

# ASCEND® Kayak Limited Warranty

Please call **417.873.5034** for more information.

**THIS LIMITED WARRANTY CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU. ANY DISPUTE OR CLAIM RELATED TO THIS LIMITED WARRANTY OR YOUR PURCHASE OF THE ASCEND KAYAK MUST BE RESOLVED BY ARBITRATION ON AN INDIVIDUAL BASIS, AND MAY NOT BE ARBITRATED OR OTHERWISE PURSUED AS A CLASS ACTION. PLEASE SEE SECTION 9.**

**1. Warrantor.** This Limited Warranty on your ASCEND® kayak is provided by the manufacturer, White River Marine Group, LLC (“White River”, “we” and “us”), subject to the terms and conditions set forth herein. White River’s address is 2500 East Kearney Street, Springfield, Missouri 65898.

**2. What This Limited Warranty Covers, And For How Long.** Except as limited herein, this Limited Warranty covers parts and labor to correct defects in the materials and workmanship of your ASCEND kayak for three (3) years from the date of purchase.

**3. What This Limited Warranty Does Not Cover.** This Limited Warranty does not cover any of the following:

- Any defect caused by misuse, neglect, or an accident;
- Any part, component, or accessory that has been modified, neglected, vandalized, or repaired or replaced with an unauthorized part, component, or accessory;

- Any damages due to ordinary wear and tear;
- Any damages or defects caused by improper storage or maintenance (see Ascend® Kayak Owner’s Manual for storage, care and maintenance information);
- Any damages incurred in transporting the kayak to us for service under this Limited Warranty; and
- Any fees or damages you may incur (such as for storage, inconvenience, or loss of time or money) while a claim under this Limited Warranty is being processed.

**4. Who May Enforce This Limited Warranty.** This Limited Warranty is personal to and extended only to the original retail purchaser of the ASCEND kayak, and is not transferable to any other person or entity under any circumstances.

**5. How To Request Service If You Have A Claim Under This Limited Warranty.** To request service under this Limited Warranty, please call us at (417) 873-5034, and we will provide you with instructions regarding where to deliver or ship your ASCEND kayak. Any costs you incur to deliver or ship your ASCEND kayak to the designated place for warranty work are your sole responsibility. When you deliver or ship your ASCEND kayak to the designated place for warranty work, you must include a copy of the original proof-of-purchase for the kayak, and specify in writing the model and serial number of the kayak. We reserve the right to return the

## ASCEND® Kayak Limited Warranty (continued)

kayak to you at your expense—for example, by cash-on-delivery (C.O.D.) shipping—if the foregoing conditions and requirements have not been met.

**6. What We Will Do.** For any defect to your ASCEND kayak that qualifies for service under this Limited Warranty, White River will either (in our sole and absolute discretion) repair or replace the defective part, component, or accessory.

**7. Limitation on Duration of Implied Warranties.** ANY IMPLIED WARRANTY APPLICABLE TO YOUR PURCHASE OF THE ASCEND KAYAK, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, IS HEREBY LIMITED IN DURATION TO THE DURATION OF THIS LIMITED WARRANTY OR THE MAXIMUM STATUTORY PERIOD, WHICHEVER IS LESS. SOME STATES DO NOT ALLOW LIMITATIONS ON THE DURATION OF IMPLIED WARRANTIES, SO THE FOREGOING LIMITATION MAY NOT APPLY TO YOU.

**8. Limitation of Damages.** IN NO EVENT WILL WHITE RIVER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR SPECIAL DAMAGES ARISING FROM OR RELATING TO THIS LIMITED WARRANTY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE FOREGOING

LIMITATION MAY NOT APPLY TO YOU.

**9. Dispute Resolution.** WHITE RIVER'S GOAL IS TO RESOLVE ANY WARRANTY ISSUE AS QUICKLY AND FAIRLY AS POSSIBLE. PLEASE CONTACT US AT 417.873.5034 IN THE EVENT YOU HAVE ANY QUESTIONS ABOUT THE TERMS, CONDITIONS OR LIMITATIONS CONTAINED IN THIS LIMITED WARRANTY. THE PROCEDURE TO HAVE YOUR LIMITED WARRANTY ISSUE RESOLVED IS SET FORTH ABOVE. IN THE EVENT WE DO NOT REMEDY THE DEFECT WITHIN A REASONABLE TIME, YOU AGREE TO WRITE US AT WHITE RIVER CUSTOMER SERVICE, 2500 EAST KEARNEY STREET, SPRINGFIELD, MISSOURI 65898, AND TO EXPLAIN THE ISSUE. IF OUR RESPONSE TO YOUR WRITTEN EXPLANATION OF THE ISSUE IS NOT TO YOUR SATISFACTION, YOU AGREE THAT THE FOLLOWING BINDING ARBITRATION WILL APPLY.

