

**DATED**

**2012**

**(1) [◆ ]**  
**as Seller**

**- and -**

**(2) [◆ ]**  
**as Buyer**

**AIRCRAFT SALE AND  
PURCHASE AGREEMENT**

**in respect of**

**one [◆ ] aircraft**  
**msn [◆ ]**  
**registration mark [◆ ]**

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THIS AGREEMENT is made on

2012

**BETWEEN:**

- (1) [◆ ] (company number [◆ ]) whose registered office is at [◆ ] ("**Seller**"); and
- (2) [◆ ] (company number [◆ ]) whose registered office is at [◆ ] ("**Buyer**").

**BACKGROUND:**

This Agreement sets out the terms and conditions upon which the Seller will sell and the Buyer will buy the Aircraft described below.

**IT IS AGREED:**

**1. DEFINITIONS AND CONSTRUCTION**

**1.1 Definitions**

In this Agreement:

"**Acceptance Certificate**" means a certificate in the form set out in schedule 2 (*Acceptance Certificate*) to be signed by or on behalf of the Buyer at Delivery as required under clause 5(d);

"**Aircraft**" means the Airframe together with the Engines and, where the context permits, references to the "**Aircraft**" shall include the Manuals and Technical Records and, unless otherwise provided in this Agreement, shall mean the Aircraft as a whole or any part thereof as specified in schedule 1;<sup>1</sup>

"**Aircraft Documents**" means the documents set out in schedule 3 (*Aircraft Documents*);

"**Airframe**" means the airframe specified in schedule 1 (*Aircraft Description*) (excluding the Engines), and all Parts installed thereon;

"**Aviation Authority**" means [◆ ];

"**Bill of Sale**" means a bill of sale in the form set out in schedule 4 (*Bill of Sale*) to be signed by or on behalf of the Seller at Delivery;<sup>2</sup>

"**Business Day**" means any day other than a Saturday or Sunday on which banks in London and [◆ ] are open for business;

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<sup>1</sup> From the buyer's point of view, it is important that schedule 1 contains a detailed description of the airframe, engines and any major items of equipment.

<sup>2</sup> It is common for the form of bill of sale to be attached as a schedule to the aircraft sale and purchase agreement and (often) for title to pass under the bill of sale. Where an aircraft that is being sold is registered with the FAA, the seller will need to execute a bill of sale in the FAA's prescribed form. To distinguish between an FAA bill of sale and a non-prescribed form bill of sale, the latter is often called a warranty bill of sale. Where the aircraft being sold is registered with the FAA, it is not uncommon for the seller to sign an FAA bill of sale and a warranty bill of sale.

**"Delivery"** means the time at which title to and property and risk in the Aircraft shall pass to the Buyer in accordance with clause 5(c);

**"Delivery Condition"** means the Aircraft:

- (a) being in an "as is, where is" condition<sup>3</sup>;
- (b) being in compliance with the aircraft specification set out in schedule 1;
- (c) being airworthy, fully serviceable with all systems and Parts working normally within their required limits;<sup>4</sup>
- (d) being free and clear of any mortgage, charge, pledge, lien or other encumbrance;
- (e) having no damage history;
- (f) being free from any [major] corrosion [of which either (i) the Seller is aware; or (b) as identified during the Initial Inspection];
- (g) [complying with all airworthiness directives affecting the Aircraft issued by the Aviation Authority and all [mandatory and alert] service bulletins with a compliance date not less than [180] days after the Delivery Date;]
- (h) [having all calendar, hourly and cycle inspections as recommended by the manufacturer's maintenance programme current and complied with and all hourly, calendar and cycle limited components shall be within the limits in accordance with the manufacturer's maintenance programme;]
- (i) [being clean;]
- (i) [◆ ];<sup>5</sup>

**"Delivery Date"** means the date Delivery takes place;

**"Delivery Location"** means [◆ ] or such other location as may be agreed between the parties in writing;

**"Deposit"** means [◆ ];

**"Engines"** means the engines specified in schedule 1 (*Aircraft Description*) together with all Parts installed thereon;

**"Escrow Agent"** means [◆ ];

**"Final Delivery Date"** means [◆ ] or such later date as agreed under clause 4(c)(ii)(B) or 10(b);

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<sup>3</sup> It is common practice for a used aircraft to be sold "as is, where is" without any continuing warranty as to the aircraft's physical state and condition. Even though an aircraft may be sold on an "as is, where is" basis, a buyer may require the aircraft sale and purchase agreement to contain a detailed description of the aircraft.

