



AGREEMENT FOR THE CONSTRUCTION OF A NEW NARROWBOAT FOR A FIXED PRICE

**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**

Builders Ref: Boat XXX
Craft Identification No: GB-TRYTWO XXXXXX

THIS AGREEMENT is made on the [DATE]

BETWEEN

1. Trinity Boats Ltd, a limited company incorporated in England (Reg.no. 05076591) whose principal place of business is Dunhampstead Wharf, Dunhampstead, Droitwich, Worcestershire, WR9 7JX and represented by David Howdle ("the **Builders**")

AND

2. [CUSTOMER NAME, CUSTOMER ADDRESS] ("the **Purchaser**")

(Jointly "the **Parties**")

1. AGREEMENT AND SPECIFICATION OF THE BOAT

1.1. The Builders agree to construct and the Purchaser agrees to buy the boat which is described in the Specification set out in Schedule 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 Purchaser shall have the right to reject any workmanship, materials or equipment which do not conform to the Specification. If there is any inconsistency between the drawings and plans on the one hand and the Specification on the other the Specification shall prevail. If there is any inconsistency between the Specification and this Agreement, the terms of this Agreement shall prevail.

1.4. The Builders shall be under no contractual or other obligation in respect of an order from the Purchaser until it has been confirmed in writing by the Builder's authorised representative named in the description of the Parties above.

2. MODIFICATIONS AND CHANGES TO THE SPECIFICATION

2.1. No modifications or changes to the Specification, Delivery Date or Contract Price shall be binding on the Parties unless and until they have been set out in writing and signed by the Parties or their authorised representatives.

2.2. The Builders shall have the right to decline any modification or change to the Specification or Plans proposed by the Purchaser after the signing of this Agreement

3. CONTRACT PRICE AND PAYMENT

3.1. The price of the Boat is the amount set out in Schedule 2 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 (together "the **Contract Price**"). The Purchaser agrees to pay the Contract Price by the instalments as set out in Schedule 2 ("**Stage Payments**") and as provided in this Agreement.

3.2. The Builders shall give the Purchaser 14 days' notice of the anticipated date of completion of each stage of construction described in Schedule 2. On expiry of the notice the Purchaser shall verify and certify that the stage has been satisfactorily completed (such certification not to be unreasonably

withheld). The relevant Stage Payment will then be immediately due and payable.

3.3. The Contract Price shall not be subject to any increase, except for modifications or changes agreed between the Parties or a change in the rate of VAT.

3.4. If the Contract Price is increased in accordance with Clause 3.3 the Builders 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 their option, by way of increase of one or more of the remaining Stage Payments.

4. UNPAID INSTALMENTS

4.1. If the Purchaser fails to pay the full amount of any Stage Payment or other sum due to the Builders on the due date without good reason then the Builders shall be entitled to stop construction of the Boat until all sums due to the Builders have been paid in full, and the Delivery Date shall be extended by the period of the delay in payment.

4.2. If the Purchaser's failure to pay any sums due to the Builders continues for 14 days then the Builders shall be entitled to charge interest at 4% over the Bank of England base rate, or, if it is higher at the Builders' current commercial overdraft rate, after as well as before judgment, calculated from the dates upon which the payments were due.

4.3. After a further period of 14 days' delay the Builders shall, without affecting any of their other rights, be entitled:

4.3.1. to require immediate payment from the Purchaser of the full balance of the Contract Price then remaining and to complete the construction of the Boat; or

4.3.2. to terminate this Agreement and to sell the Boat pursuant to Clause 10.2;

4.3.3. to claim from the Purchaser any special, direct, indirect and/or consequential losses incurred by the Builders as a result of the delay in the payment of the sums due to them under this Agreement.

5. ACCEPTANCE TRIAL AND DELIVERY

5.1. The Boat shall be completed and ready for delivery at the place and on the date stated in Schedule 3 or on such later date as may be determined in accordance with the terms of this Agreement ("the **Delivery Date**").

5.2. Unless otherwise agreed between the Parties the Boat shall, at the Builders' expense, be taken on a trial trip (of not more than 3 hours' duration) (the "**Acceptance Trial**"). The Builders shall give the Purchaser at least 14 days' written notice of the place and approximate duration of the Acceptance Trial, but if the date shall not be convenient to the Purchaser the Parties shall agree an alternative date not more than one week after the date proposed by the Builders.