### **BINDING ARBITRATION & CLASS ACTION WAIVER**

a) You and White River agree to submit all disputes, claims, or controversies of any kind arising out of or related to this Limited Warranty and/or your purchase of the ASCEND kayak for resolution exclusively through binding and final arbitration, instead of through court proceedings. You should review this arbitration provision (this Section 9) carefully; it limits your and our ability to litigate claims in court. THIS AGREEMENT TO ARBITRATE MEANS THAT YOU AND WE WAIVE ANY RIGHT TO A TRIAL BY JURY, WHETHER ON AN INDIVIDUAL OR A CLASS BASIS.

## ASCEND® Kayak Limited Warranty (continued)

b) Arbitration is usually an informal proceeding in which disputes are decided by one or more neutral arbitrators who receive the evidence at a hearing and then issue a binding ruling in the form of an award. You and we understand that in an arbitration, discovery is more limited than in a court, and review by courts is very limited.

c) If either you or we intend to seek arbitration, such party must first send to the other party, by certified mail, a written Notice of Dispute (a “Notice”). Any Notice that you send to us must be addressed to General Counsel, White River Marine Group, LLC, 2500 East Kearney Street, Springfield, MO, 65898 (the “Notice Address”). Any Notice that we send to you will be sent to the contact information that we have on file for you. Any Notice must (i) describe the nature and basis of the dispute, claim, or controversy and (ii) set forth the specific relief sought. If you and we do not reach an agreement to resolve the dispute, claim, or controversy within 30 days after the Notice is received, you or we may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or we shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or we are entitled.

d) You and we agree, upon written demand made by you or us, to submit

to binding arbitration of any and all disputes, claims, and controversies between you and us, whether based on statute, regulation, constitution, common law, equity, or any other legal basis or theory, and whether pre-existing, present, or future, that arise out of or relate to this Limited Warranty and/or your purchase of the ASCEND kayak, including contract disputes, tort claims, fraud claims, fraud-in-the-inducement claims, misrepresentation claims, statutory claims and/or regulatory claims arising out of or relating to this Limited Warranty or your ASCEND kayak (including, to the fullest extent permitted by applicable law, relationships with third parties who are not parties to this Limited Warranty or this arbitration provision), or the scope or enforceability of this Limited Warranty, including the determination of the applicability of this agreement to arbitrate, and/or any other relationship or dispute between you and us (each a “Claim”, and collectively the “Claims”). Any and all Claims shall be submitted for binding arbitration in accordance with the Consumer Arbitration Rules of the American Arbitration Association (the “AAA Rules”), as amended, in effect at the time arbitration is initiated. The AAA Rules are available online at [www.adr.org](http://www.adr.org) or by calling (800) 778-7879. In the event of any inconsistency between this arbitration provision and the AAA Rules, such inconsistency shall be resolved in favor of this provision.

e) After the 30-day period specified in paragraph c) above has expired,

## ASCEND® Kayak Limited Warranty (continued)

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either you or we may initiate arbitration by giving written notice of the intention to arbitrate to the other party and by filing notice with the AAA in accordance with the AAA Rules in effect at the time the notice is filed. We may be given notice at the Notice Address specified in paragraph c) above. If you decide to initiate arbitration, you agree to pay the initiation fee of \$200 (or the amount otherwise required by the AAA Rules), and we agree to pay the remaining arbitration initiation fee and any additional deposit required by AAA to initiate your arbitration. We will pay the costs of the arbitration proceeding, including the arbitrator's fees; however, other fees, such as attorney's fees and expenses of travel to the arbitration, shall be paid in accordance with the AAA Rules and applicable law. We will pay all costs associated with any arbitration that we commence.

f) A single, neutral arbitrator selected in accordance with the AAA Rules shall decide all Claims. The arbitrator shall be an active member in good standing of the bar for any state in the continental United States and shall be either actively engaged in the practice of law for at least five years or a retired judge.

g) You and we agree that the arbitrator shall: (i) limit discovery to non-privileged matters directly relevant to the Claim; (ii) grant only relief that is based upon and consistent with substantial evidence and applicable substantive law; (iii) have authority to grant relief only with respect

to the Claims asserted by or against you and us individually; and (iv) provide a written statement stating the disposition of each Claim and a concise written explanation of the basis for the award and shall make specific findings of fact and conclusions of law to support any arbitration award. Unless inconsistent with applicable law, and except as otherwise provided herein, each party shall bear the expense of its respective attorney, expert, and witness fees, regardless of which party prevails in the arbitration. Any arbitration proceedings shall be conducted in the federal judicial district of your residence, and you will be given the opportunity to attend the proceeding and be heard. If the Claim is for \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing with the arbitrator, or by an in-person hearing in accordance with the AAA Rules.

h) The arbitrator's decision will be final and binding upon the parties and may be enforced in any federal or state court that has jurisdiction. You and we agree that the arbitration shall be kept confidential and that the existence of the proceeding and any element of it (including, without limitation, any pleadings, briefs or other documents submitted or exchanged and any testimony or other oral submissions and awards) will not be disclosed beyond the arbitration proceedings, except as may lawfully be required in judicial proceedings relating to the arbitration or by applicable disclosure rules and regulations of securities regulatory

## ASCEND® Kayak Limited Warranty (continued)

authorities or other governmental agencies.