<sup>4</sup> Even if the buyer accepts the purchase is on an "as is, where is" basis a buyer will require to satisfy himself that, when the aircraft is delivered, it will be airworthy and will have all systems functioning normally.

<sup>5</sup> There may be other provisions relating to the condition of the aircraft on delivery.

**"Final Inspection"** has the meaning given to such term in clause 4(b);

**"Inspection Facility"** means [◆ ] or such other facility as may be agreed between the parties in writing;

**"Manuals and Technical Records"** means all original records, logs, manuals, technical data and other materials and documents (whether kept or to be kept in compliance with any regulation of the Aviation Authority or otherwise) relating to the Aircraft;

**"Parts"** means all appliances, parts, navigational and communications equipment, accessories, furnishings, instruments, modules, components, radar, radio and other items of equipment (other than complete engines); and

**"Purchase Price"** means [◆ ].

## 1.2 Construction

In this Agreement:

- (a) any reference to:
  - (i) this Agreement or any other agreement or instrument is a reference to this Agreement or that other agreement or instrument as amended, assigned or novated;
  - (ii) a **"person"** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
  - (iii) the **"Seller"** or the **"Buyer"** shall, where the context permits, include such person's successors and permitted assigns and any persons deriving title under such person;
  - (iv) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - (v) a provision of law is a reference to that provision as amended or re-enacted;
  - (vi) a clause or schedule is a reference to a clause of or schedule to this Agreement; and
  - (vii) a time of day is a reference to London time;
- (b) words importing the plural include the singular (and vice versa); and
- (c) section, clause and schedule headings are for ease of reference only.

## 2. AGREEMENT TO SELL

The Seller agrees to sell and the Buyer agrees to buy the Aircraft for the Purchase Price and otherwise upon and subject to the terms and conditions of this Agreement.

### 3. DEPOSIT<sup>6</sup>

- (a) The Buyer shall pay the Deposit to the Escrow Agent on or prior to the date of this Agreement.
- (b) The Deposit is non-refundable except where this Agreement shall have terminated pursuant to any of clauses 4(c)(i), 7(e), 10(a) or 10(b) or where the Seller shall have failed to comply with its obligations under clause 5(b) (otherwise than as a consequence of any breach by the Buyer of the Buyer's obligations under this Agreement). The Deposit shall be returned to the Buyer by the Escrow Agent following the occurrence of any of the circumstances set out in this clause 3(b).
- (c) At Delivery, the Deposit shall be applied in part satisfaction of the Purchase Price.
- (d) The Buyer acknowledges that the Seller has or will incur costs and expenses in connection with the sale of the Aircraft under this Agreement. If this Agreement is terminated and the Escrow Agent is obliged to pay the Deposit to the Seller pursuant to any provision of this Agreement, the Deposit shall be paid to the Seller as liquidated damages and not as a penalty. Each of the parties agrees that the Deposit constitutes the likely costs, expenses and loss that would be incurred by the Seller in such event.<sup>7</sup>

### 4. PRE-DELIVERY INSPECTION

- (a) The Buyer or any other person as the Buyer shall have directed or nominated shall have completed a ground and records inspection of the Aircraft on or prior to the date of this Agreement ("**Initial Inspection**") and the Buyer acknowledges that the Initial Inspection has been completed.
- (b) The Buyer or any other person as the Buyer shall direct or nominate shall be entitled to inspect the Aircraft at the Inspection Facility prior to Delivery on [◆ ] (or such other date as may be mutually agreed between the parties in writing) during which the Seller shall give the Buyer the opportunity to:
  - (i) inspect the interior and exterior of the Aircraft;

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<sup>6</sup> It is common for the seller to require a prospective buyer to pay a deposit to an escrow agent before the seller withdraws the aircraft from the market. It is prudent for the aircraft sale and purchase agreement to clearly specify the circumstances where the deposit should be returned to the Buyer or paid to the Seller.

