



Note: There are clauses within these T&C which require the reader's special consideration. Please read these T&C carefully to ensure that you are happy with them before the conclusion of a Contract because these T&C will then become legally binding on you. In particular, please consider the Warranty Conditions under Clause 12 and the Time Bar at Clause 17.2

1. Definitions

- 1.1 "Company"/"Our" shall be used interchangeably in these Terms and Conditions to mean Westport Marine Ltd and where the context permits, its employees, agents or subcontractors and the Surveyor.
- 1.2 "Vessel(s)" shall mean the Pilot & Sport range of boats which the Company specialises in manufacturing.
- 1.2 "Buyer" shall mean any person, or persons, firm or corporate body that instructs the Company to carry out boat manufacture.
- 1.3 "Contract" shall mean the offer for the supply of boat building supply pursuant to these terms and conditions which have been specified and agreed in writing between the Company and the Buyer.
- 1.4 "Supply": The Buyer will set out in writing the specification of the Vessel or Vessels which it requires the Company to supply. All orders should be placed using the Company's Order Form Template and should include collection or delivery details and signature. Order Forms can be faxed, emailed or posted to the Company. The company will confirm in writing that it accepts those instructions or alternatively what Vessel(s) it can provide on the basis of Buyer's instructions with limitations of service identified via its Proposal. Once the Company and the Buyer have agreed what is to be supplied any subsequent changes or additions must be agreed by both parties in writing; collectively the Supply.
- 1.5 "Terms and Conditions" shall mean the Terms and Conditions of Business contained herein and apply to all contracts for Supply undertaken by us on or after 1st January 2005.
- 1.6 "Contract Price" shall mean the amount Agreed for the Company to undertake the supply for the Buyer. These may include VAT at the applicable rate where applicable. The Contract Price shall be set out in the Proposal and may only be varied by agreement in writing.
- 1.7 "Completion" shall mean the date at which the supply contracted for has been completed and the vessel has been made available for collection by the Buyer.
- 1.8 "Delivery" shall take place at the time and date at which the Supply has been made available for collection by the Buyer, unless otherwise agreed in writing.

2. General

- 2.1 These Terms and Conditions shall apply to all Supply undertaken by the Company for the Buyer but are overridden by any explicit terms contained within the Proposal for Supply. No additions or variations to these conditions shall apply unless otherwise agreed in writing.
- 2.2 The Company's Terms and Conditions shall prevail over all other terms and conditions received unless Agreed in writing.
- 2.3 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Supply and any person who is not a party to the Supply shall have no right under that Act to enforce any term(s) arising in connection with the Supply.
- 2.4 Unless specifically instructed, and agreed in writing, to the contrary the Supply will be based on the assumption that the vessel will be used as a private pleasure boat in the waters for which it was designed, as described in the current edition of the Company's brochure and the Company's website.
- 2.5 Whilst we try to be as accurate as possible in our descriptions of the Vessels we offer for sale, errors and omissions may occur from time to time and you must not rely on our descriptions as full technical specifications. The appearance of colour in our promotional literature may also vary from the true colour of the Vessels themselves. Full specifications can be obtained from us on request. Items which do not form part of the Vessels for sale may appear in images for illustrative purposes only. Unless specifically stated these items are not included in any prices provided.

3. Payment Terms

- 3.1 The Buyer shall pay the Contract Price in advance of the Supply commencing unless otherwise agreed in writing. The Company may also require the Buyer to put the Company in funds on account of anticipated disbursements such as delivery charges.
- 3.2 The Contract Price shall be payable by the Buyer as set out in the Proposal.
- 3.3 Any variations to the Supply shall be agreed in writing and the Company reserves the right to revise the Contract Price against the new Supply programme.
- 3.4 Quotations shall be open for acceptance within fourteen (14) days unless otherwise agreed in writing.
- 3.5 Where disbursements are to be charged in addition to the Contract Price the Buyer agrees to reimburse the Company. The Contract Price and any disbursements will be invoiced in sterling at the prevailing exchange rate taken from www.xe.com at the date of the transaction or at a pre-agreed currency exchange rate.
- 3.6 In the case of damage to a Vessel in transit to the Buyer and/or in the case of inherent defect in a Vessel, the Buyer shall pay for all costs and charges incurred by the Company in collecting the Vessel for testing and in packing and redelivering the Vessel after testing and/or repair. The Buyer shall be obliged to insure the Vessel against loss or damage whilst in the possession of the Company. Reasonable charges may subsequently be reimbursed by the Company provided that the damage or fault is proven to rest with the Company

