



F6

TEMPLATE AGREEMENT FOR THE CONSTRUCTION OF A NEW BOAT

THIS DOCUMENT IS INTENDED TO CREATE A LEGALLY BINDING CONTRACT; IF YOU ARE UNSURE AS TO THE EFFECT OF ANY OF THE PROVISIONS YOU ARE ADVISED TO TAKE APPROPRIATE PROFESSIONAL ADVICE

THIS AGREEMENT is made on _____ *(insert the date on which the last Party signs the Agreement)*

and is made between:

1. Perrydale Narrowboats Ltd a partnership whose registered office/principal place of business is Ashwood Marina, Kingswinford, West Midlands. DY6 0AQ and represented by Sammy Rose, Boat Broker

2. _____
(insert the Purchaser's full name(s) and address) (the "Purchaser")

(each a "Party" and jointly the "Parties")

| TERMS | |
|---|--------------------------|
| 1. BUILDER'S NUMBER: | GB PDN A |
| 2. ACCEPTANCE TRIAL: | (the "Acceptance Trial") |
| Contract Price: | £ |
| The Boat | |
| Plus VAT (if applicable) | £ |
| Price inclusive of VAT | £ |
| The Contract Price shall be payable by Stage Payments as set out below: | |
| 1) Upon signing of this Agreement | 10% |
| 2) Upon the hull being available at the Builders' premises ready for fitting out. | 40% |
| 3) *Fit out being mid-way through completion | 40% |

Builders signature:

Purchasers signature:

| | |
|---|---|
| 4) Upon completion of the Acceptance Trial and the signing of the Satisfaction Notice by the Purchaser or upon deemed acceptance and completion of the Builders' Certification as provided in Clauses 5.5 and 5.6 | 10% |
| 5) DELIVERY | (a) Date: (b) Place: (the "Delivery Date" and "Delivery") |

*At the agreement of builder and seller, this payment may be divided into 2 lots of 20%

1. Agreement and Specification of the Boat

- 1.1 The Builder agrees to construct and the Purchaser agrees to buy the boat which is described in the Specification set out in Annex 1 (the "**Specification**"), and any drawings and plans, (the "**Boat**") and in accordance with the terms of this Agreement.
- 1.2 The Specification and any drawings and plans shall be signed by the Parties.
- 1.3 The specification and drawings and plans may be superceeded during the build upon the agreement of the builder and purchaser.
- 1.4 In which case an update of this agreement will be given to both parties via the broker.
- 1.5. The Builder shall have the right to decline any modification or change to the Specification or plans requested by the Purchaser after the signing of this Agreement.

2. Contract Price and Payment

- 2.1. The price of the Boat is the Contract Price set out above together with the cost of any extras, modifications or changes to the Specification agreed between the Parties after the date of this Agreement and, if applicable, VAT.
- 2.2. The Purchaser agrees to pay the Contract Price by instalments, as set out above and as provided in this Agreement.
- 2.3. Each instalment will be paid into the broker`s Client Trust Account and released to Perrydale on a weekly basis in line with labour and materials progress.
- 2.4. When an instalment is required for payment, the purchaser will be given 14 days notice to arrange payment into the Client Trust Account.
- 2.5. The Contract Price shall not be subject to any increase, except for increases in the cost of materials or modifications or changes agreed between the Parties or a change in the rate of VAT.
- 2.6. If the Contract Price is increased in accordance with Clause 2.5, the Builder shall be entitled to require payment of that increase in the Contract Price in full at the time of agreement of the modifications or changes or, at its option, by way of increase of one or more of the remaining Stage Payments.

3. Unpaid Instalments

- 3.1. If the Purchaser fails to pay the full amount of any Stage Payment or other sum due to the Builder on the due date, the Builder shall be entitled to stop construction of the Boat until all sums due to the Builder have been paid in full, and the Delivery Date shall be extended by the period of the delay in payment.
- 3.2. If the Purchaser's failure to pay any sums due to the Builder continues for fourteen (14) days after the due date, the Builder shall be entitled to charge interest at four percent (4%) over the

Bank of England base rate, or, if it is higher at the Builder's current commercial overdraft rate, after as well as before judgment, calculated from the dates upon which the payments were due.