<sup>7</sup> The case of Tandrin Aviation Holdings Limited v Aero Toy Store LLC and Insured Aircraft Title Service, Inc heard in the High Court in January 2010 is a case regarding a claim for the return of a deposit paid under an aircraft sale and purchase agreement. The claimant, Tandrin, contracted to purchase a new Bombardier jet aircraft from a third party and paid a total of about US\$26.5m for the aircraft and took delivery of it. The claimant entered into an aircraft sale and purchase agreement with the first defendant, Aero Toy Store, a US entity, for the sale of the aircraft to the first defendant for US\$31.75m. The first defendant paid US\$3m as a deposit to the second defendant, IATS, an escrow agent. Both the deposit and the balance of the purchase price were due to be paid on delivery of the aircraft. The first defendant failed to participate in the pre-delivery procedures, failed to accept delivery of the aircraft when tendered and failed to pay the purchase price. After a cure period, the claimant terminated the aircraft sale and purchase agreement, the consequence of which was that the deposit became payable to the claimant as liquidated damages. The first defendant failed to instruct the second defendant to pay the deposit to the claimant. The claimant ultimately sold the aircraft for US\$24m at a significant loss. It was held that a clause providing for liquidated damages is enforceable if it does not exceed a genuine attempt to estimate in advance the loss which the claimant would be likely to suffer from a breach of the obligation in question and it is enforceable irrespective of the amount of loss actually suffered. Furthermore, the question of whether a sum stipulated in a contract is a penalty or liquidated damages is a question of law. On the facts of the case, the claimant was entitled to receive the deposit as liquidated damages and the High Court granted an order requiring the second defendant to pay the deposit to the claimant.

- (ii) inspect the Engines or any Parts not then installed on the Aircraft or the Engines or any Parts which are, in accordance with this Agreement, to be installed upon the Aircraft at Delivery;
- (iii) conduct a borescope inspection of the Engines;
- (iv) inspect the Aircraft Documents;
- (v) [at the cost and expense of the Buyer,] conduct a test flight of not more than [two (2)] hours duration for the purpose of demonstrating that the Aircraft is in the Delivery Condition. A pilot that is acceptable to the Seller shall maintain command and control of the Aircraft at all times during the test flight. The Buyer may have up to [two (2)] observers on the test flight; and
- (vi) [◆ ],<sup>8</sup>

**("Final Inspection").**

- (c) Within [two (2)] Business Days of the completion of the Final Inspection, the Buyer shall:
  - (i) give notice in writing to the Seller of its intention to take Delivery of the Aircraft pursuant to clause 5; or
  - (ii) if the Final Inspection reveals any discrepancies from the Delivery Condition, give notice in writing to the Seller of such discrepancies and the Seller shall, within two (2) Business Days of receipt of that notification, inform the Buyer in writing of its intention [either]:
    - (A) [to terminate this Agreement (whereupon this Agreement shall terminate and neither party shall have any further obligation or liability under this Agreement save that the Escrow Agent shall return the Deposit to the Buyer (and the Seller shall give written instructions to the Escrow Agent to that effect)); or]
    - (B) if the discrepancies can be rectified within [thirty (30)] Business Days of the receipt of the notification (or such other time period as may be mutually agreed between the parties in writing), to rectify the discrepancies within such time period and if the discrepancies shall not have been rectified by the Seller within that time period, the Buyer and the Seller shall each have the right to terminate this Agreement and upon receipt of such notification to terminate by the Buyer or Seller (as applicable) this Agreement shall terminate and neither party shall have any further obligation or liability under this Agreement save that the Escrow Agent shall return the Deposit to the Buyer (and the Seller shall give written instructions to the Escrow Agent to that effect)). Time taken to effect any rectifications pursuant to this clause 4(c)(ii)(B) shall be deemed to be an excusable

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<sup>8</sup> There may be additional inspections that the buyer requires (e.g. a 48 month check).

delay and the Final Delivery Date shall be extended to the anticipated completion date.<sup>9</sup>

- (d) The Seller shall have no liability to the Buyer in respect of any delay in relation to any matter arising in connection with this clause 4 or the condition of the Aircraft.

