Postal address and telephone number of the tenderer;
  - (c) The Admiralty in Rem No and the said Vessel’s name; and
  - (d) Tender price.
- 1.3 Tenders shall be submitted in the prescribed Tender Form. Any Tender not submitted in the prescribed Tender Form will be rejected outright. At the time of collecting the Tender Form, the Tenderer(s) will be required to pay a non-refundable fee of RM10.00 per set.
- 1.4 If the Tender documents are not completed properly or if the instructions on the Tender have not been complied with fully, the Tender shall be deemed to be bad and rejected.

## 2.0 TENDER BOX

- 2.1 The tender shall be deposited unopened immediately upon receipt in a locked Tender Box on which shall be marked the date and time at which it is to be opened. Three locks shall be provided for the box and keys shall be separately held by the Registrar, High Court, Miri, or his representatives, the Plaintiff’s counsel and the said Agent.
- 2.2 During the currency of a tender, the box will be kept at all times at the Miri High Court Registry and the public are allowed to deposit their tenders personally into the Tender Box during office hours of the High Court Registry.
- 2.3 The Tender box shall be removed and stored after office hours in the office safe or some other equally secured place under the authority of the Senior Assistant/Deputy Registrar, High Court, Miri.
- 2.4 The tender box shall be opened immediately after the appointed closing hour of the Tender Box in the presence of the Sheriff or his representative, Plaintiff’s Counsel (and the Defendant’s Counsel, where applicable) the appointed Agent and the tenderers only at the Auction Room, Judicial Department, Miri. during the opening of the Tender Box, there shall be no other persons present in the Auction Room save for the above persons.

## 3.0 TENDERER’S OFFER

- 3.1 A Tenderer should be a person/body who is legally capable of entering into a contract and should under no disability.
- 3.2 The mere act of submission of the Tender Form in a sealed envelope to the Court Bailiff/Sheriff, High Court in Sabah and Sarawak, shall, ipso facto, mean that the Tenderer has inspected and is satisfied with the condition of the said vessel and that his offer to purchase is subjected to the reserve price fixed by the Court and to the conditions herein set forth.
- 3.3 The Tenderer’s offer once made cannot be varied or revoked unilaterally by the Tenderer and shall remain open at all times for acceptance.
- 3.4 Submission of Tender in sealed envelope to the Registrar, High Court, serves that the Tenderer has duly inspected the vessel and thereby offer to purchase the same subject to the reserve price fixed by the Honourable Court free from legal encumbrances and subject to the Conditions of Sale set forth below.

- 3.5 Each person who submits the Tender shall be deemed to accept these conditions and to have undertaken that this Tender is made in accordance with them and that his Tender will remain unvaried and open for acceptance.

#### 4.0 ACCEPTANCE OF TENDER

- 4.1 The said Vessel will be sold subject to the reserve price of **RM570,000.00**. The highest Tender made, which in any case must be higher than or equivalent to the reserve price, shall be accepted and the result announced by the Agent.
- 4.2 Subject to the reserve price, the highest tenderer shall be the Purchaser. If any dispute shall arise as to the highest bid, the Registrar, High Court in Sabah and Sarawak will decide the dispute.
- 4.3 All Tenderers are in any case entitled to make enquiries with the Court Sheriff or Plaintiff's Advocate or Auctioneer and/or Agent if they are not present or represented at the time of the opening of the Tender.
- 4.4 The Tenderer awarded with the sale upon the opening of the Tender shall be notified in writing by the Registrar or the Agent in the prescribed form by AR registered post and this shall be conclusive evidence of notification. If the successful tenderer or his authorised representative is present during the opening of the tender box, he/she can be immediately notified on the spot.