5.3. If any defects in workmanship or materials or deviations from the Specification are found during the Acceptance Trial then the Builders shall rectify them without delay and shall carry out a further Acceptance Trial following the notice procedure set out in Clause 5.2.

5.4. If the Purchaser fails to attend the first Acceptance Trial, the Builders shall carry out a further Acceptance Trial following the notice procedure set out in Clause 5.2.

5.5. If the Purchaser fails to attend an Acceptance Trial organised under Clause 5.4, or if the Parties fail to agree an alternative date for a first or subsequent Acceptance Trial, then the Builders shall certify to the Purchaser in writing that an Acceptance Trial has been deemed to have taken place.

5.6. At the satisfactory conclusion of an Acceptance Trial the Purchaser shall sign the Certificate of Delivery and Acceptance in the form provided in Schedule 4. 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 Builders to the Purchaser of the Certificate referred to at Clause 5.5 or upon the Purchaser's wrongful failure or refusal to sign the Certificate of Delivery and Acceptance.

5.7. From the moment of the Purchaser's signature of the Certificate of Delivery and Acceptance 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.

5.8. The Purchaser's signature of the Certificate of Delivery and Acceptance will not be conclusive evidence that the Boat complied with the Specification at the time of delivery and will not affect the Purchaser's rights under the warranties afforded by the Builders in respect of latent defects.

5.9. The Purchaser shall take delivery of the Boat immediately upon signature by the Purchaser of the Certificate of Delivery and Acceptance and payment of the final balance of the Contract Price and any other sums owing to the Builders by the Purchaser. If the Purchaser fails to take delivery of the Boat or fails to pay any outstanding sums due to the Builders without good reason then, in addition to any other rights which the Builders may have, the Builders 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 Builders, including insurance, maintenance and lifting of the Boat in or out of the water until actual delivery shall take place.

5.10. Upon delivery of the Boat the Builders will provide the Purchaser with a Builder's Certificate, a receipted VAT invoice (if applicable) and any other documents listed in Schedule 5.

5.11. The Purchaser and the Builders expressly agree that the Builders 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.

6. DELAYS AND EXTENSIONS OF TIME (FORCE MAJEURE)

6.1. If construction of the Boat is delayed directly or indirectly due to any cause beyond the Builders' reasonable control then the Delivery Date shall be extended by the period of time during which that delaying event operates.

6.2. The Builders shall give the Purchaser written notice of any event in respect of which the Builders claim to be entitled to an extension of time:

6.2.1. within 7 days of its commencement, stating the date on which the delay commenced, the cause of it and its estimated duration; and

6.2.2. within 7 days of its end, stating the date on which it ended and the total period of the extension to the Delivery Date.

6.3. Any dispute arising between the Parties as to the operation of a delaying event shall be adjudicated in accordance with Clause 14.2.

6.4. If the Builders' premises, plant, machinery or equipment shall be so damaged by the operation of a delaying event for which the Builders are not responsible so as to make it impracticable for the Builders to complete the construction of the Boat, the Builders may, at their option (to be exercised within 21 days of the operation of the delaying event), cancel this Agreement by notice in writing to the Purchaser, whereupon the Purchaser shall be entitled by written election either:

6.4.1. to take over and complete the Boat without further liability on the Builders whereupon the Purchaser shall pay to the Builders all sums then due, whether by way of Stage Payments or otherwise; or

6.4.2. to require repayment of all instalments paid by the Purchaser to the Builders and upon such

repayment title in the Boat and all materials and equipment appropriated to the Boat shall revert in the Builders.

7. ACCESS TO BOAT AND TO BUILDERS' PREMISES

7.1. The Purchaser shall have the right to inspect the progress of construction of the Boat from time to time subject to the following conditions:

7.1.1. Inspections shall take place during the Builders' normal business hours;

7.1.2. Inspections shall be on reasonable notice – both as to timing and the identity and authority of the persons attending - and subject to the reasonable consent of the Builders;

7.1.3. the Builders shall be entitled to accompany the Purchaser or his representative and require strict observance of the Builders' Insurance requirements, their Health and Safety policy and other regulatory requirements;

7.1.4. access shall extend only to those parts of the Builders' premises necessary for the inspection of the Boat and/or the materials and equipment intended for the Boat;

7.1.5. the length, timing or frequency of such inspections shall not unreasonably interfere with the Builders' construction programme.

7.2. During such inspections and while at the Builders' premises or on the Boat the Purchaser and his representatives shall observe all current rules and regulations applied by and to the Builders, and to their premises.