## **5. DELIVERY AND ACCEPTANCE**

- (a) Delivery may take place at any time from the date of this Agreement to the Final Delivery Date save that Delivery shall occur no later than 5:00pm local time in the Delivery Location on the Final Delivery Date.
- (b) Subject to the fulfilment of all the conditions specified in clause 7, the Aircraft shall be tendered for Delivery by the Seller at the Delivery Location:
  - (i) in the Delivery Condition; and
  - (ii) with the Aircraft Documents.
- (c) Subject to the provisions of this Agreement, by physical delivery of the Aircraft to the Buyer, all the Seller's property in, and title to, the Aircraft and all risk of loss or damage to the Aircraft shall pass from the Seller to the Buyer.
- (d) At Delivery the Buyer shall execute and deliver to the Seller the Acceptance Certificate. Delivery of the executed Acceptance Certificate to the Seller shall constitute conclusive evidence for all purposes that the Aircraft complies in all respects with the condition required by this Agreement.
- (e) In the event that any of the Aircraft Documents are not at the Delivery Location on the Delivery Date, such Aircraft Documents may be held by the Escrow Agent and, on Delivery, the Seller shall procure an undertaking to be given by the Escrow Agent or to the Buyer to hold such Aircraft Documents to the order of the Buyer.

## **6. PAYMENT**

- (a) The Purchase Price shall be paid in full by the Buyer to the Escrow Agent prior to Delivery.
- (b) The Buyer and the Seller shall each bear 50% of the fees of the Escrow Agent for acting in such capacity with respect to this Agreement (such fees being paid prior to or at Delivery).
- (c) All payments to be made by the Buyer under this Agreement shall be made free of bank charges (if any).
- (d) Time shall be of the essence in relation to the payment of any amounts due from the Buyer to the Seller in connection with this Agreement.
- (e) In the event that, notwithstanding the terms of clause 6(a), the Buyer takes physical delivery of the Aircraft in circumstances where the Purchase Price has not at the time of that delivery been received by the Escrow Agent, such delivery shall not relieve

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<sup>9</sup> The parties may wish to agree a cap with respect to the aggregate cost of the discrepancies to be rectified.



the Buyer of its obligation to pay the Purchase Price. The Buyer covenants that in those circumstances it will not move the Aircraft or permit or suffer the Aircraft to be moved from the Delivery Location until the Escrow Agent has confirmed to the Seller and the Buyer receipt by it of the Purchase Price.

## 7. CONDITIONS PRECEDENT

- (a) All of the Seller's obligations under this Agreement are subject to the fulfilment of the following conditions:
  - (i) execution of this Agreement by the Buyer; and
  - (ii) receipt of the Deposit by the Escrow Agent.
- (b) Subject to clause 7(a), the Seller's obligation to sell the Aircraft to the Buyer under this Agreement is subject to the fulfilment prior to Delivery of the following conditions:
  - (i) receipt by the Escrow Agent of:
    - (A) the Purchase Price and Acceptance Certificate duly executed by the Buyer;
    - (B) the insurance certificate specified in clause 9(d); and
    - (C) evidence of the authority of the person signing this Agreement on behalf of the Buyer and the authority of such signatory to bind the Buyer;
  - (ii) that the representations given by the Buyer in clause 8(b) are true and accurate on the Delivery Date; and
  - (iii) that the Buyer has not failed to observe or perform any of its obligations under this Agreement.
- (c) The Buyer's obligation to purchase the Aircraft from the Seller under this Agreement is subject to fulfilment prior to Delivery of the following conditions:
  - (i) receipt by the Escrow Agent of:
    - (A) each of the applicable Aircraft Documents duly executed by the Seller (as applicable); and
    - (B) evidence of the authority of the person signing this Agreement on behalf of the Seller and the authority of such signatory to bind the Seller;
  - (ii) the Aircraft being tendered for Delivery by the Seller at the Delivery Location in the Delivery Condition;
  - (iii) that the representations given by the Seller in clause 8(a) are true and accurate on the Delivery Date; and