i) Demand for arbitration under this arbitration provision must be filed before the date when any judicial action upon the same Claim would be barred under any applicable statute of limitations; otherwise, the Claim is also barred in arbitration. Any dispute as to whether any statute of limitations, estoppel, waiver, laches, or other doctrine bars the arbitration of any Claim shall be decided by arbitration in accordance with this provision.

j) Neither you nor White River may act as a class representative or private attorney general, nor participate as a member of a class of claimants, with respect to any Claim. The Claims may not be arbitrated on a class or representative basis. The arbitrator can decide only your and/or White River's individual Claims. The arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated. Accordingly, you and we agree that the AAA Supplementary Rules for Class Arbitrations do not apply to our arbitration. This arbitration provision and the procedures applicable to the arbitration contemplated by this provision are governed by the Federal Arbitration Act, notwithstanding any state law that may be applicable.

k) This arbitration agreement does not preclude you or us from seeking

action by federal, state, or local government agencies. You and we also have the right to exercise self-help remedies, such as set-off, or to bring qualifying claims in small claims court. In addition, you and we retain the right to apply to any court of competent jurisdiction for provisional or ancillary relief, including pre-arbitral attachments or preliminary injunctions, and any such request shall not be deemed incompatible with the terms of this Limited Warranty, nor a waiver of the right to have disputes submitted to arbitration as provided in this provision.

l) You may choose to opt out of these arbitration procedures within 30 days from the date you purchase your ASCEND product ("*Opt Out Deadline*"). You may opt out of these arbitration procedures by completing the opt-out form located at [www.ascend-kayaks.com/arbitrationoptout](http://www.ascend-kayaks.com/arbitrationoptout) and sending the opt-out form by U.S. first-class mail, postage prepaid, to the following notice address: White River Customer Service, Attn: Arbitration Director, White River Marine Group, LLC, 2500 East Kearney Street, Springfield, Missouri 65898. Any opt-out received after the Opt Out Deadline will not be valid and you must pursue your Claims in arbitration or small claims court.

m) A court may sever any portion of this Section 9 that it finds to be unenforceable, except for the prohibitions on any Claim being handled on a class or representative basis, and the remaining portions of this

## ASCEND® Kayak Limited Warranty (continued)

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arbitration provision will remain valid and enforceable. No waiver of any provision of this Section 9 will be effective or enforceable unless recorded in a writing signed by the party waiving such a right or requirement. Such a waiver shall not waive or affect any other portion of this Limited Warranty.

n) THIS SECTION 9 LIMITS CERTAIN RIGHTS, INCLUDING THE RIGHT TO MAINTAIN A COURT ACTION, THE RIGHT TO A JURY TRIAL, THE RIGHT TO PARTICIPATE IN ANY FORM OF CLASS OR REPRESENTATIVE CLAIM, THE RIGHT TO ENGAGE IN DISCOVERY EXCEPT AS PROVIDED IN THE AAA RULES, AND THE RIGHT TO CERTAIN REMEDIES AND FORMS OF RELIEF. OTHER RIGHTS THAT YOU OR WHITE RIVER WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION.

**10. Choice of Law; Jurisdiction and Venue.** Except as set forth above, this Limited Warranty shall be governed exclusively by, and construed exclusively in accordance with, the internal laws of the state of Delaware without reference to the choice of law or conflicts of law principles thereof, and all claims relating to or arising out of this Limited Warranty, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed exclusively by the laws of the state of Delaware without reference to the choice of law or conflicts of law principles thereof. To the extent any action is permitted under the provisions above to be heard in a court of competent jurisdiction, such action shall take

place in the state or federal courts sitting in Kent County, Delaware, the parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party agrees that any such court shall have in personam jurisdiction over it for any such action, and each party consents to service of process in any manner authorized by Delaware law.

**11. Your Legal Rights.** This Limited Warranty gives you specific legal rights, and you may also have other rights which vary from state to state. To the extent any limitation or exclusion contained herein is contrary to any applicable law, such limitation or exclusion shall be severable and all other terms herein shall remain in full force and effect and are valid and enforceable.

**12. Other Information.** For all inquiries regarding your ASCEND kayak, please call 417.873.5034 from 9AM—5PM Central Time.

## ASCEND® Kayak Limited Warranty Arbitration Opt-Out Notice

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I am writing to provide notice that I do not agree to and am opting out of the agreement to arbitrate contained in the ASCEND Kayak Limited Warranty.

Pursuant to the terms of the agreement to arbitrate contained in the ASCEND Kayak Limited Warranty, I am providing the requested information below and sending it by U.S. first-class mail, postage prepaid, to White River Marine Group Customer Service, Attn: Arbitration Director, White River Marine Group, LLC, 2500 East Kearney Street, Springfield, Missouri, 65898.

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First & Last Name

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Street Address, City, State, Zip Code

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Phone Number

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Email Address

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Kayak Serial Number

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(Signature)

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Date

**Note:** This Arbitration Opt-Out Notice must be postmarked no later than 30 days after the date you purchased your ASCEND kayak. It is your responsibility to mail this Arbitration Opt-Out Notice by the applicable deadline.