- 3.7 Unless otherwise stated in the Proposal all transactions will be in Pounds Sterling and no account will be taken of any exchange rate fluctuations during the life of the contract.
- 3.8 The Buyer must settle the Contract Price and any disbursements already incurred within fourteen (14) days of receipt of the Company's invoice failing which the Company shall be entitled to compound interest at 4% above the prevailing Business Lending Rate of HSBC Bank Plc until the date of payment.
4. VAT
- 4.1 The price we quote prior to accepting a Buyer's order will exclude delivery, carriage and insurance unless otherwise stated. Where a separate charge is made for carriage, insurance and any other agreed charge, these will be shown clearly on the invoice.
- 4.2 The Company uses its best endeavors to keep promotional literature up to date but on occasion the prices advertised may not reflect actual purchase prices. If there are any price changes these will be notified to the Buyer before order is agreed and the Buyer will have the right to withdraw its offer to purchase Vessel(s) from the Company.
5. VAT payable outside the UK
- 5.1 Where Vessel(s) are to be delivered to an address outside the UK, VAT and/or other import duties and/or costs may be payable in the country of destination, the Buyer will be liable for timely payment of all such expenses. The Company accepts no liability whatsoever for any and all losses arising out of non payment of such expenses. In the event that such expenses are not paid when they fall due and the Vessel(s) cannot be delivered the Company has the right to terminate the contract and recover and/or limit any losses occasioned by non-delivery by re-sale of the Vessel(s) and/or by commencing formal legal proceedings in accordance with clause 20 below.
6. Estimated Delivery Time and Dispatch
- 6.1 Buyer Vessel(s) will be dispatched or released for collection as soon as possible and only upon receipt of both the full purchase price and delivery charge where applicable. The Company will use its reasonable endeavors to dispatch Vessel(s) as soon as practicable and the Company will notify the Buyer of the delivery date as soon as possible.
- 6.2 The Company shall not be held liable for any loss or damage arising out of any delay in dispatch of Vessel(s) as time is not of the essence of any contract agreed. In the event that a particular delivery date is essential for a Buyer then the Company must be notified of this and written agreement obtained, which may be subject to an additional charge.
7. Delivery and acceptance
- 7.1 In the event that the Company is to deliver Vessel(s), the Buyer must specify which level of delivery service is required and at what cost at the time of placing the order. Where the Company delivers Vessel(s) to the Buyer, the Buyer must accept delivery at the Company's convenience, which means that if the Buyer cannot be at the delivery address on the day of delivery, they must arrange for someone else to be there to accept delivery on their behalf.
- 7.2 In the event that nobody is present at the delivery address to take receipt of the Vessel(s) and the Buyer cannot be contacted the delivery agent may at their absolute discretion and without liability take whatever reasonable action they consider appropriate to effect delivery or to abort delivery altogether and return the Vessel(s) to the Company. Redelivery in such circumstances would then be subject to additional charge payable by the Buyer.
- 7.3 Unless agreed otherwise, delivery agents are not contracted to examine Vessel(s) on delivery.
- 7.4 All Vessel(s) must be examined before being signed for. This means that the Buyer must examine the Vessel(s) before the delivery agent leaves and the Buyer will be provided reasonable time to do this. The Buyer must not sign the form "unexamined".
- 7.5 The Buyer shall be deemed to have accepted the Vessel(s) once the Vessel(s) have been delivered and inspected or latest 7 days thereafter if earlier.
8. Retention of Title / Risk
- 8.1 In instances where the Company has agreed to staggered payment for the Supply, title to all Vessel(s), equipment and materials supplied by us to a Buyer shall remain with us until full payment has been received by us.
- 8.2 In rare instances where the Company has agreed to effect Delivery to the Buyer before full payment is received, all Vessel(s), equipment and materials supplied by the Company must be separately stored to other Vessel(s), equipment and materials stored by the Buyer and these items must be clearly marked as such. The Company reserves a right of entry to the Buyer's premises to remove its Vessel(s), equipment and materials in the event of non payment of any amount outstanding to the Company.
- 8.3 Risk in all Vessel(s), equipment and materials supplied by us to a Buyer shall pass to the Buyer at the time of Delivery to the Buyer.
9. Limitation of Liability
- 9.1 The Company's liability to the Buyer shall not under any circumstance exceed the total invoice(s) price paid for Supply except where otherwise provided by law. This limitation of liability does not apply if the Companies' proven negligence or fraudulent misrepresentation causes death or personal injury. The Company shall not be liable to the Buyer, their employees, agents or subcontractors, for any indirect or consequential losses, costs or expenses whatsoever and howsoever arising from or in connection with any failure by us, our agents or subcontractors to perform our contract with the Buyer.

