



MASTER USED AIRCRAFT PURCHASE AGREEMENT, 2012

USER'S GUIDE AND COMMENTARY

Prepared jointly by AWG and IATA

DISCLAIMER

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INTRODUCTION AND DISCLAIMER

This User's Guide and Commentary (*User's Guide*) has been jointly prepared by AWG – IATA for use in conjunction with the Master Used Aircraft Purchase Agreement, 2012 (*MUAPA*). This User's Guide should be used only in connection with the MUAPA and should not be used or relied upon for any other purpose.

The purpose of this User's Guide is to provide technical assistance to users of the MUAPA and to provide practical guidance on the terms thereof. This User's Guide does not include a comprehensive analysis of every term of the MUAPA, nor does it explain how each provision of the MUAPA operates. Practitioners should not rely on this User's Guide when engaging in any transaction or providing any advice in respect of the subject matter covered hereby.

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The MUAPA and this User's Guide may be used by any transaction party, whether or not such party is a member of AWG or IATA. The MUAPA is designated as a template document and is intended as a framework for efficient negotiations, as the transaction parties deem fit. Neither AWG nor IATA express a view on whether the MUAPA should be used in a particular transaction or on whether the positions reflected in the MUAPA or in this User's Guide are appropriate for any particular transaction parties. Transaction parties may deviate from the terms of the MUAPA when using or negotiating the MUAPA.

Capitalised terms used in this User's Guide but not otherwise defined have the meanings ascribed to them in Annex 1 (*Definitions and Rules of Interpretation*) to the MUAPA.

AWG – IATA thanks Freshfields Bruckhaus Deringer LLP for its assistance in the preparation of this User's Guide.

COMMENTARY

SECTION 1

CLAUSE 2 OF THE MUAPA

1. CLAUSE 2.1 : TERMS OF PURCHASE AGREEMENT

SUB-CLAUSE 2.1.2

- 1.1. The structure of the MUAPA is that of a master agreement containing a set of standard terms relating to the purchase of used aircraft.

Attached to the MUAPA are the following Annexes:-

- **Annex 1** : Definitions and Rules of Interpretation
 - **Annex 2**: Form of Purchase Agreement (the **Purchase Agreement**). The used aircraft (the **Aircraft**) to be purchased pursuant to the MUAPA are identified in the Purchase Agreement. A form of Acceptance Certificate and Bill of Sale are attached to the Purchase Agreement as Appendix A and Appendix B respectively
 - **Annex 3**: Conditions Precedent. Part A comprises the Conditions Precedent to be delivered to Seller and Part B comprises Conditions Precedent to be delivered to Purchaser.
- 1.2. Amendments to be made to the MUAPA in respect of the Aircraft are outlined in the Purchase Agreement. The Purchase Agreement refers to and incorporates the terms of the MUAPA. The MUAPA (as amended as amended by the parties pursuant to the Purchase Agreement) together with the Purchase Agreement, is then read as a single contract.
- 1.3. The Purchase Agreement only, being the operative part of the MUAPA, is signed by Seller and Purchaser. The MUAPA is not signed by either party.
- 1.4. The MUAPA has been drafted so that it can be adapted for use in transactions where either (i) the Aircraft is being sold without a lease in place or (ii) the Aircraft is subject to a continuing lease at the time of sale (**Part I, point 4** of the **Purchase Agreement**).
- 1.5. If an Aircraft is subject to a continuing lease at the time of sale and the parties select the laws of England as the governing law, the Master Aircraft Lease Novation Agreement (2012) (**MALNA**) may be used in connection with the MUAPA. If the parties select the laws of the State of New York as the governing law, the Master Aircraft Lease Assignment, Assumption and Amendment Agreement (2012) (**MALAAA**) may be used in connection with the MUAPA.
- 1.6. It should be noted that the parties may deviate from, amend or supplement any of the terms of the MUAPA and any such deviations, amendments or supplementary provisions agreed between the parties should be included in Part II of the Purchase Agreement.

