



# **BUILD AGREEMENT**

Revision A 03/03/2026

This Agreement sets out the terms under which THOMAS TISON MANUFACTURING COMPANY SARL (hereinafter: "Builder") provides manufacturing services, specifically for the Airborn Foiler, referred to as the Vessel, to the CLIENT jointly referred to hereinafter as the "Parties" or the "Party".

## **1. ENTIRE AGREEMENT**

This Agreement consists and includes: this Build Agreement and separate signed agreement that specifically reference these terms.

Side agreements have not been entered into. Any amendment, alteration or extension of this Agreement has to be agreed upon in writing between the Parties.

Payment of any invoice constitutes acceptance of the terms of the Agreement. This Agreement will become effective upon reception of Payment of the Total Price.

In case any of the regulations of this Agreement should be incomplete or invalid for whatever reason, it shall be amended or replaced by a wording in line with the original intentions of the Parties.

## **2. OBLIGATION TO BUILD**

The Builder shall build the Vessel in reasonable compliance with the Specification.

The Builder may deviate from the Specification within tolerances that are reasonable having regard to changes in working practices, design, materials or equipment or lack of availability or shortage of specified materials or equipment or availability of other materials or equipment preferred by the Builder or otherwise provided that the general characteristics and quality of the Vessel shall not be substantially altered as a consequence.

### **3. ONE-DESIGN**

The Client acknowledges that the Airborn Foiler is conceived and produced as a one-design vessel in order to preserve uniform performance and construction standards.

Accordingly, the Client shall have no right to request, require, or impose any variation, modification, customization, or deviation from the Specification other than those agreed before construction (choice of colour accent, and naming of the boat).

### **4. DELIVERY TIME**

The Vessel shall be constructed in the chronological order of confirmed orders received by the Builder.

Upon receipt of the Order and payment of the Total Price, the Builder shall provide the Client by email with a delivery date based on the production schedule applicable at that time.

The Builder shall use reasonable endeavours to complete the Vessel by the Delivery Date.

The Builder shall not be responsible for any loss or damage whether direct or consequential caused by delay.

Delay in delivery shall not entitle the Client to cancel the Order, suspend payment, or claim damages, unless otherwise expressly agreed in writing.

In the event of a delay in the construction of the Vessel attributable to the Builder and exceeding sixty calendar days, the Builder shall pay the Client a penalty equal to 0.02% of the tax-excluded price of the Vessel for each business day of delay, starting from the sixty-first day of delay. These penalties will be capped at 5% of the tax-excluded price of the Vessel. Any applicable delay penalties will cease on the day of the Delivery.

The Builder cannot be held responsible for construction delays in the event of an accident during the transportation of the Vessel or parts of the Vessel or delays in delivery attributable to a transporter, even if the latter was commissioned by the Builder.

### **5. DELIVERY PLACE**

The Builder shall deliver the Vessel to the Client at the Delivery Place provided by the Client when placing the order. The Delivery Place shall be entered by the Client upon placing the order via our website.

Shipping and shipping insurance costs shall be charged to the Client and will vary depending on the designated delivery location. Prior to placing the order, the Client may request an estimate of the applicable shipping costs from the Builder by email.

The Client shall ensure their presence at the time of delivery for Reception of the Vessel. Should the shipment need to be returned or stored due to the Client's absence or inability to accept delivery, any resulting additional costs shall be borne by the Client.

## **6. RECEPTION**

Upon reception of the Vessel by the Client, the Client shall give notice in writing to the Builder of any deficiencies or apparent defects in the Vessel, her gear or equipment within ten (10) days of delivery and the Builder shall forthwith rectify such deficiencies or defects or contest such notice. Failing such notice within this period, the Vessel shall be deemed accepted, without prejudice to the Client's rights under the 24-month warranty for latent defects.

## **7. TAXES**

The Total Price displayed on the order page includes French VAT of 20% for orders within the European Union. When placing your order, VAT will be adjusted according to your specific situation. For countries outside the EU, the boat is invoiced excluding VAT and does not include shipping fees and shipping insurance which will be charged additional.