8. WARRANTIES

8.1. In addition to the Purchaser's statutory rights the following warranties shall apply:

8.2. Subject to the conditions which are set out at Clause 8.3 the Builders warrant to the Purchaser that the Boat will:

8.2.1. be of satisfactory quality and reasonably fit for the purpose(s) made known to the Builders prior to the date of this Agreement whether or not such purpose is one for which the Boat is commonly supplied; and

8.2.2. correspond with the Specification and any agreed variations, additions or modifications; and

8.2.3. be free from defects in materials and workmanship for a period of 12 months from delivery; and

8.2.4. comply with all legislative requirements and regulations relating to the sale of the Boat in the European Union for any purpose(s) made known under 8.2 above; and

8.2.5. comply with any other requirements or regulations which may be agreed between the Parties or their authorised representatives.

8.3. The Purchaser's statutory rights and the warranties set out in Clauses 8.2 shall be subject to the following conditions:

8.3.1. The Builders shall have no liability for any defect or regulatory non- conformity in the Boat which arises directly as a result of the Builders' adherence to any part of the Specification which is specified, supplied or developed by the Purchaser or his agents;

8.3.2. The Builders 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 Builders at their premises without cost to the purchaser or, where that is not convenient to the Parties, the Builders shall pay the reasonable

cost of having the work carried out elsewhere;

8.3.3. The Purchaser shall notify the Builders in writing as soon as reasonably practicable on discovery of any alleged defect or deficiency and the Builders or their agent shall have the right to inspect the Boat including the right to carry out sea trials to enable the Builders or their agent to examine or assess the extent of the alleged defect or deficiency. The expense of any such trials shall be borne by the Builders if the defect is shown to be one of workmanship or materials.

9. INSURANCE

9.1. The Builders shall insure the Boat (together with all equipment and materials installed or intended for it and within the Builders' premises) in the joint names of the Builders and the Purchaser from the date of this Agreement until the date of delivery.

9.2. 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.

9.3. Such insurance shall be on terms no less favourable than the *Institute Clauses for Builders' Risks* 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.

9.4. 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 Builders and shall be applied by them 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 save that where the Boat is declared an actual or constructive total loss the Purchaser shall have the option, to be exercised within 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 Builders. 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 Builders.

9.5. If the Builders fail to provide satisfactory evidence of insurance in accordance with the provisions of this Clause, 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.

10. TERMINATION

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

10.1.1. the other Party becomes insolvent or initiates or becomes subject to any formal insolvency procedure; or

10.1.2. the other Party has breached an important term of this Agreement and has been given written notice of the need to correct the breach but has failed to do so within 28 days of that written notice and has not referred the matter to dispute resolution under the provisions of Clause 14.

10.2. If the Builders exercise their right to terminate this Agreement under Clause 10.1 they 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 Builders for the purpose of the construction of the Boat. The Builders shall give the Purchaser 28 days' written notice of their 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 Builders together with details of the proposed method

of sale. Following the sale of the Boat and/or other property the Builders shall repay to the Purchaser the balance of the proceeds of sale after deduction of all sums owing to the Builders and all reasonable legal or other expenses including, but not limited to, the costs of sale and maintenance and storage charges incurred by the Builders.

10.3. 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 Builders 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 Builders have given notice to the Purchaser in accordance with the Act. For the purpose of the Act it is recorded that:

10.3.1. The Builders' obligation to the Purchaser as custodian of the Boat and other property ends on the expiry or termination of this Agreement;

10.3.2. The place for delivery and collection of the Boat shall be at the Builders' premises.

10.4. The Purchaser shall co-operate with the Builders in so far as may be necessary to effect a sale of the Boat including signing or confirming any authority or instructions.

10.5. Termination under this Clause 10 shall not affect any other rights or remedies which the Parties may have.

11. OWNERSHIP OF THE BOAT

11.1. The Boat and/or all materials and equipment purchased or appropriated from time to time by the Builders specifically for its construction (whether in their premises, upon the water or elsewhere) shall become the property of the Purchaser upon payment to the Builders of the first 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 Builders 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 they have received full payment of all sums due to them 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 Builders.

11.2. The Builders 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.

11.3. 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, the full balance of the Contract Price shall become immediately due and payable without affecting any other rights or remedies of the Builders.

12. COPYRIGHT

12.1. Any copyright or similar protection in manuals, drawings, plans, specifications, including the Specification prepared by the Builders or their employees or agents, shall remain the property of the Builders.