2. CLAUSE 2.2 : AGREEMENT TO SELL AND PURCHASE

SUB-CLAUSE 2.2.1

- 2.1. The Aircraft will be sold to Purchaser on an “as is, where is” basis. The purpose of this provision is to establish that the Aircraft is being sold without any continuing warranty in relation to the condition of the Aircraft, thereby eliminating Purchaser’s ability to claim in respect of faults discovered post delivery. Seller will generally require Purchaser to confirm that it accepts the physical condition of the Aircraft at the time of delivery and title transfer, and that Purchaser assumes the risk of any defects discovered or arising after delivery and title transfer.
- 2.2. Use of the term “as is, where is” does not however imply that Purchaser and Seller may not agree on delivery condition requirements for the Aircraft (as is contemplated in Option B (see **Section 3 below**)). If Purchaser and Seller agree on Delivery Condition Requirements, then Purchaser will have the right to satisfy itself that these requirements have been satisfied. Once that determination has been made by Purchaser, and parties proceed to Delivery, the transaction becomes an “*as-is, where-is*” sale with no ongoing representations or warranties from Seller as to the condition of the Aircraft. In

this regard, please see Clause 7 (*Disclaimer and Waivers*) of the MUAPA, (see **Section 6 below, paragraphs 1.2 and 1.3**).

- 2.3. Purchaser will have an option to inspect the Aircraft either prior to signing the Purchase Agreement (**Clause 4.1, Option A**) or prior to the Delivery Date (**Clause 4.2, Option B**).
- 2.4. Certain used aircraft sale and purchase contracts include the term “*as is, where is, with all faults*”. Whilst parties may elect to use this expanded wording, it may be argued that use of the words “*as is*” implies that the aircraft is being sold with all faults. As such, inclusion of the additional “*with all faults*” wording may be considered superfluous.

SUB-CLAUSE 2.2.2

- 2.5. It is common practice in the aviation industry for Seller to provide a title warranty to Purchaser in relation to the sale of used aircraft.
- 2.6. If the parties select the laws of England as the governing law, Seller shall pass to Purchaser “*good and marketable title*” to the Aircraft. Where the laws of the State of New York are selected as the governing law, Seller shall pass to Purchaser “*good title*” to the Aircraft. The title warranty is repeated in the Bill of Sale (**annex 2, appendix B**).
- 2.7. In English law contracts, the alternative phrase “with full title guarantee” is often used. Under the Law of Property (Miscellaneous Provisions) Act, 1994 use of the phrase “with full title guarantee” imports the following implied covenants:-
 - **right to dispose** : Seller has the right to make the disposition it purports to make under the sale contract
 - **further assurance**: Seller will at its own cost do all it reasonably can do to vest title in Purchaser
 - **freedom from encumbrances** : the property is free from all charges, encumbrances and third party rights, other than those which Seller does not, or could not reasonably be expected to, know about. This covenant is generally varied by the terms of the contract (see **Clause 2.9 below**).
- 2.8. Whilst parties to an English law governed MUAPA can elect to use the “*full title guarantee wording*”, some practitioners regard the above covenants to be implicit in the phrase “*good and marketable title*”. Alternatively, Seller may seek to limit the title warranty provided to Purchaser. In such circumstances, the sale contract will provide that the Aircraft is sold to Purchaser “*with limited title guarantee*”. It should be noted however that under Section 12(4) of the English Sale of Goods Act, 1979 (**SoGA**), if it appears from the contract or is to be inferred from its circumstances, an intention that the seller should transfer only such title as he or a third person may have, then there is an implied term in such contract that all charges or encumbrances known to the seller and not known to the buyer have been disclosed to the buyer before the contract is made. Accordingly, where this more limited form of title warranty is provided, Seller must ensure that all encumbrances known to Seller are disclosed to Purchaser.
- 2.9. Seller warrants to Purchaser that title is transferred to Purchaser free and clear of any liens, save for (i) Permitted Liens or (ii) where the Aircraft is subject to a lease at the time of sale, the lease. In addition to including any lien created by Purchaser and any lien permitted under the lease (other than a lien created by Seller), the definition of “*Permitted Liens*” includes “*any Lien in respect of which the lessee is obliged to indemnify the lessor in accordance with the terms of the lease*”. Accordingly, the MUAPA has been drafted to reflect the position whereby Seller will not take responsibility for liens created by lessee in contravention of the terms of the lease or otherwise permitted to exist under the terms of the lease but which, ultimately, lessee is required to remove. Any risk relating to the existence of such liens is to be borne by Purchaser. In the event that lessee fails to remove such a lien in breach of its obligations under the lease and Purchaser suffers loss as a result of lessee’s breach, Purchaser can rely on the relevant covenants and indemnities in the novated lease or assigned lease (as applicable).