The total price does not include applicable tariffs, customs duties, or any other local taxes, registration fees which remain the responsibility of the buyer.

## **8. PAYMENT**

The Client shall pay the Total Price and all other sums due to the Builder in Euro (or such other currency as the Builder may agree in writing) without deduction, set-off, counterclaim, or withholding.

Unless otherwise expressly agreed in writing, one hundred percent (100%) of the Total Price shall be due and payable upon placement of the Order. The Order shall not be binding upon the Builder, and construction shall not be scheduled or commenced, until full cleared funds have been received in the Builder's designated bank account.

The Total Price will be indicated on the website upon placing the order.

## **9. INSURANCE**

The Builder shall insure the Vessel and all materials and equipment purchased or appropriated to her by the Builder or its sub-contractors against Builders' risks.

The Builder shall insure until reception including delivery.

If the Vessel, her materials or equipment are damaged or destroyed and insurance monies are received the Builder shall at its option:

- make good the damage or loss (and the Client shall not on account of the damage and repair or replacement or consequent delay or otherwise be entitled to reject or make any objection to the Vessel, her materials or equipment or make any claim for consequential loss or depreciation) or

- terminate this Agreement and on repayment to the Client of all instalments of the Total Price, the property in the Vessel, her materials and equipment shall revert to the Builder and the Client shall have no claim on the Builder.

## **10. SUB-CONTRACTORS**

The Builder reserves the right to complete the Vessel using its own workforce or such other sub-contractor(s) as it shall in its absolute discretion think fit.

## **11. DRAWINGS AND COPYRIGHT**

Drawings, technical data and Specifications and copyright design rights and any other rights or property in them shall remain with the Builder and shall not be reproduced or used or disclosed to third parties without the written consent of the Builder.

## **12. WARRANTY**

The Warranty Period shall be 24 months commencing with delivery at the Delivery Place.

The Builder shall make good all defects in the Vessel and her equipment attributable to faulty design or workmanship by or materials supplied by the Builder or its contractors or subcontractors subject to the following provisions of this Clause 12 and Clause 13:

- the Client shall have given the Builder written notice specifying the defects as soon as reasonably practicable after the defect became apparent and within the Warranty Period
- the Client shall have paid the Total Price and any other monies then owed to the Builder and any other company in its group in full
- the Client shall have furnished the Builder with all such information relating to the claim and shall allow the Builder such time and access to the Vessel and relevant equipment as the Builder may reasonably require

The Builder may elect within a reasonable time to:

- carry out the necessary repairs itself or by its subcontractor(s) in which case the Client shall at his own expense deliver the Vessel to the Delivery Place or another mutually agreed location

- pay to the Client in full satisfaction of its obligations hereunder such sum as it estimates it would charge for making good the defects at its or its contractor's normal rates for work and materials and making due allowance for profit and taxes.

The Builder may repair rather than replace where reasonable to do so.

All work undertaken by the Builder pursuant to this Clause shall carry with it a further 6-month guarantee from the date of completion of such work, on the same terms of this clause, but limited to that work and the element of the part or equipment that failed, and provided that no such guarantee shall extend beyond 24 months from the Actual Date of Delivery.

### **13. LIABILITY**

In the event that the Builder shall be liable to the Client:

- the Builder shall not be required to colour-match paint, gelcoat or other materials beyond reasonable tolerances having regard to the effect of ageing, normal manufacturing tolerances and the differences between manufacturers' colourcard and the product and the like, nor shall the Builder be required to compensate for any failure to colour-match or for the effects of fading, moisture absorption, discoloration or degradation through ultra-violet light

- the total liability of the Builder shall not exceed the Total Price or in the case of defective equipment, the replacement cost of such equipment

- the liability of the Builder shall not extend to any machinery, gear or equipment which is the subject of a warranty given by a manufacturer in circumstances where the Builder is able to procure that the Client shall have the benefit of such warranty

- the Builder shall not be liable to the Client in respect of any consequential or economic loss or diminution in value however arising including (without limiting the generality of the above) loss of use, loss of charter or other income and travel and other expenses incidental to the use of the Vessel.