- 3.3. After a further period of fourteen (14) days' delay, the Builder shall, without affecting any of its other rights, be entitled:
 - 3.3.1. to require immediate payment from the Purchaser of the full balance of the Contract Price then remaining (including any interest earned under Clause 3.2 above) and to complete the construction of the Boat; or
 - 3.3.2. to terminate this Agreement and to sell the Boat pursuant to Clause 9.2; or
 - 3.3.3. to claim from the Purchaser any special, direct, indirect and/or consequential losses incurred by the Builder as a result of the delay in the payment of the sums due to it under this Agreement.

4. Acceptance Trial and Delivery

- 4.1. The Boat shall be completed and ready for Delivery at the place and on the date stated above or on such later date as may be determined in accordance with the terms of this Agreement (the "**Delivery Date**").
- 4.2. Unless otherwise agreed between the Parties, the Boat shall, at the Builder's expense, be taken on a trial trip before Delivery (the "**Acceptance Trial**"). The Builder shall give the Purchaser at least fourteen (14) days' written notice of the date, place and approximate duration of the Acceptance Trial. If the date is not convenient to the Purchaser, the Parties will agree an alternative date not more than two (2) weeks after the date initially proposed by the Builder.
- 4.3. If any defects in workmanship or materials or deviations from the Specification are found during the Acceptance Trial then the Builder shall rectify them without delay and shall carry out a further Acceptance Trial following the procedure set out in Clause 4.2.
- 4.4. If the Purchaser fails to attend the first Acceptance Trial, the Builder shall carry out a further Acceptance Trial following the procedure set out in Clause 4.2.
- 4.5. If the Purchaser fails to attend the second (or any subsequent) Acceptance Trial and the Parties fail to agree an alternative date for a subsequent Acceptance Trial, the Builder may certify to the Purchaser in writing that a satisfactory Acceptance Trial is deemed to have taken place (the "**Acceptance Certificate**").
- 4.6. At the satisfactory conclusion of an Acceptance Trial, the Purchaser shall sign the Certificate of Delivery and Acceptance in the form provided in Annex 2. The final balance of the Contract Price shall become due and payable immediately upon signature of the Certificate of Delivery and Acceptance or upon provision by the Builder to the Purchaser of the Acceptance Certificate referred to in Clause 4.5 or upon the Purchaser's wrongful failure or refusal to sign the Certificate of Delivery and Acceptance (the "**Acceptance**").
- 4.7. From the moment of the Purchaser's signature of the Certificate of Delivery and Acceptance or the Builder's signature of the Acceptance Certificate (as the case may be), the Boat and all its gear and equipment shall be the responsibility and at the risk of the Purchaser, who will be immediately responsible for insuring it.
- 4.8. The Purchaser's signature of the Certificate of Delivery and Acceptance will (save for any matters listed in the Certificate of Delivery and Acceptance) or the Builder's signature of the Acceptance Certificate (as the case may be) constitute evidence that the Boat complied with the Specification at the time of delivery.
- 4.9. The Purchaser shall take Delivery of the Boat upon signature by the Purchaser of the Certificate of Delivery & Acceptance or upon signature by the Builder of the Acceptance Certificate (as the case may be), and immediately upon payment of the final balance of the Contract Price and any other sums owing to the Builder by the Purchaser. If the Purchaser fails to take Delivery of the Boat or fails to pay any outstanding sums due to the Builder without good reason then, in addition to any other rights which the Builder may have, the Builder shall be entitled to require the Purchaser to pay the reasonable berthing and/or storage charges together with any other expenses reasonably incurred by the Builder, including insurance, maintenance and lifting of the Boat in or out of the water until actual delivery shall take place.

- 4.10. Upon Delivery of the Boat the Builder will provide the Purchaser with an RCD, a receipted VAT invoice (if applicable) and any other documents listed in Annex 3.
- 4.11. The Purchaser and the Builder expressly agree that the Builder shall not be responsible for investigating or otherwise ensuring that the Purchaser is competent and experienced in the proper control and navigation of the Boat. A list of boat handling and training establishments is available from the Royal Yachting Association.

