

# SELLING/BUYING YOUR HOMEBUILT...

## Proposed Waiver Language:

As a service to EAA members selling their Experimental Amateur-Built aircraft, EAA is providing this sample **EXPERIMENTAL AMATEUR-BUILT AIRCRAFT PURCHASE AND SALE AGREEMENT WITH WAIVER AND RELEASE OF LIABILITY**. It was developed by Pat Phillips, a member of EAA's Legal Advisory Council, and he has used it over many years with his clients. This type of hold harmless agreement may not be recognized in some states or courts and it is not effective against third parties.

This sample agreement is a good starting point for you and your attorney to draft an agreement to cover **your** specific situation. It should help prevent your attorney from having to "reinvent the wheel" and charging you for it! **We stress that you should not simply "fill in the blanks"**. It should NOT be used without the assistance of a qualified attorney. The sale of an aircraft that you built carries with it enough potential risks that the use of an attorney is warranted. The proper use of a waiver/release may help you better limit some of your exposure in the event of an accident.

Your use of this sample agreement is subject to the following Terms of Use. Your agreement to these terms is consideration for EAA's provision of the service to you. If you do not agree then do not use the agreement.

**LIMITATION OF LIABILITY AND INDEMNIFICATION:** THIS SAMPLE AGREEMENT IS PROVIDED TO ASSIST YOUR ATTORNEY WITH DRAFTING AN AGREEMENT FOR SELLING AN EXPERIMENTAL AMATEUR BUILT AIRCRAFT. THE EXPERIMENTAL AIRCRAFT ASSOCIATION (EAA) AND ITS EMPLOYEES, AGENTS, OR ANY OF ITS AFFILIATED OR RELATED ORGANIZATIONS DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE WHATSOEVER OF ITS MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE WHATSOEVER THAT THE VERBIAGE OR INTENDED OR EXPECTED USE OF ANY PART OF THE SAMPLE AGREEMENT WILL BE EFFECTIVE IN PROTECTING YOU FROM LEGAL LIABILITY. NEITHER THE EAA NOR ANY OF ITS AFFILIATED OR RELATED ORGANIZATIONS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES AS A RESULT OF THE USE OF THE COPY OR ANY PART OF THE COPY PROVIDED THROUGH THIS MEDIUM OR ANY OTHER MEDIUM OR SERVICE. THIS DISCLAIMER INCLUDES, BUT IS NOT LIMITED TO, DEATH, INJURY OR FAILED EXPECTATION. YOU SPECIFICALLY AGREE, ON YOUR BEHALF AND ON BEHALF OF YOUR HEIRS, EXECUTORS AND ASSIGNS, NOT TO BRING ANY LEGAL ACTION IN ANY FEDERAL OR STATE COURT OR OTHER COURT OF LAW OR EQUITY AGAINST THE EAA OR ANY OF ITS AFFILIATED OR RELATED ORGANIZATIONS UNDER ANY THEORY OF LIABILITY AND FURTHER AGREE TO INDEMNIFY AND HOLD EAA AND ITS AFFILIATED OR RELATED ORGANIZATIONS HARMLESS FROM YOUR BREACH OF THESE TERMS.

# EXPERIMENTAL AMATEUR-BUILT AIRCRAFT PURCHASE AND SALE AGREEMENT WITH WAIVER AND RELEASE OF LIABILITY

**THIS EXPERIMENTAL AMATEUR-BUILT AIRCRAFT SALE AGREEMENT (AGREEMENT)** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between \_\_\_\_\_, (Seller), and \_\_\_\_\_ (Purchaser).