13. NOTICES

13.1. Notices may be given to a Party by being handed to him or sent by first class post or by email or fax confirmed by first class post to the address as shown on page 1 (unless the Party has by written notice to the other Party substituted a different address in England as the notice address). Any notice sent by first class post shall be deemed to have been received 72 hours after the time of

posting and any notice sent by fax shall be deemed to have been received on the next working day provided that the sender shall have retained a confirmed transmission report. In proving service of any notice it shall be sufficient to prove that delivery was made or that the envelope containing the notice was properly addressed.

14. LAW, JURISDICTION and DISPUTE RESOLUTION

- 14.1. This Agreement shall be subject to and governed by English law or, where the Builders have their principal place of business in Scotland, be subject to and governed by Scottish law.
- 14.2. 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 Builders and the Purchaser and whose identity and terms of reference shall be agreed by the Parties or, in default of agreement, nominated by the President of the Yacht Designers and Surveyors Association.
- 14.3. A surveyor appointed or nominated under Clause 14.2 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.
- 14.4. For the purposes of Clause 14.2 technical issues will include, by way of example, whether a Stage Payment is due or as to the operation or duration of a delaying event or whether for the purposes of the insurance the Boat has suffered "substantial damage" or as to the Boat's conformity with the Specification.
- 14.5. Any other dispute arising between the Parties out of or in connection with this Agreement shall be submitted to mediation or, failing that, arbitration under the British Marine Federation's Dispute Resolution Scheme.
- 14.6. Nothing in Clauses 14.2 to 14.5 shall affect the rights of a consumer to submit a dispute to the Courts of England & Wales, or, in the case of a contract governed by Scottish law to the Courts of Scotland.

15. INTERPRETATION

- 15.1. The construction and meaning of this Agreement is not to be affected by any headings.
- 15.2. 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 Builders and the Purchaser 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.

16. VARIATIONS AND ADDITIONS

- 16.1. This Agreement is subject to the variations and additions set out below or identified below and attached to this Agreement and initialed and dated by both Parties.

Signed for and on behalf of the Builders:

In the presence of:



TRINITY BOATS

beautiful bespoke narrowboats

Full name of witness:

Address:

Occupation:

Signature:

Signed for and on behalf of the Purchaser:

In the presence of:

Full name of witness:

Address:

Occupation:

Signature:

N.B. (1 Witness in England, 2 in Scotland)

SCHEDULE 1 – SPECIFICATION

The Specification for the Boat is as set out in the attached Specification Document (Boat XXX_ContractSpec.pdf) signed by the Parties.

SCHEDULE 2 – PRICE AND STAGE PAYMENTS

Contract Price:

The Boat:	£ XXX,XXX.XX
Plus VAT:	£ XX,XXX.XX
Price Inc VAT:	£ XXX,XXX.XX
Less Deposit Received:	£ X,XXX.XX
Balance to Pay:	£ XXX,XXX.XX

The Contract Price Balance to Pay shall be payable by Stage Payments as set out below:

1) Upon signing of this agreement (15%):	£XX,XXX.XX
2) Upon the hull being delivered to the Builders' premises (30%):	£XX,XXX.XX
3) Upon substantial completion of the fitting of the interior joinery work or installation of the engine whichever is the earlier (35% of balance)	£XX,XXX.XX
4) Upon completion of the boat and notification of readiness for transportation to destination marina (17.5% of balance)	£XX,XXX.XX
5) Upon completion of the Acceptance Cruise 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 (2.5% of balance)	£XX,XXX.XX

SCHEDULE 3 – COMPLETION / DELIVERY

Approximate Completion Date: On or around [COMPLETION DATE] – exact date TBA.

Delivery & Craneage can be arranged by us, at additional cost to the purchaser, as shown in the specification document.

SCHEDULE 4 - CERTIFICATE OF DELIVERY & ACCEPTANCE

Place of Acceptance Trial

Date of Acceptance Trial

Persons present at Acceptance Trial

I the undersigned hereby 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

SCHEDULE 5 – DOCUMENTS TO BE PROVIDED TO THE PURCHASER BY THE BUILDERS ON DELIVERY, WHERE APPLICABLE:

- Builder's Certificate
- Received VAT invoice
- Warranty Cards/ manuals for proprietary equipment, engines, instruments etc
- Copy signed Certificate of Delivery and Acceptance
- Boat Safety Certificate