The Builder shall not be liable to the Client in respect of any defect, failure, injury, damage or loss attributable to fair wear and tear, willful damage, neglect, misuse, failure to maintain, negligence, abnormal conditions, failure to observe instructions including (without limiting the above) the maintenance and operating instructions of the Owner's Manual supplied by the Builder and/or suppliers and/or manufacturers of equipment materials and services provided to the Vessel or repair or alteration without the Builder's approval.

Unless otherwise provided in these General Terms all warranties, conditions and other terms are excluded to the fullest extent permitted by law.

#### **14. FOILING**

The Client acknowledges that the Vessel is a high-performance hydrofoiling craft designed to lift partially or fully out of the water at speed and that such operation involves inherent and increased risks, including but not limited to sudden acceleration or deceleration, loss of control, foil ventilation or stall, capsize, crew ejection, impact loads, collision with floating or submerged objects, and the risk of serious bodily injury or death.

The Client further acknowledges that operation of the Vessel requires appropriate skill, training, physical capability, and competent seamanship, and that the Vessel must be operated in accordance with the Owner's Manual, applicable laws and regulations, and suitable weather, sea and traffic conditions. Appropriate safety equipment, including personal flotation devices, must be used at all times.

The Client is strongly advised to consult the applicable national sailing federation or competent maritime authority in the country of operation regarding local regulations, safety standards, licensing requirements, and recommended training applicable to hydrofoiling or high-performance sailing craft.

To the fullest extent permitted by applicable law, the Client assumes all risks arising out of or related to the operation, use, misuse, transportation, or storage of the Vessel, including all risks inherent in hydrofoiling.

#### **15. INTELLECTUAL PROPERTY**

The Builder warrants that by its and/or the Sub-contractor's design and construction of the Vessel no patents or other intellectual property or industrial or design rights of third parties will be infringed.

Should nonetheless a third party raise claims against the Client for infringement of any patent or other intellectual property or industrial or design rights, the Builder shall indemnify the Client against any action, claim, demand, costs, expenses or losses incurred by the Client as a result of, such infringement, provided that the Builder shall have the right to conduct the defence, in the name of the Client if appropriate, of any such claims, and the Client at the Builder's expense will give the Builder all such assistance in the defence of such claims as the Builder may reasonably request.

Subject to the provisions of this clause, the Builder grants to the Client and its successors in title free of charge such licence as is necessary for the use and Clientship of the Vessel.

## **16. TERMINATION**

The Builder or the Client may terminate this Agreement if the other shall commit an act of bankruptcy or enter into any composition or arrangement with his creditors, or if being a company it shall enter into liquidation (other than for the purposes of reconstruction) or any arrangement with its creditors or shall have a receiver appointed of the whole or any part of its property and any such act shall be deemed a breach of this Agreement by the Builder or the Client.

The Builder may terminate this Agreement if through any circumstances beyond the Builder's control its performance is delayed for a period of six months or more or it becomes impracticable for the Builder to perform its obligations under this Agreement and the Builder then shall return to the Client all monies paid by him under this Agreement whereupon the property in the Vessel and all materials and equipment purchased for or appropriated to it shall remain with or vest in the Builder.

## **17. ASSIGNMENT**

The Client shall not assign the benefit and burden of this agreement without the prior written consent of the Builder which it may withhold in its absolute discretion.

Notwithstanding assignment of this agreement by the Client whether with or without the Builder's consent the Client shall remain liable to the Builder for performance of his obligations under this agreement to the same extent as if there had been no assignment.

## **18. SCOPE**

This Agreement includes the Specification and these Build Agreement and the contents of any written note signed by both parties with reference to this Agreement.

This Agreement comprises the entire contract between the Builder and the Client and unless confirmed in writing signed by the Builder and incorporated herein no term, warranty, condition, description, representation, variation or matter having contractual or other legal effect is given or shall be implied by anything said, written or done by the Builder or anyone on its behalf.

The construction of this Agreement shall not be affected by any Clause heading.

## **19. WAIVER**

The Builder or the Client may waive any of their respective rights under this Agreement without prejudice to any rights not waived.