#### 5.0 TENDER DEPOSIT

- 5.1 Each tender must be accompanied by deposit of ten per cent (10%) of the tender price in the form of a Bank Draft and made payable to the "AKAUNTAN NEGARA MALAYSIA". Tenders not accompanied by the deposit of 10% will be rejected.
- 5.2 The Tender deposit from successful Tenderer shall be applied in part satisfaction of the Tender price.
- 5.3 Tender deposit(s) of unsuccessful Tenderer(s) will be returned or refunded without interest.

#### 6.0 PAYMENTS

- 6.1 The balance of the purchase price must be paid in by the successful Tenderer within thirty (30) calendar days from the date of the acceptance of the Tender, to the High Court by non-negotiable bank draft or bank cashiers order. All bank draft or bank cashiers' order shall be made payable to "Akauntan Negara Malaysia".
- 6.2 The deposit of the successful tenderer will be forfeited if the balance of the purchase price is not paid within thirty (30) calendar days from the date of notification of the acceptance of the tender.
- 6.3 In default of payment of the full Tender price within the period allowed, the vessel shall be again put for sale and the deposit, after defraying the expenses of the sale of Tender, shall be forfeited and the deficiency in price (if any) which may result on a resale or the balance of the Tender price, if there is no resale, as the case may be, shall be recoverable from the defaulting Tenderer.
- 6.4 The Proceeds of Sale to be paid into Court and be applied in such manner as the Court shall order but pending payment out, at the written request of the Plaintiff's Advocates, the Deputy Registrar/Senior Assistant Registrar shall be authorised to deposit the proceeds of sale in an interest-bearing account with any reputable banking or financial institution as the Plaintiff's Advocates shall direct.

#### 7.0 CONDITION OF VESSEL

- 7.1 The said Vessel is offered for sale as she lies at J.K.R. R.C. Wharf, Piasau Industrial Estate, Miri in her "as is where is" condition at the date of delivery and sold free and clear from all liens, charges, encumbrances and claims.
- 7.2 No error or misdescription herein shall entitle the successful tenderer to annul the sale or to take legal action against the Court Sheriff or otherwise.
- 7.3 All descriptions or identification stated in any catalogue, advertisement, publication is to provide an overview of the general condition of the vessel and may not exactly reflect the vessel's condition.

7.4 No warranties are given:-

- (a) as to the said Vessel's seaworthiness of condition or the condition of any of her appurtenances or that is fit for any particular purposes;
- (b) that the said Vessel or any of her equipment are appropriately or adequately certificated or that any certificate which appear to have been issued are presently in force;
- (c) as to the ownership of the radio and allied apparatus (if any).

7.5 Tenderer is responsible to inspect the condition and verify descriptions or identification covered in the catalogue, advertisement, publication as well as information relating to fines, insurance, registration and certification requirement by the relevant authorities, etc.

## 8.0 INSPECTION

8.1 Permission to inspect the said Vessel may be obtained from the Court Sheriff of the High Court in Sabah and Sarawak at Miri.

## 9.0 RISK

9.1 As from the time of the sale, the said vessel shall be at the sole risk of the successful Tenderer as regards loss or damages by fire, act of God, breaks-ins, burglary or other unlawful acts or arising through non-occupation or otherwise.

## 10.0 COLLECTION AND TRANSFER

10.1 The possession or ownership of the vessel shall not pass to the successful Tenderer until full payment of the proceeds of sale is received and he will not be allowed to remove the vessel or any portion thereof.

10.2 On completion of the sale, the successful tenderer will assume all responsibility for complying with the Marine Department's and Sarawak River Board's directions (if any) regarding the said Vessel.

10.3 That within seven (7) calendar days after the date of payment into Court of the proceeds of sale, the Court Sheriff shall send for publication in the Gazette and such daily newspaper or publication, a notice complying with Order 70 rule 21(3) of the Rules of Court, 2012.

10.4 The successful Tenderer shall be entitled to collect the vessel immediately upon publication on notification in the Gazette and such daily newspaper or publication, but no later than twenty-one (21) calendar days from the publication date thereof, failing which the Plaintiff shall be entitled to impose charges as stipulated under Regulation 25 (1) of the Sarawak Rivers (Traffic) Regulations, 1993. The manning of the vessel after the twenty-one (21) calendar days shall be under the responsibilities of the successful Tenderer.