5. Delays and Extensions of Time (Force Majeure)

- 5.1. If construction of the Boat is delayed directly or indirectly due to any cause beyond the Builder's reasonable control then the Delivery Date shall be extended by the period of time during which that delaying cause continues.
- 5.2. The Builder shall give the Purchaser written notice of any event in respect of which the Builder claims to be entitled to an extension of time.
- 5.3. If the Builder's premises, plant, machinery or equipment shall be so damaged by the operation of a delaying cause for which the Builder is not responsible so as to make it impracticable or impossible for the Builder to complete the construction of the Boat in a timely manner, the Builder may, at its option and in any event within twenty one (21) days of the operation of the delaying cause, cancel this Agreement by notice in writing to the Purchaser, whereupon the Purchaser shall be entitled by written election either:
- 5.3.1. to take over and complete the Boat without further liability on the Builder whereupon the Purchaser shall pay to the Builder all sums then due, whether by way of the Stage Payments or otherwise; or
- 5.3.2. to require repayment of all Stage Payments paid by the Purchaser to the Builder up to that date, and upon such repayment, title in the Boat and all materials and equipment appropriated to the Boat shall re-vest in the Builder.

6. Access to the Boat and to Builder's Premises

- 6.1. The purchaser shall have the right to inspect the progress of construction of the Boat from time to time subject to the following conditions:
- 6.1.1. inspections shall take place during the Builder's normal business hours;
- 6.1.2. inspections shall be on reasonable notice –as to the timing, identity and authority of the persons attending – and subject to the consent of the Builder (such consent not to be unreasonably withheld);
- 6.1.3. the Builder shall be entitled to accompany the Purchaser or his representative(s) and require strict observance of the Builder's insurance requirements, Health and Safety policy and other regulatory requirements;
- 6.1.4. access shall extend only to those parts of the Builder's premises necessary for the inspection of the Boat and/or the materials and equipment intended for the Boat; and
- 6.1.5. the length, timing or frequency of such inspections shall not unreasonably interfere with the Builder's construction programme.
- 6.2. During such inspections and while at the Builder's premises or on the Boat, the Purchaser and his representative(s) shall observe all current rules and regulations applied by and to the Builder and its premises.
- 6.3. Purchasers inspect their vessels at their own risk.

7. Warranties

- 7.1. In addition to the Purchaser's statutory rights, the warranties in Clause 7.2 shall apply.

- 7.2. Subject to the conditions which are set out at Clause 7.3, the Builder warrants to the Purchaser that the Boat will:
- 7.2.1. be of satisfactory quality and reasonably fit for the purpose made known to the Builder prior to the date of this Agreement whether or not such purpose is one for which the Boat is commonly supplied;
 - 7.2.2. correspond with the Specification and any agreed variations, additions or modifications to the Specification;
 - 7.2.3. be free from defects in materials and workmanship for a period of twelve (12) months from Delivery;
 - 7.2.4. comply with all legislative requirements and regulations relating to the sale of the Boat in the European Union for any purpose made known under Clause 7.2.1 above; and
 - 7.2.5. comply with any other requirements or regulations which may be agreed between the Parties or its authorised representatives.
- 7.3. The Purchaser's statutory rights and the warranties set out in Clause 7.2 shall be subject to the following conditions:
- 7.3.1. the Builder shall have no liability for any defect or regulatory non-conformity in the Boat which arises directly as a result of the Builder's adherence to any part of the Specification which is specified, supplied or developed by the Purchaser or his agents;
 - 7.3.2. the Builder shall be given the opportunity to repair or replace any defect or deficiency in workmanship, materials or equipment or any failure to conform with the Specification. Such repair or replacement shall be carried out by the Builder at its premises without cost to the Purchaser or, if this work to be carried out elsewhere, a travel charge may apply.
 - 7.3.3. The builder has the right to appoint a third party contractor of their choice to carry out such work.
 - 7.3.4. the Purchaser shall notify the Builder in writing as soon as reasonably practicable on discovery of any alleged defect or deficiency and the Builder or its agent shall have the right to inspect the Boat including the right to carry out trials to enable the Builder or its agent to examine or assess the extent of the alleged defect or deficiency. The expense of any such trials shall be borne by the Builder if the defect is shown to be one of workmanship or materials.