If at any time the Builder or the Client does not enforce its strict rights under this Agreement this will not prejudice its enforcement of rights hereunder on any other occasion.

## **20. LAW**

This Agreement and all disputes arising out of or in connection with it shall be subject to French law and the exclusive jurisdiction of the French Courts.

In case of dispute arising out of or in connection with this Agreement both Parties undertake to discuss all problems in a fair and open manner on the basis of the regulations and true meaning of this Agreement for the purpose of an amicable settlement.

In the event of a disagreement regarding the execution of the Agreement, the quality of construction, or any other divergence concerning the obligations of the Parties, the Parties agree, prior to any contentious action, to entrust a conciliation mission to two Experts Maritimes who shall have competence over all aspects of this contract.

The party considering itself in disagreement must notify the other party of the disagreement in question by letter. The recipient party will have a period of five (5) business days to confirm or deny the existence of this disagreement, with failure to respond within this period being deemed as confirmation and acknowledgment of the disagreement.

Each party must designate its Expert Maritime and notify the other party no later than eight (8) business days following the acknowledgment of the disagreement. The two Experts Maritimes shall be tasked with finding and proposing a mutually acceptable agreement for both parties.

The Experts Maritimes will have a period of twenty-one (21) business days from the expiration of the aforementioned eight-day period for their designation to attempt to reach an agreement accepted by both parties.

Each party will bear the costs and fees of its own Expert Maritime.

The total duration of the conciliation procedure shall not exceed 45 days from the acknowledgment of the disagreement between the parties.

In any case, after the expiration of the eight-day period for the designation of the Experts or the total 45-day period for conciliation, each party will then be free to terminate the conciliation procedure and refer the matter to the Tribunal du Commerce de Nice.

Nothing in this Agreement shall affect the mandatory statutory rights of either Party.

Any provision in this Agreement which would be invalid, illegal or unenforceable shall be deemed omitted so far as is necessary to restore validity, legality and enforceability to the Agreement and any such provision shall not affect the validity, legality or enforceability of the remaining provisions.

## **21. FORCE MAJEURE**

Neither party shall be liable for any delay or failure to perform its obligations under this Agreement if such delay or failure arises from an event of Force Majeure. For the purposes of this Agreement, "Force Majeure" shall mean any event or circumstance beyond the reasonable control of the affected party, including but not limited to:

- Acts of God (e.g., natural disasters such as earthquakes, floods, hurricanes)
- War, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, or confiscation
- Terrorism or threats thereof
- Epidemics, pandemics, or quarantine restrictions
- Strikes, lockouts, or other industrial actions
- Governmental regulations or orders, or changes in laws or regulations
- Fires, explosions, or other catastrophic events
- Supply chain disruptions due to any of the above

The party affected by an event of Force Majeure shall notify the other party in writing as soon as reasonably possible, and in any event within 10 working days of becoming aware of the occurrence of such event, providing details of the nature, likely duration, and impact of the Force Majeure event on its ability to perform its obligations.

Upon the occurrence of a Force Majeure event, the affected party's obligations under this Agreement shall be suspended to the extent that they are affected by the Force Majeure event and for the duration of the Force Majeure event. The affected party shall take all reasonable steps to mitigate the effects of the Force Majeure event and resume full performance of its obligations as soon as reasonably practicable.

If the affected party is prevented from performing its obligations due to a Force Majeure event, the time for performance of those obligations shall be extended by a period equal to the duration of the Force Majeure event plus a reasonable period for the affected party to resume performance.

Notwithstanding any other provision in this Agreement, the occurrence of a Force Majeure event shall not excuse either party from its obligation to make any payments due under this Agreement.

## **22. TRANSFER OF PROPERTY**

The Vessel and all materials and equipment purchased for her by the Builder shall become the property of the Client upon payment of the Total Price and title shall pass to the Client.

The Builder shall have a lien on the Vessel and such materials and equipment and a right of sale as provided above for all sums due under this Agreement or otherwise (whether invoiced or not).

The Builder shall use all reasonable endeavours to ensure that its sub-contractors and suppliers shall plainly mark or label all major components with the hull number of the Vessel or with other appropriate markings or symbols of identification.