10.5 The successful Tenderer shall cause a written notice to be submitted to the Plaintiff through the Plaintiff's Advocate Reddi & Co Advocates three (3) calendar days prior to the collection, on information including but not limited to date, time, method of collection, name of the person or company or appointed agent handling the collection or transportation, and other necessary information required for proper identification.

10.6 The successful Tenderer shall adduce a copy of the notification in the Gazette and other identification documents at the time of collection for verification purposes.

10.7 The successful Tenderer shall collect the vessel at their sole expenses and risks and is responsible for complying with all legal requirements on the removal and transportation of the vessel.

10.8 The success tenderer shall be liable for any fees, duties, taxes or dues of whatever nature which may become payable upon the purchase and transfer of the said Vessel.

10.9 If the successful Tenderer fails to collect the vessel within the stipulated time, the Plaintiff reserves the rights and may in its absolute discretion to deal with vessel in the manners deemed fit.

**11.0 LIBERTY TO TENDER**

- 11.1 The Plaintiff be at liberty to tender for the purchase of the said Vessel.
- 11.2 In the event that the Plaintiff, Sarawak Rivers Board were to tender for the said Vessel, the Plaintiff's tender is not required to be accompanied by deposit of 10% of the tender price in the form of Bank Draft.
- 11.3 If the Plaintiff were to successfully tender at the tender sale of the said Vessel and the tender price of the said Vessel is more than the amount owing by the Defendant to the Plaintiff under the Judgment dated 20.5.2021 (Encl. 28) filed herein as at the date of the tender sale of the said Vessel:-
- (a) the Plaintiff be at liberty to set-off the amount of RM142,945.00 being outstanding wharf fees as at 31.1.2021 and continuing owed by the Defendant together with interest to the Plaintiff under the Judgment dated 20.5.2021 (Encl. 28) as against the tender price of the said Vessel; and
  - (b) the Plaintiff as the successful tenderer, is only obliged to pay the difference between the tender price of the said Vessel and the amount owing by the Defendant to the Plaintiff under the Judgment dated 20.5.2021 (Encl. 28) as at the date of the tender sale of the said Vessel.

**12.0 WITHDRAWAL, POSTPONEMENT OR CANCELLATION**

- 12.1 The Registrar, High Court in Sabah and Sarawak at Miri reserves the right to withdraw or postpone the sale at any time before the opening time of the tender. Before opening of tender, abortion of the tender sale can be made by application to the Deputy Registrar/Senior Assistant Registrar by the Plaintiff or the Plaintiff's Counsel at any time. In this event, the Tender Box will be immediately opened and the deposit returned to the tenderer without interest.
- 12.2 In the event of the Tender sale being set aside for any reasons, the sale shall become null and void and be of no further effect and the Plaintiff shall refund the monies paid free from interest to the Purchaser and the Purchaser is not entitled to any claim and demand whatsoever against the Plaintiff.

**13.0 MISCELLANEOUS**

- 13.1 Any further information may be obtained from the Plaintiff's Advocate Messrs. Reddi & Co Advocates or Messrs. C. H. Williams, Talhar, Wong & Yeo Sdn. Bhd. of Lot 1139, Waterfront Commercial Centre, P. O. Box 1121, 98008 Miri, Sarawak on any working day during office hours.
- 13.2 The Statement made in the Proclamation and conditions of sale is made without responsibility of the Plaintiff, its solicitors and the auctioneer and/or agent.
- 13.3 The terms and conditions herein are deemed to be the Court Sheriff's conditions of sale and is incorporated into and form part of the Proclamation of Sale with Conditions of Sale.
- 13.4 The costs of and incidental to this application shall be paid out from the proceeds of sale.
- 13.5 Such other directions as the Honourable Court may deem fit.