- (iv) that the Seller has not failed to observe or perform any of its obligations under this Agreement.
- (d) The conditions specified in clauses 7(a) and 7(b) are inserted for the sole benefit of the Seller and may be waived in writing in whole or in part, by the Seller without prejudicing the right of the Seller to receive fulfilment of those conditions, in whole or in part, at any time. If any of the conditions specified in clauses 7(a) and 7(b) remain outstanding on the Final Delivery Date and are not waived or deferred in writing by the Seller, the Seller shall be entitled at any time to terminate its obligation to sell the Aircraft to the Buyer by notice to the Buyer, whereupon neither party shall have any further obligation or liability under this Agreement save that the Escrow Agent shall pay the Deposit to the Seller (and the Buyer shall give written instructions to the Escrow Agent to that effect).
- (e) The conditions specified in clause 7(c) are inserted for the sole benefit of the Buyer and may be waived in writing in whole or in part, by the Buyer without prejudicing the right of the Buyer to receive fulfilment of those conditions, in whole or in part, at any time. If any of the conditions specified in clause 7(c) remain outstanding on the Final Delivery Date and are not waived or deferred in writing by the Buyer, the Buyer shall be entitled at any time to terminate its obligation to purchase the Aircraft from the Seller by notice to the Seller, whereupon neither party shall have any further obligation or liability under this Agreement save that the Escrow Agent shall return the Deposit to the Buyer (and the Seller shall give written instructions to the Escrow Agent to that effect).

## 8. WARRANTIES

- (a) The Seller represents and warrants to the Buyer that:
  - (i) it is the sole and absolute legal and beneficial owner of the Aircraft;
  - (ii) upon Delivery, the Seller will transfer the Aircraft to the Buyer with full title guarantee;<sup>10</sup>
  - (iii) the Aircraft is not the subject of any mortgage, charge, pledge, lien or other encumbrance [created by the Seller];<sup>11</sup>
  - (iv) [the Aircraft has no damage history;]
  - (v) it is duly incorporated in [◆ ] and has full power and authority to enter into and perform its obligations under this Agreement, that entry and performance has been duly authorised by all necessary corporate action of the Seller and that this Agreement has been duly executed and delivered by the Seller.

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<sup>10</sup> Where the seller is a bank, financial institution or operating lessor, there may be circumstances where the seller will insist on limiting the title warranty.

<sup>11</sup> It is common for the seller to give a warranty that the aircraft is free from any mortgage, charge, pledge, lien or other encumbrance. Where the seller is a bank, financial institution or operating lessor, the seller may insist on limiting the warranty on freedom from liens and encumbrances. Whilst it may be prepared to warrant that it has not created any liens or encumbrances, it may not wish to warrant that the sale is free from all liens and encumbrance given it may not be in a position to be satisfied that the owner/lessee has not permitted any lien or encumbrance to arise. Depending on the strength of the market, it may be difficult to negotiate selling an aircraft with limited warranties as to title and freedom from liens and encumbrances.

- (b) The Buyer represents and warrants to the Seller that it is duly incorporated in [◆ ] and has full power and authority to enter into and perform its obligations under this Agreement, that entry and performance has been duly authorised by all necessary corporate action of the Buyer and that this Agreement has been duly executed and delivered by the Buyer.
- (c) EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT AND/OR THE BILL OF SALE IN RELATION TO TITLE, THE BUYER AGREES AND ACKNOWLEDGES THAT THE AIRCRAFT WILL BE TENDERED FOR DELIVERY AND WILL BE ACCEPTED BY IT AT THE DELIVERY LOCATION IN AN "AS IS WHERE IS" CONDITION. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT AND/OR THE BILL OF SALE IN RELATION TO TITLE, NO CONDITION, WARRANTY OR REPRESENTATION OF ANY KIND IS OR HAS BEEN GIVEN BY OR ON BEHALF OF THE SELLER IN RESPECT OF THE AIRCRAFT. ACCORDINGLY, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT AND/OR THE BILL OF SALE IN RELATION TO TITLE, THE BUYER CONFIRMS THAT IT HAS NOT, IN ENTERING INTO THIS AGREEMENT, RELIED ON ANY CONDITION, WARRANTY OR REPRESENTATION BY THE SELLER, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WHETHER ARISING BY LAW, COURSE OF TRADE, COURSE OF DEALING OR OTHERWISE HOWSOEVER IN RELATION TO THE AIRCRAFT (INCLUDING, WITHOUT LIMITATION, CONDITIONS, WARRANTIES OR REPRESENTATIONS AS TO THE COMPLIANCE WITH DESCRIPTION, AIRWORTHINESS, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, QUALITY, WORKMANSHIP, VALUE, CONDITION, DESIGN, MANUFACTURE, PERFORMANCE OR OPERATION OF THE AIRCRAFT) AND INsofar AS ANY CONDITION, WARRANTY OR REPRESENTATION MIGHT, NOTWITHSTANDING THIS CLAUSE 8(C), BE IMPLIED THE BENEFIT OF IT IS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVED BY THE BUYER.
- (d) The Buyer confirms that this clause 8 has been the subject of negotiation between the Seller and the Buyer and the Purchase Price has been agreed in consideration of its provision.