WITNESSETH:

That for and in consideration of the premises, and of the mutual promises, covenants, stipulations, and agreements hereinafter contained, and for and in consideration of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) paid by Purchaser to Seller, Seller and Purchaser have agreed, and by these presents, do agree as follows:

1. Seller agrees to sell to Purchaser a(n) \_\_\_\_\_ aircraft, Federal Aviation Administration (FAA) registration number N\_\_\_\_\_, and Aircraft serial number \_\_\_\_\_, an experimental amateur built aircraft (Aircraft).
2. Seller conveys Aircraft free and clear of all liens, claims, and encumbrances as are actually known to Seller. Purchaser acknowledges that Purchaser has conducted an aircraft title search or has had the opportunity to conduct an aircraft title search and is satisfied with the status of the title of Aircraft.
3. Purchaser shall pay any and all taxes including, but not limited to, sales taxes and use taxes, duties, fees, or other obligations assessed or levied by any federal, state, or local authority as a result of the conveyance, sale, delivery, registration, or transfer of ownership of Aircraft.
4. Purchaser acknowledges that Aircraft was designed and constructed as an Experimental amateur-built aircraft and is not designed nor built to meet any standards of airworthiness as with a standard certificated aircraft. Further, Purchaser acknowledges that Aircraft does not have an FAA Form 8130-9 "Statement of Conformity" on file, with the FAA, since there is no FAA Approval data to which it conforms. Further, Purchaser acknowledges that this is an experimental amateur-built aircraft which the builder and owner are or were the experimenters, and that Aircraft was not built in a permanent jig and parts are not interchangeable with any other aircraft of the same facsimile. Purchaser understands that the registered owner is free to make such modifications or changes as he, she, or it wishes. Purchaser acknowledges that Aircraft was certified in the Experimental (Amateur-Built) Category and, as a result, may or may not contain structural and/or design defects or inadequate and/or inappropriate materials or components, and that this Agreement neither includes nor provides any assurances that Aircraft is complete, airworthy, insurable, fit for service, or capable of being licensed or authorized for any flight, use; or operational activities of any kind or nature whatsoever. Purchaser acknowledges and agrees that all decisions, judgments, or inspections related to the conveyance, sale, delivery, registration, or transfer of ownership of Aircraft are exclusively those of Purchaser and are Purchaser's sole and absolute responsibility.
5. AIRCRAFT IS SOLD ON AN AS IS AND WITH ALL FAULTS BASIS FOR REASON THAT THE BUILDER OF AIRCRAFT WAS AN AMATEUR BUILDER AND AIRCRAFT DOES NOT COMPLY WITH THE FEDERAL SAFETY REGULATIONS FOR STANDARD CERTIFICATED AIRCRAFT, SELLER DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE WHATSOEVER TO PURCHASER AND ANYONE ELSE INCLUDING,

BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS OF AIRWORTHINESS, MERCHANTABILITY, AND/OR FITNESS FOR PURPOSE, EXCEPT SELLER AGREES THAT AIRCRAFT WILL BE DELIVERED WITH AN APPROPRIATE BILL OF SALE IN THE STANDARD FAA FORM. FURTHER SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE WHATSOEVER THAT AIRCRAFT IS COMPLETE, AIRWORTHY, INSURABLE, FIT FOR SERVICE, OR CAPABLE OF BEING LICENSED OR AUTHORIZED FOR ANY FLIGHT, USE, OR OPERATIONAL ACTIVITIES OF ANY KIND OR NATURE WHATSOEVER. PURCHASER ACKNOWLEDGES AND AGREES THAT AS OWNER OF AIRCRAFT, PURCHASER SHALL BE RESPONSIBLE FOR ITS AERODYNAMICS AND STRUCTURAL CONCEPT AND FOR THE PERFORMANCE AND FITNESS FOR PURPOSE OF EVERY PART AND PIECE OF AIRCRAFT. ADDITIONALLY, SELLER DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE WHATSOEVER TO PURCHASER AND ANYONE ELSE FOR ANY FLYING OR GROUND HANDLING CHARACTERISTIC, FOR THE STRUCTURAL INTEGRITY, OR FOR ANY FEATURE, PART OR COMPONENT OF AIRCRAFT.