- 9.2 The Company shall not be liable to the Buyer, their employees, agents or subcontractors, for any losses, costs or expenses whatsoever arising directly from non-performance or delayed performance of any contract between the Company and the Buyer provided always that non-performance can be reasonably be attributed to circumstances beyond the Company's reasonable control including but not limited to: "acts of God", fire, explosion, epidemic, flood, war, national or international emergency, riot, civil commotion, terrorism, strike, labour dispute, blockade, import or export delays not attributable to us, acts of national or local governments, strikes, industrial action.
- 9.3 In the event that circumstances arise beyond the Company's control such as those detailed above then the Company shall use its reasonable endeavours to notify the Buyer of those circumstances as soon as it becomes practicable to do so. The absence of such notice shall not mean that liability is admitted and/or accepted and/or that the Company cannot rely on sub-clause 9.2 above.
- 9.4 Where an event caused by third party events outside either party's control or influence causes such delay that the purposes of the contract are wholly or partly frustrated, either party shall be entitled to cancel the remaining portion of the contract. In such circumstances the Buyer will not make any further payments but there will be no refund of payments already made (including any payments for that part of the contract that remains unfulfilled) and the Company will be entitled to recover any Disbursements incurred.
- 9.5 The Company shall have no liability whether in contract, tort or otherwise in respect of the consequences of late, incomplete, inadequate, inaccurate or ambiguous instructions or the non-disclosure by the Buyer of relevant information.
- 9.6 Customers themselves may be liable for any loss or damage caused by them, their crew or their vessels. Any Vessel, gear, equipment or other goods are left with us at the Buyer's own risk and the Buyer should maintain adequate insurance which should also cover third party liability of at least £2,000,000.
- 9.7 The payment of all sums due and owing to the Company as Agreed shall be a pre-condition to any liability of the Company hereunder.
10. Operation of Contract
- 10.1 The Buyer undertakes to ensure that full instructions are given to the Company in sufficient time to enable the Supply to be performed effectively and efficiently and to procure all necessary materials for the Vessel build. The Company shall not be liable for the consequences of late, incomplete, inadequate, inaccurate or ambiguous instructions.
- 10.2 The Company shall carry out the Supply with reasonable care and skill.
- 10.3 A full description of the nature of the Supply to be carried out shall be set out in the Buyer's instructions, the Proposal and any subsequent correspondence prior to any Supply being commenced. Any further modifications to the Supply must be agreed in writing.
- 10.4 All commitments with respect to the timing and scope of Supply given to the Buyer – whether written or verbal – are made in good faith. The Company agrees to use its best endeavours to fulfil such commitments to Buyers regarding the timing and the scope of Supply but it does not guarantee performance in either respect.
11. Termination
- 11.1 Any contract made pursuant to these T&C may only be terminated by either party by providing the non terminating party with written notice of the termination within fourteen (14) days of conclusion of the Contract.
- 11.2 In the event that the Buyer terminates the contract, they will be responsible for any charges reasonably incurred or committed up to the date of termination. All deposits are non-refundable.
- 11.3 The Company shall have the right to discontinue immediately all Supply for the Buyer should he or another person petition for his bankruptcy, or be declared insolvent, or be placed into administrative receivership or be generally unable to pay his bills as they fall due.
12. Warranties
- 12.1 The Company's manufacturer's warranty extends for 12 months from date of Buyer purchase and covers domestic use only.
- 12.2 The following exclusions will render any warranty void and unenforceable: willful damage or neglect including, but not limited to; failure to follow manufacturers' instructions for maintenance and use of the Vessel; non-adherence to the Owners Manual issued with each new boat sale; non-adherence to our Engine Power and Speed guide as published on our website and in our boat brochures; commercial use of the Vessel.
- 12.3 Registration: On completion of the Supply of a new Westport Marine boat a **Product & Warranty Registration Form** must be completed & returned to Westport Marine Ltd, including boat model, hull number, outboard model and frame number, full customer, dealer details, date of sale, type of usage, etc. The Warranty will only be valid on receipt of the completed form which can be found at the end of the Owners Manual supplied with every boat, or on request from Westport Marine Ltd. The warranty will commence from the date that the boat was Delivered new, by Westport Marine (or by appointed Dealer). In the case of a Westport or Dealer demonstration boat the warranty will commence from the date the vessel was first launched as a demonstration boat, prior to Delivery or Dealer Sale.
- 12.4 Use: Westport Marine boats have been designed and manufactured for domestic use only and as such warranty is limited to domestic use and does not cover any boat engaged in commercial use, activity or application. The warranty will cease from the time that the boat is first engaged in any such type of commercial use or service.
The following exclusions will further render any warranty void and unenforceable: willful damage or neglect including, but not limited to, failure to follow manufacturers' instructions for maintenance and use of the boat and non-adherence to the Owners Manual issued with each new boat sale.
- 12.5 Limitation: Westport Marine limits its warranty to make good any defect or fault due to the process used to manufacture the boat. It is the responsibility of the boat owner to return the boat to Westport