## 9. INDEMNITY AND INSURANCE

- (a) In clauses 9(b) and 9(c) the expression "*the Seller and its Associates*" shall mean the Seller, [◆ ] and their respective parents, associated and subsidiary companies and the respective officers, directors, employees, servants, agents, shareholders, members, suppliers, successors and assigns of the Seller, [◆ ] and those other persons.
- (b) With effect from Delivery, the Buyer shall indemnify and hold harmless the Seller and its Associates from and against penalties, liabilities, losses, claims, demands, actions, proceedings, fees, costs, charges and expenses of any kind whatsoever:
  - (i) in respect of or in relation to any injury to or death of any person properly attributable to the period occurring from and after Delivery; and
  - (ii) in respect of or in relation to any loss of or damage to any property of any kind whatsoever (including, but not limited to, the Aircraft or any part of it) properly attributable to the period occurring from and after Delivery,

which may in any manner arise whether directly or indirectly from the ownership, management, control, operation or use of the Aircraft and any part of it and whether the same shall arise out of or be attributable to any defect in the Aircraft or any other item or service supplied by the Seller and its Associates or any of them or otherwise, whether in connection with this Agreement or otherwise, or the testing, design, use, maintenance, service, repair, overhaul, modification or reconstruction of the Aircraft regardless of when the same shall or may have been carried out or put into effect.<sup>12</sup>

- (c) The Buyer undertakes that with effect from Delivery and for the next following two (2) years the insurance policies effected by the Buyer, each of its successors and assigns or any other operator of the Aircraft in respect of the Aircraft shall:
- (i) include the Seller and its Associates as additional named assureds on the passenger, third party, cargo and baggage liability policies which shall also include a suitable cross liabilities clause and breach of warranty protection; and
  - (ii) provide that the hull insurers shall waive any rights of subrogation against the Seller and its Associates, and each such policy shall be in form and substance satisfactory to the Seller, with insurers acceptable to the Seller and shall provide for the Seller to be given at least thirty days (or such lesser period as may be stipulated by insurers in respect of war risks cover) notice of cancellation, termination or material alteration.<sup>13</sup>
- (d) The Buyer shall produce to the Seller on Delivery (and on each insurance renewal date for two years following Delivery) an insurance certificate evidencing compliance with clause 9(c).
- (e) [In clause 9(f), the expression "*the Buyer and its Associates*" shall mean the Buyer, [◆ ] and their respective parents, associated and subsidiary companies and the respective officers, directors, employees, servants, agents, shareholders, members, suppliers, successors and assigns of the Buyer, [◆ ] and those other persons.
- (f) With effect from Delivery, the Seller shall indemnify and hold harmless the Buyer and its Associates from and against penalties, liabilities, losses, claims, demands, actions, proceedings, fees, costs, charges and expenses of any kind whatsoever:

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<sup>12</sup> It is common for aircraft sale and purchase agreements to contain indemnity clauses relating to liabilities and losses before and/or after delivery. From the seller's perspective, the seller will require an indemnity given by the buyer in favour of the seller holding the seller harmless from all losses and liabilities arising after delivery of the aircraft. This type of indemnity should make it clear that, once delivery has occurred, the seller is indemnified against any and all liabilities, including any liabilities which may arise as a result of any accident to the aircraft. The main reason for this is to protect the seller where the aircraft suffers an accident after delivery and a claim is made against the seller, for example, by an innocent third party on the ground on the basis that the seller has a continuing liability for negligent maintenance work undertaken when the seller owned the aircraft. From the buyer's perspective, the buyer will require an indemnity given by the seller in favour of the buyer holding the buyer harmless from all liabilities and losses arising before delivery of the aircraft.