6. Seller has made Aircraft available to Purchaser at Purchaser's convenience without limitation prior to the delivery of Aircraft to enable Purchaser to have a **PRE-PURCHASE INSPECTION** performed by Purchaser or Purchaser's agent. Accordingly, Purchaser acknowledges that Purchaser has had Aircraft and its records inspected by an FAA licensed mechanic or by an FAA approved repair station. Purchaser acknowledges that Purchaser is satisfied with the workmanship and condition of Aircraft and that it is suitable for Purchaser's own purposes.
7. Seller will transfer to Purchaser, at the time of the delivery of Aircraft, such log books and other records, if any at all, pertaining to Aircraft which are in the possession of Seller. SELLER DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES OF ANY KIND OR NATURE WHATSOEVER AS TO ANY LOG BOOKS OR OTHER RECORDS PERTAINING TO AIRCRAFT AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY, COMPLETENESS, OR VERACITY OF ANY LOG BOOKS OR OTHER SUCH RECORDS PERTAINING TO AIRCRAFT.
8. PURCHASER HEREBY WAIVES AND RELEASES \_\_\_\_\_ THE BUILDER/SELLER FROM ANY AND ALL CLAIMS, LOSSES, DEMANDS OR LIABILITY OF EVERY KIND WHICH SUCH PERSON OR PERSONS MAY HAVE, OR CLAIM TO HAVE, AGAINST SAID BUILDER/SELLER BY REASON OF ANY INJURY, DEATH OR PROPERTY DAMAGE OF ANY KIND SUSTAINED WHILE BEING AN OWNER, AN OPERATOR, A PILOT, OR A PASSENGER IN THIS AIRCRAFT. THIS WAIVER AND RELEASE IS BINDING ON THE HEIRS, PERSONAL REPRESENTATIVES AND ASSIGNS OF THE PURCHASER, SUBSEQUENT OWNER, PILOTS AND PASSENGERS.
9. Purchaser shall defend, indemnify, and hold Seller harmless from each and every claim made against Seller as a result of Purchaser's ownership, possession, use or operation of Aircraft from the date of this Agreement.
10. This Agreement shall be binding upon the agents, servants, employees, officers, directors, successors, assigns, heirs, next of kin, and personal representatives of both Seller and Purchaser.
11. Purchaser agrees that Purchaser shall not make any modification to Aircraft and agrees not to use or exchange any components or accessories of Aircraft without the written authorization and approval of the FAA, Aircraft kit manufacturer, Aircraft designer, or any successors or assigns thereof, whichever is required or necessary.

12. Purchaser agrees to purchase and install promptly all mandatory changes, modifications, alterations, or improvements designated by the FAA, Aircraft kit manufacturer, Aircraft designer, or any successors or assigns thereof, whichever is required or necessary, and shall perform any other inspections, maintenance procedures, and repairs recommended or required by the FAA, Aircraft kit manufacturer, Aircraft designer, or any successors or assigns thereof, whichever is required or necessary.

13. This Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_.

14. In any action brought to enforce or to interpret this Agreement, the Prevailing party shall be entitled to recover its costs and reasonable attorneys' fees including, without limitation, attorneys' fees incurred in connection with any appeal proceeding, and the sole and exclusive venue of any such action shall be in a court of appropriate jurisdiction for the County of \_\_\_\_\_, State of \_\_\_\_\_, or in the United States District Court for the judicial district in which the County of \_\_\_\_\_, State of \_\_\_\_\_, is or may be located. Seller and Purchaser renounces and waives any right to have any such controversy litigated in any other place whether pursuant to the doctrine of forum non conveniens or otherwise. Seller and Purchaser renounce and waive any right whatsoever to a trial by jury.

15. This Agreement shall not be modified, revised, or amended except by an instrument in writing agreed to and signed by both Seller and Purchaser.

If any part of this Agreement shall prove to be invalid or void, it shall in no manner affected or impair any of the remaining provisions of the Agreement which can be given effect without the invalid or void part.

16. Purchaser is under no legal disability and has relied upon the advice and representation of an attorney of his own selection, or has had the opportunity to do so, prior to executing this Agreement. Further, Purchaser affirms that Purchaser has read and fully understands this Agreement, and has been fully advised as to the legal effects thereof or has had the opportunity to do so, prior to executing this Agreement.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed on the day, month, and year first above written.

Signed and sealed in the presence of:

_____	PURCHASER
Witness	
_____	_____
Print Name	
_____	Print Name: _____
Witness	
_____	Address: _____
Print Name	
_____	PURCHASER'S SPOUSE
Witness	
_____	Print Name: _____
Print Name	
_____	Address: _____
Witness	
_____	

Print Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name

SELLER

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_