3. CLAUSE 2.3 : CONDITIONS PRECEDENT

- 3.1. Seller’s obligation to sell the Aircraft, and Purchaser’s obligation to Purchase the Aircraft, is subject to fulfilment, or discretionary waiver, of the relevant conditions precedent by each party (**Part A and Part B of annex 3**)
- 3.2. If agreed between the parties, the MUAPA can be amended to include additional conditions precedent not listed in annex 3 (**Part I, point 7 of the Purchase Agreement**).

3.3. For each of Purchaser and Seller, the conditions precedent are divided into two categories:

- (i) conditions that it must use “*commercially reasonable efforts*” to satisfy; and
- (ii) other conditions which are, essentially, not within its control.

In the case of Purchaser, the conditions that it must use commercially reasonable efforts to satisfy are set out in **1-3 of Part A to annex 3** (including delivery of its signatures, making sure that its representations and warranties are true and ensuring that it is not in default under the MUAPA), and any additional conditions the parties may specify in **Part I, point 7A** (but only for those conditions to which Clause 2.3.2 is expressly stated to apply).

In the case of Seller, the conditions that it must use commercially reasonable efforts to satisfy are set out in **1-3 of Part B to annex 3** (including delivery of its signatures, making sure that its representations and warranties are true and ensuring that it is not in default under the MUAPA), and any additional conditions the parties may specify in **Part I, point 7B** (but only for those conditions to which Clause 2.3.4 is expressly stated to apply).

For each party, the **annex 3** conditions that it is not obliged to use commercially reasonable efforts to satisfy, and which are assumed not to be within its control, include changes in law, concluding that the transactions will not give rise to Tax, and satisfaction of the conditions precedent contained in a novation.

3.4. This distinction between conditions the parties are obliged to use commercially reasonable efforts to satisfy and those which they are not assumed to be able to control, will be important for purposes of determining whether a party is in breach of the MUAPA if the transaction fails to close and the other party validly elects to terminate the agreement. For example, Clause 3.2.2 determines whether Seller is obliged to return the Deposit based, in part, on whether Purchaser is in breach of any of its material obligations under the MUAPA. Accordingly, if Purchaser is obliged to use commercially reasonable efforts to satisfy certain conditions but Purchaser fails to use such commercially reasonable efforts and the transaction does not close as a result, this could be a justification for Seller to retain the Deposit, among other remedies that may be available to Seller.

3.5. For each condition precedent, parties should consider the import of this provision, in particular whether satisfaction of any condition precedent is beyond the reasonable control of Seller or Purchaser (as applicable).

SECTION 2

CLAUSE 3 OF THE MUAPA

1. CLAUSE 3.2 : DEPOSIT

The terms of the MUAPA can be amended to reflect payment of a deposit, with or without interest, by Purchaser to Seller (**Part I, point 9 and point 10** of the **Purchase Agreement**).

SUB-CLAUSE 3.2.2

1.1. The only circumstances in which Seller is obliged to refund the Deposit are as follows:-

- (i) If, prior to Delivery:
 - (a) damage to or fault with the Aircraft occurs;
 - (b) the Aircraft does not meet the agreed Delivery Condition Requirements; or
 - (c) a Total Loss occurs,

and a notice of termination is given by either Seller or Purchaser in accordance with the provisions of clause 5 of the MUAPA (*Non Compliance; Damage or Fault or Total Loss before Delivery*) (**see section 4 below**).