<sup>13</sup> It is common in the aviation industry (although less common in the business jets market) for the buyer to agree with the seller that, for a period of two years after delivery, the buyer will arrange for the seller to be named as an additional insured on the buyer's third party liability insurance policy. Whilst the seller will usually have the benefit of an indemnity from the buyer, the strength of the indemnity may be limited and, as liabilities arising from aircraft accidents to passengers and persons on the ground may be extremely high, the seller will invariably insist on insurance protection. The period of two years is the industry norm and the underlying theory is that it is likely that during this period the aircraft will undergo a major overhaul and the possibility of a third party (or, indeed, the buyer) being able to sustain a claim against the seller for a post-sale accident arising after a major overhaul is considerably reduced. It is not uncommon for an aircraft sale and purchase agreement to require the buyer to add the seller as an additional insured on the buyer's liability policy for whichever is the earlier of a period of two years or the date that a major overhaul has been undertaken on the aircraft.

- (i) in respect of or in relation to any injury to or death of any person properly attributable to the period occurring prior to Delivery; and
- (ii) in respect of or in relation to any loss of or damage to any property of any kind whatsoever (including, but not limited to, the Aircraft or any part of it) properly attributable to the period occurring prior to Delivery,

which may in any manner arise whether directly or indirectly from the ownership, management, control, operation or use of the Aircraft and any part of it and whether the same shall arise out of or be attributable to any defect in the Aircraft or any other item or service supplied by the Seller and its Associates or any of them or otherwise, whether in connection with this Agreement or otherwise, or the testing, design, use, maintenance, service, repair, overhaul, modification or reconstruction of the Aircraft regardless of when the same shall or may have been carried out or put into effect.]<sup>14</sup>

## **10. DELAY AND TERMINATION**

- (a) If prior to Delivery the Aircraft is lost or destroyed or suffers [substantial] damage [which in the Seller's opinion would be uneconomical to repair], the Seller shall notify the Buyer in writing of that occurrence and this Agreement shall then terminate and neither party shall have any liability to the other under this Agreement save that the Escrow Agent shall return the Deposit to the Buyer (and the Seller shall give written instructions to the Escrow Agent to that effect).
- (b) If prior to Delivery the Aircraft suffers damage for whatever reason which in the Seller's opinion is repairable within [two (2) months] of the Final Delivery Date, the Seller shall notify the Buyer in writing of the nature of the damage, the anticipated completion date for the repairs and shall use all reasonable efforts to repair the damage as soon as practicable. Time taken to effect any of the repairs shall be deemed to be an excusable delay for the purpose of this Agreement and the Final Delivery Date shall be extended to that anticipated completion date. If, for any reason, the repairs shall not have been completed by that anticipated completion date (or any later date as may be agreed between the parties), the Buyer and the Seller shall have the right to terminate this Agreement and neither party shall have any liability to the other under this Agreement save that the Escrow Agent shall return the Deposit to the Buyer. The Seller shall have no liability to the Buyer hereunder in respect of any delay pursuant to this clause 10.

## **11. TAXES**

The Buyer shall be responsible for and shall indemnify and keep the Seller indemnified fully on demand from and against the payment of all taxes, duties, withholdings, deductions, fees and charges (including VAT) assessed by any national or local government or authority arising out of or in connection with this Agreement or the sale and purchase of the Aircraft under this Agreement or the ownership, import, export, possession, operation, use, maintenance, return, storage or resale of the Aircraft or any part of it on or after Delivery.

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<sup>14</sup> This is a buyer friendly clause.

**12. DEFAULT INTEREST**

- (a) If any party fails to pay an amount payable by it under this Agreement on its due date, interest shall accrue at a rate of [1% per calendar month] on the overdue amount from the due date up to the date of actual payment (both before and after judgment).
- (b) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount monthly but will remain immediately due and payable.

**13. NOTICES**

- (a) Any communication to be made under or in connection with this Agreement shall be made in writing and may be made by letter or fax.
- (b) The address and fax number of each party for any communication or document to be made or delivered under or in connection with this Agreement is:

in the case of the Seller:

[◆            ]

Fax:            [◆            ]  
Attention:      [◆            ]

with a copy to:

[◆            ]

Fax:            [◆            ]  
Attention:      [◆            ]

and, in the case of the Buyer:

[◆            ]

Fax:            [◆            ]  
Attention:      [◆            ]

Or any substitute address or fax number as one party may notify to the other by not less than five (5) Business Days' notice.

- (c) Any communication or document made or delivered by one person to another under or in connection with this Agreement shall only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address.

**14. MISCELLANEOUS**

- (a) Neither party may assign or otherwise transfer (including by way of novation) this Agreement or any or all of its interests hereunder without the prior written consent of the other party.
- (b) A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
- (c) This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of such document.