8. Insurance

- 8.1. The Builder shall insure the Boat (together with all equipment and materials installed or intended for it and within the Builder's premises) from the date of this Agreement until the date of Delivery, noting, insofar as possible, the Purchaser's interest in the Boat.
- 8.2. Such insurance shall be effected with a reputable insurer for a sum equal to the replacement cost of the completed Boat (to a maximum of 125% of the Contract Price) and shall include the cost of any additions or variations to the Specification which have been agreed between the Parties.
- 8.3. Such insurance shall be on terms no less favourable than the Institute Clauses for Builder's Risks published by the Institute of London Underwriters, as applicable from time to time. Documentary evidence of such insurance, its terms and conditions and proof of payment of the premium shall be provided to the Purchaser on request.
- 8.4. In the event that the Boat, equipment or materials sustain damage at any time before Delivery, any monies received in respect of the insurance shall be receivable by the Builder and shall be applied by it in making good such damage in a reasonable and workmanlike manner and the Delivery Date shall be extended by such period as shall be reasonably necessary to effect the necessary repairs. The Purchaser shall not be entitled to reject the Boat, equipment or materials on account of such damage or repairs or to make any claim in respect of any resultant depreciation. If the Boat is declared an actual or constructive total loss the Purchaser shall have

the option, to be exercised within twenty eight (28) days of the loss, of cancelling this Agreement in which event the insurance money to the value of Stage Payments already paid shall be paid direct to the Purchaser by the insurers and the Purchaser will abandon all rights under the said insurance to the Builder. This Agreement will then terminate in all respects as if it had been duly completed and the Purchaser shall have no further right to claim against the Builder.

- 8.5. If the Builder fails to provide satisfactory evidence of insurance in accordance with the provisions of this Clause 8, the Purchaser shall be entitled to insure the Boat on comparable terms and to deduct the amount of the premium actually paid from the Contract Price.

9. Termination

- 9.1. Either Party shall be entitled to terminate this Agreement by written notice if;

- 9.1.1. the other Party becomes insolvent or initiates or becomes subject to any formal insolvency procedure or, in the case of an individual, is declared bankrupt or makes any arrangement with or for the benefit of their creditors;
- 9.1.2. the other Party has breached a fundamental term of this Agreement and has been given written notice of the need to correct the breach but has failed to do so within twenty eight (28) days of that written notice and has not referred the matter to dispute resolution under the provisions of Clauses 17 and 18.

- 9.2. If the Builder exercises its right to terminate this Agreement under this Clause 9 title to the Boat shall pass to the Builder and the Builder shall be entitled to sell the Boat, the materials and the equipment and/or any other property of the Purchaser in the possession of the Builder for the purpose of the construction of the Boat. The Builder shall give the Purchaser twenty eight (28) days' written notice of its intention to sell the Boat and/or other property and such notice shall give details of the reasons for the sale including details of any sums due and payable to the Builder together with details of the proposed method of sale. Following the sale of the Boat and/or other property the Builder shall repay to the Purchaser the balance of the proceeds of sale after deduction of all sums owing to the Builder and all reasonable legal or other expenses including, but not limited to, the costs of sale and maintenance and storage charges incurred by the Builder.

- 9.3. This Agreement is governed by English law and so, in addition to any other rights contained in this Agreement, the provisions of the Torts (Interference with Goods) Act 1977 (the "**Act**") shall apply in relation to an uncollected Boat and/or other property. This Act confers a Right of Sale on the Builder in circumstances where the Purchaser fails to collect or accept delivery of goods (which includes the Boat and any other property). Such sale will not take place until the Builder has given notice to the Purchaser in accordance with the Act. For the purpose of the Act it is recorded that:

- 9.3.1. the Builder's obligation to the Purchaser as custodian of the Boat and other property ends on the expiry or termination of this Agreement;

- 9.3.2. the place for Delivery and collection of the Boat shall be at the Builder's premises.