- (ii) If, prior to Delivery:
 - (a) an Insolvency Event occurs with respect to either party; or

- (b) any other specified event (if any) occurs with respect to a party.

In relation to (b), the parties can elect to amend the MUAPA to include additional termination events specific to the terms of the relevant transaction (**Part I, point 26** of the **Purchase Agreement**). If additional termination events are added, parties should carefully consider the interaction between any such additional termination events and the Deposit refund and termination provisions as outlined in the MUAPA.

The Deposit will only be refundable under (ii) above if Purchaser is the terminating party and it is not in breach of its material obligations under the MUAPA.

- (iii) If Delivery has not occurred on or before the Final Delivery Date (see **section 9 below**).

The Deposit will only be refundable under (iii) above if Purchaser is not in breach of its material obligations under the MUAPA. This is one of the key provisions linked to the distinction between conditions precedent that Purchaser is obliged to use commercially reasonable efforts to satisfy, and those which it is not (being items which are deemed to be beyond its control) pursuant to Clause 2.3. This clause of the MUAPA presumes that if Purchaser has in fact used commercially reasonable efforts to satisfy the conditions precedent which it is obliged to satisfy, and it is not otherwise in breach of the MUAPA, if the transaction fails to close on or before the agreed deadline it should be entitled to a refund of the Deposit upon termination of the MUAPA.

2. CLAUSE 3.3 : TIME FOR PAYMENT; ADJUSTMENT TO PURCHASE PRICE

2.1. Purchaser is required to pay, or procure the payment of, the Purchase Price of the Aircraft to Seller and if applicable, adjusted as follows:-

- (i) increased or reduced by application of the "Delivery Adjustments". The MUAPA can be amended to include reference to any economic adjustment formula agreed between the parties (**Part 1, point 11** of the **Purchase Agreement**);
- (ii) reduced by the Deposit (if any) paid by Purchaser;
- (iii) reduced in accordance with the provisions of clause 5.1 of the MUAPA (*Non-compliance with Delivery Conditions Requirements; damage or fault before Delivery*)(see **section 4 below**).

2.2. Purchaser is required to pay the Purchase Price, as adjusted (if applicable), on or prior to Delivery.

3. CLAUSE 3.4 : PAYMENTS GENERALLY

All payments under the MUAPA must be received on the due date for such payment. A "following business day" convention is applied in the MUAPA such that if the due date is not a business day, the due date will fall on the next succeeding business day.

4. CLAUSE 3.5 : TAXES

4.1. There is a mutual obligation on Seller and Purchaser to cooperate to ensure that the delivery location for the Aircraft is in a tax neutral jurisdiction.

4.2. The parties can amend the MUAPA to specify whether any exclusions or modifications apply to the remaining provisions relating to taxes as set out in clause 3.5 (**Part 1, point 13** of the **Purchase Agreement**)

4.3. All payments to be made by Purchaser to Seller are required to be made on an after tax basis such that the net payment received by Seller will represent the full amount owing to Seller after any deduction or withholding.

4.4. While there is no uniform approach to purchase contract tax indemnities, the MUAPA reflects the position that Purchaser shall indemnify Seller for any taxes assessed against Seller in connection with the sale of the Aircraft, subject to customary exclusions including taxes (i) on income, profits or gains of Seller (ii) imposed as a result of Seller's non-compliance with applicable laws or with the MUAPA and (iii) arising as a result of Seller's gross negligence or wilful misconduct.

SECTION 3

CLAUSE 4 OF THE MUAPA

The parties have the option to select either inspection "Option A" or inspection "Option B" (**Part 1, point 14 of the Purchase Agreement**).