**15. GOVERNING LAW AND ENFORCEMENT**

- (a) This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by English law.
- (b) The courts of England have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement).

This Agreement has been entered into on the date stated at the beginning of this Agreement.

## SCHEDULE 1: AIRCRAFT DESCRIPTION

### Airframe

Manufacturer [◆ ]

Model [◆ ]

Serial Number [◆ ]

Registration Mark [◆ ]

### Engines

Manufacturer [◆ ]

Model [◆ ]

Serial Numbers [◆ ] and [◆ ]



**SCHEDULE 2: ACCEPTANCE CERTIFICATE**

We refer to the aircraft sale and purchase agreement ("**Agreement**") dated [◆ ] and made between [◆ ] ("**Seller**") and [◆ ] ("**Buyer**").

The Buyer hereby acknowledges that at [◆ ] hours on [◆ ] there was delivered to, and irrevocably and unconditionally accepted by the Buyer one [◆ ] aircraft with manufacturer's serial number [◆ ] and registration mark [◆ ] pursuant to the Agreement.

The abovementioned acceptance shall be deemed to constitute unconditional and irrevocable acceptance of the Aircraft under the Agreement and, accordingly, the Aircraft has been delivered fully in compliance with the requirements of the Agreement.

.....  
For and on behalf of  
**[BUYER]**

Name: [◆ ]

Title: [◆ ]

Date: [◆ ]

### SCHEDULE 3: AIRCRAFT DOCUMENTS

1. Manuals and Technical Records.
2. Bill of Sale.
3. Invoice.
4. [Certified copies of the aircraft sale and purchase agreement and bill of sale pursuant to which the Seller took title to the Aircraft.]<sup>15</sup>
5. [Certificate of Registration issued by the Aviation Authority.]
6. [Certificate of Airworthiness issued by the Aviation Authority.]
7. [Export Certificate of Airworthiness issued by the Aviation Authority.]
8. [Evidence that the Aircraft is free from any mortgage, charge, pledge, lien or other encumbrance.]<sup>16</sup>
9. [Evidence that the Aircraft is in free circulation in the European Union for VAT purposes.]<sup>17</sup>
10. Undertaking from the Escrow Agent with respect to any Aircraft Documents not at the Delivery Location on the Delivery Date.
11. [◆ ].

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<sup>15</sup> A buyer may seek to obtain a copy of all previous bills of sale and documents relating to any previous transfers of title to the aircraft as this helps to establish the history of the aircraft.

<sup>16</sup> If there are any existing mortgages, charges, pledge, liens or other encumbrances, there should be a requirement on the part of the seller to arrange for the same to be discharged before or at Delivery (and the relevant documentation should be inserted here (e.g. UK CAA Form CA1577C and a deed of release with respect to any existing mortgage).

<sup>17</sup> The buyer should consider if it should receive evidence of the VAT status of the aircraft and whether the aircraft has been imported into the EU or relevant jurisdiction.

**SCHEDULE 4: BILL OF SALE**

**KNOW ALL MEN BY THESE PRESENTS:**

[◆ ] ("**Seller**"), as the sole and absolute legal and beneficial owner of the Aircraft (as defined below), did this [◆ ] day of [◆ ] at [◆ ] hours, grant, convey, transfer, bargain and sell, deliver and send over to [◆ ] ("**Buyer**") and its successors and assigns forever all the right, title, interest and benefit in one [◆ ] aircraft with manufacturer's serial number [◆ ] and registration mark [◆ ] (as more particularly described in the aircraft sale and purchase agreement between the Seller and the Buyer dated [◆ ] ("**Aircraft**").

This Bill of Sale is governed by and construed in accordance with English law.

**IN WITNESS WHEREOF**, the Seller has caused this instrument to be executed and delivered by its duly authorised signatory as of this [◆ ] day of [◆ ] .

**SIGNED** )  
for and on behalf of )  
**[SELLER]** )  
by )

.....  
Authorised signatory

**EXECUTION PAGE**

**THE SELLER**

**SIGNED** )  
for and on behalf of )  
[◆ ] )  
by )  
.....  
Authorised Signatory

**THE BUYER**

**SIGNED** )  
for and on behalf of )  
[◆ ] )  
by )  
.....  
Authorised Signatory