- 9.4. The Purchaser shall co-operate with the Builder insofar as may be necessary to effect a sale of the Boat including signing or confirming any authority or instructions.

- 9.5. Termination under this Clause 9 shall not affect any other rights or remedies which the Parties may have.

10. Ownership of the Boat

- 10.1. The Boat and/or all materials and equipment purchased or appropriated from time to time by the Builder specifically for its construction (whether in its premises, upon the water or elsewhere) shall become the property of the Purchaser upon payment to the Builder of the 1st Stage Payment. As and from that date, title in additional materials, gear and equipment bought for or

appropriated to the Agreement shall pass to the Purchaser upon such purchase or appropriation. The Builder shall, however, have a claim (known as a "lien") over and be entitled to retain possession of the Boat and any materials or equipment purchased for or appropriated to the construction until it has received full payment of all sums due to it under this Agreement and any variations, whether invoiced or not. Title in any materials or equipment rejected by the Purchaser or otherwise not used in construction of the Boat shall immediately pass back to the Builder.

- 10.2. The Builder shall, so far as it is reasonably practicable to do so, mark all individual items of equipment and materials which are purchased for or appropriated to the construction of the Boat.
- 10.3. The Purchaser shall not without the prior written consent of the Builder (which shall not be unreasonably withheld) sell, assign, pledge or otherwise charge this Agreement or any rights arising under it, or the Boat itself by way of security for any indebtedness prior to Delivery except for the sole purpose of obtaining a loan to finance the construction of the Boat. If the Purchaser charges the Boat in breach of the terms of this Clause 10.3, the full balance of the Contract Price shall become immediately due and payable without affecting any other rights or remedies of the Builder.

11. Consumer Rights

- 11.1. Whilst the Builder is acting in the course of his/her trade and the Purchaser is a consumer, as this Agreement is a distance or off-premises contract for the purposes of the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013, then the Purchaser is not entitled to cancel this Agreement within fourteen (14) days from the day on which the Purchaser acquires physical possession of the Boat (the "**Cancellation Period**"). The consumer only has the right to the cancellation period if the agreement is a distance or off premises contract.
- 11.2. Furthermore the consumer's boat has been built to their specification and as such may not have a market value equal to or above the final contract price. In which case the builder would be unable to recover the costs and time invested in the build.

12. Third Party Rights

- 12.1. A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

13. Copyright

- 13.1. Any copyright or similar protection in manuals, drawings, plans, specifications, including the Specification, prepared by the Builder or its employees or agents, shall at all times remain the property of the Builder.
- 13.2. The builder reserves the right to use images taken by them of the boat during the build and upon completion for marketing and promotional purposes. Also the builder may conduct viewings on the boat prior to handover.

14. Notices

- 14.1. Any notice to be served under this Agreement on either Party shall be in writing and shall be sufficiently served if delivered personally or posted by recorded delivery to the address set out in this Agreement (unless the Party has by written notice to the other Party substituted a different address in England as the notice address). Any posted notice shall be deemed to have been received on the third business day after the time of posting.
- 14.2. Notices may also be served by e-mail or fax, in which case they shall be deemed received upon despatch if despatch was on a business day in the United Kingdom and within 0900-1700 hours UTC and there was no delivery failure notice. If despatched before 0900 hours UTC on a business day, the notice shall be deemed received at 0900 hours UTC that day. If despatched after 1700 hours UTC on a business day or on any non-business day, the notice shall be deemed received at 0900 hours UTC on the next business day.

15. Entire Agreement

- 15.1. This Agreement constitutes the entire agreement between the Parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Agreement.
- 15.2. Each Party acknowledges that, in entering into the Agreement it does not rely on any statement, representation, assurance or warranty of any person (whether a party to the Agreement or not) other than as expressly set out in the Agreement.
- 15.3. Nothing in this Clause shall limit or exclude any liability for fraud.
- 15.4. Any variations or alterations to this Agreement must be in writing and signed by the Parties.
- 15.5. This Agreement may be executed by the Parties in any number of counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same instrument and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other party.