Marine, Plymouth, before any warranty work can be undertaken. It is the owner's responsibility to maintain insurance cover for his boat and equipment while it is at Westport Marine or their appointed contractor's premises. All warranty work must be undertaken by Westport Marine or their approved contractor. No liability will be accepted for any work undertaken by the owner or their appointed contractor on the boat at any time. The warranty period is not extendable.

- 12.6 Claims: Claims must be made in writing directly to Westport Marine Limited at the earliest possible time. Warranty cover can only be accepted from the date that any such claim notification is received by Westport Marine. Westport Marine will endeavor to respond to any claim in a considered, professional and timely manner. Full disclosure of the claim will hasten the procedure and should include the following: clear and concise summary of the issue of concern, photographs, usage history, engine hours, maintenance, boat condition, storage location & history, etc. All further queries about the vessel's history and use, by Westport Marine, must be fully answered by the claimant to enable a full and considered understanding of the submitted issues. Any information proved to be false or misleading will render any warranty claim void and unenforceable.
13. Copyright and Intellectual Property
13.1 The Company shall retain all copyright and intellectual property rights in all its Supply, designs and promotional material in whatsoever form unless otherwise Agreed in writing and no such material may be reproduced in any form whatsoever or actually replicated in whole or in part without the prior written consent of the Company.
14. Confidentiality:
14.1 Any verbal or written general and technical information and trade prices, estimates or quotations disclosed to the Buyer and/or its employees, agents or subcontractors, by the Company, shall be private and confidential and shall not be published to any third party without the express written permission of the Company.
15. Insurance
15.1 The Company shall maintain appropriate insurances in respect of Supply at its own cost from the date of the Contract until the point of Delivery only.
15.2 The Buyer shall be responsible for taking out appropriate insurances in respect of the Supply from the point of Delivery onwards.
16. Assignment
16.1 The Buyer may not assign any of their rights or obligations under the terms of Proposal or any connected Supply to any third party.
17. Complaints and Time Bar
17.1 Any complaint by the Buyer in respect of the Supply must be notified to the Company as soon as is reasonably practicable after the Buyer becomes aware of the alleged problem. Where any complaint is capable of remedy, the Company must be afforded a reasonable opportunity both to inspect the subject matter of the complaint, and if necessary, remedy it.
17.2 Any claims against the Company arising out of or in connection with the Supply by the Buyer shall be deemed to be waived and absolutely time barred upon the expiry of one calendar year from the Delivery date of the Vessel to the Buyer. This time bar does not apply if a claim relates to an allegation of the Company's negligence or fraudulent misrepresentation which has allegedly caused death or personal injury.
18. Notices
18.1 Notice to a Buyer shall be sufficiently served if personally given to him or if sent by first class post to the Buyer's last known address. Notices to the Company should be sent by first class post to our principal trading address or registered office.
19. Entire Agreement
19.1 Without prejudice to stipulations contained within the Proposal, these terms and conditions represent the entire agreement between the Company and the Buyer.
20. Jurisdiction and Law
20.1 These conditions shall be governed by and construed in accordance with the law of England and Wales; and any dispute between the parties shall be subject to the exclusive jurisdiction of the English Courts.
21. Dispute Resolution
21.1 Matters suitable for London Maritime Association of Arbitrators Small claims arbitration shall be submitted to a single Arbitrator. The provisions of the Arbitration Act 1996 shall apply.

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