1. CLAUSE 4.1 : INSPECTION (OPTION A)

- 1.1. If the parties select inspection Option A, Purchaser will inspect the Aircraft prior to signing the Purchase Agreement to determine whether it is satisfied with the physical condition of the Aircraft. No delivery conditions are specified and no "walk around" inspection will be completed by Purchaser prior to Delivery.
- 1.2. If prior to Delivery the Aircraft suffers damage or if a fault occurs, and such damage or fault does not constitute a Total Loss, the provisions of clause 5.1 of the MUAPA (*Non-compliance with Delivery Conditions Requirements; damage or fault before Delivery*) will apply (see **section 4 below**).
- 1.3. Option A is expected to be the most appropriate choice for an Aircraft subject to a lease however, Part II of the Purchase Agreement may be amended to provide for inspection of the Aircraft after signing if so agreed between the parties. In such circumstances, parties should carefully consider the impact that a post-signing inspection may have on the Deposit refund and termination provisions outlined in the MUAPA.

2. CLAUSE 4.2 : INSPECTION (OPTION B)

SUB-CLAUSE 4.2.1

- 2.1. If inspection Option B is selected, the transaction parties will specify the applicable Delivery Condition Requirements (**Part 1, point 15 of the Purchase Agreements**).
- 2.2. Purchaser will be permitted, at its own cost, to inspect the Aircraft prior to Delivery to ensure the specified Delivery Condition Requirements have been satisfied. The parties can specify a time for completion of the inspection (**Part 1, point 14 of the Purchase Agreement**) and if not so specified, the inspection shall be completed at a time and location notified by Purchaser to Seller provided that in each case, the inspection must be carried out within 10 days of the date of the MUAPA.
- 2.3. The inspection comprises a physical inspection of the Aircraft and Parts, the Aircraft Documents and, unless otherwise specified by the parties (**Part 1, point 14 of the Purchase Agreement**), will also include (i) completion of a full boroscope inspection, (ii) completion of engine condition runs (iii) inspection for existence of structural repairs and (d) completion of a demonstration flight in accordance with the procedure agreed between the parties (**Part 1, point 14 of the Purchase Agreement**).
- 2.4. Given the scope of the inspection required under Option B, it is expected that this option will be selected by parties only in circumstances where the relevant Aircraft is out of service and not subject to a lease. Option B could be selected for a transaction involving the forward sale of a leased aircraft, providing that the inspection is completed concurrently with the redelivery inspection procedures under the lease; however, care should be taken by the parties to adjust the time periods and to confirm that the inspection procedures in the MUAPA align with the inspection contemplated by the lease. In such a transaction, parties should also ensure that the MUAPA provisions concerning the sale of the Aircraft "subject to a lease" are not applicable.

SUB-CLAUSE 4.2.2

- 2.5. If following completion of the inspection Purchaser determines that the Aircraft does not meet the Delivery Condition Requirements, Purchaser will notify Seller that the Delivery Condition Requirements have not been satisfied and the provisions of clause 5.1 of the MUAPA (*Non-compliance with Delivery Conditions Requirements; damage or fault before Delivery*) will apply (see **section 4 below**).

SUB-CLAUSES 4.2.3 AND 4.2.4

- 2.6. Purchaser and Seller provide reciprocal indemnities to the other party in respect of all Claims and Losses that may arise from the death or injury to any of its own representative or employee in

connection with the inspection or demonstration flight, unless such death or injury is caused by gross negligence or wilful misconduct of the other party.

SUB-CLAUSE 4.2.5

- 2.7. If specified by the parties (**Part 1, point 14** of the **Purchase Agreement**) in addition to completion of the inspection under clause 4.2.1 (*Inspection, Option B*), Purchaser may complete a “walk around” inspection of the Aircraft prior to Delivery to ensure compliance with the Delivery Condition Requirements. If following the “walk around” inspection Purchaser determines that the Aircraft does not meet the Delivery Condition Requirements, Purchaser will notify Seller and the provisions of clause 5.1 of the MUAPA (*Non-compliance with Delivery Conditions Requirements; damage or fault before Delivery*) will apply (see **section 4 below**)

The above scenarios are further outlined in Section A of the Termination and Deposit Refund Scenarios Table set out in Schedule V hereto.