16. Interpretation

- 16.1. The construction and meaning of this Agreement is not to be affected by any headings.
- 16.2. To the extent that the terms of this Agreement contradict any laws on consumer rights, the rights conferred on any Party who is a consumer shall remain unaffected.
- 16.3. If any provision of this Agreement is deemed for any reason to be invalid, void or deleted, the Agreement shall nonetheless remain in full force and effect as if such provision had not originally been included. In such circumstances, the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable and satisfactory alternative provision in place of the invalid, void or deleted provision. If such agreement cannot be reached, the Agreement shall remain in full force and effect without such provision.

17. Law & Jurisdiction

- 17.1. If the Purchaser is not a consumer for the purposes of the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013, then this Agreement and any non-contractual obligations arising out of, or in connection with, this Agreement shall be governed by and construed in accordance with English law.
- 17.2. If the Purchaser is a consumer for the purposes of the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013, then this Agreement and any non-contractual obligations arising out of, or in connection with, this Agreement shall be governed by and construed in accordance with English law, if the principal place of residence of the Purchaser is in England.
- 17.3. Subject to Clause 18 below, the Parties irrevocably agree that, any and every dispute (and any non-contractual obligations, as aforesaid) arising out of or in connection with this Agreement shall be subject to the non-exclusive jurisdiction of the English courts.
- 17.4. A dispute on a technical issue may, with the agreement of both Parties, be referred to a single surveyor who shall be independent of the Parties and whose identity and terms of reference shall be agreed by the Parties or, in default of agreement by the Parties within seven (7) days from receipt of the written notice from one of the Parties for such a referral, a surveyor shall be appointed by the Parties from a list of three (3) surveyors selected by the Yacht Designers and Surveyors Association on the Parties' behalf.
- 17.5. A surveyor appointed or nominated under Clause 17.4 shall act as an expert and not as an arbitrator and his written decision shall be final and binding upon the Parties and his fees and expenses shall be borne equally by the Parties.
- 17.6. For the purposes of Clause 17.4, technical issues include, by way of example, whether a Stage Payment is due, the operation or duration of a delaying event, whether for the purposes of the insurance the Boat has suffered damage, and the Boat's conformity with the Specification.

18. Dispute Resolution Scheme

18.1. Disputes arising out of or in connection with this Agreement, when they cannot be resolved by negotiation, prior to any legal proceedings will be submitted to mediation under British Marine's ("BM") Dispute Resolution Scheme. The cost of which will be borne equally by the parties.

Signature of the Builder:

Name:

Date:

In the presence of:
Witness signature:

Witness name:

Witness address:

Witness occupation:

Signature of the Purchaser:

Name:

Date:

In the presence of:
Witness signature:

Witness name:

Witness address:

Witness occupation:

ANNEX 1
SPECIFICATION

The Specification for the Boat is as produced in conjunction with this Agreement and signed by the Parties.

Reference clause 1 of this agreement it may be superceeded as the build progresses

ANNEX 2

CERTIFICATE OF DELIVERY & ACCEPTANCE

Place of Acceptance Trial :

Date of Acceptance Trial :

Persons present at Acceptance Trial :

I the undersigned hereby conclusively certify that the construction of the Boat and the Acceptance Trial have been completed to my reasonable satisfaction.

Subject to the terms of the Agreement dated _____, this Certificate of Delivery and Acceptance will not affect my statutory rights, should the Boat or its equipment subsequently prove to be defective.

I hereby acknowledge delivery of the Boat and I accept all risk and responsibility in it.

Signed by _____, the Purchaser

Dated _____

ANNEX 3

**DOCUMENTS TO BE PROVIDED TO THE PURCHASER
BY THE BUILDER ON DELIVERY**

[NB: add, delete or amend to suit the individual terms of agreement]

- Builder's Certificate
- Receipted VAT invoice
- Owner's manual containing Declaration of Conformity with Recreational Craft Directive
- Warranty Cards/ manuals for proprietary equipment, engines, instruments etc.
- Copy signed Certificate of Delivery and Acceptance