SECTION 4

CLAUSE 5 OF THE MUAPA

1. CLAUSE 5.1 : NON-COMPLIANCE WITH DELIVERY CONDITION REQUIREMENTS; DAMAGE OR FAULT BEFORE DELIVERY

- 1.1. The MUAPA provides that the parties may specify a Damage Threshold (**Part 1, point 16** of the **Purchase Agreement**) in relation to any repairable damage suffered by the Aircraft prior to Delivery or any non-compliance with the Delivery Condition Requirements. Repairs costs will be measured and termination rights will be determined on the basis of the Damage Threshold, as follows:

Where,

- (i) prior to Delivery the Aircraft suffers damage or if a fault occurs, and such damage or fault does not constitute a Total Loss; or
- (ii) the parties have selected inspection Option B and the Delivery Condition Requirements are not satisfied, the following provisions will apply:

Aircraft is subject to a lease at the time of sale (**Part 1, point 4** of the **Purchase Agreement**)

- (a) if the estimated cost of repairs is below the Damage Threshold, then Delivery shall take place notwithstanding the damage to the Aircraft; or
 - (b) If the estimated cost of repairs exceeds the Damage Threshold, Purchaser may by notice to Seller elect to proceed to Delivery notwithstanding the damage to the Aircraft; or
 - (c) If neither (a) nor (b) apply, either Seller or Purchaser may terminate by giving notice to the other party.
- 1.2. Under (a) above, Delivery must take place notwithstanding the damage to the Aircraft. No party will have a right to terminate under this provision and the parties must proceed with the transaction. It is assumed that for relatively modest damage, Purchaser will be willing to proceed with the closing and rely on Lessee’s obligation to repair the damage according to the standards set out in the lease.
- 1.3. In setting the level of the Damage Threshold, Purchaser should bear in mind that if there is damage to the Aircraft up to (but not exceeding) the Damage Threshold level, it will be obliged to close the transaction without any adjustment to the Purchase Price. If the damage exceeds the Damage Threshold, Purchaser will have the option to proceed with the transaction under (b) above and to seek an adjustment to the Purchase Price through mutual agreement with Seller or, failing that, Purchaser may elect to terminate the agreement under (c) above. It should be noted however, that a time limit is imposed on Purchaser within which it must elect to proceed with the transaction. Accordingly, if Purchaser fails to notify Seller that it intends to proceed to Delivery within 10 Business Days of receipt of a repair estimate, then Seller may terminate by giving notice to Purchaser.

- 1.4. If either Seller or Purchaser elects to terminate under (c), Seller is obliged to promptly return the deposit to Purchaser. Neither party will have any other obligation or liability save for the reciprocal confidentiality obligations outlined in clause 13.13 of the MUAPA (*Confidentiality*).

Aircraft is not subject to a lease at the time of sale (Part 1, point 4 of the Purchase Agreement)

- (a) if the estimated cost of repairs is below the Damage Threshold, then Seller may notify Purchaser within the specified time period that it will repair the damage prior to the Final Delivery Date. If the repairs are completed to the satisfaction of Purchaser, then Delivery will proceed; or
- (b) if (a) does not apply, if the parties agree, Delivery shall proceed with the Purchase Price being reduced by the estimated amount of the repair costs as agreed between the parties, or with such other arrangements being implemented as the parties may agree; or
- (c) if neither (a) nor (b) apply, either Seller or Purchaser may terminate by giving notice to the other party.
- 1.5. In relation to item (a) above, whether the repairs to the Aircraft are to be completed is determined by Seller. The MUAPA presumes that, given the potential complexities associated with sourcing parts, engineering and slot availability for even relatively minor aircraft repairs, particularly if the time remaining until the closing deadline is limited, it would be difficult to place an obligation on Seller to repair damage below the Damage Threshold, although the parties are free to consider whether to modify these provisions. If Seller elects to repair the damage, but repairs are not completed by the Final Delivery Date or are not completed to the satisfaction of Purchaser, Purchaser may elect to terminate and the Deposit will be refunded to Purchaser.
- 1.6. If Seller does not elect to repair the Aircraft, it may be agreed between the parties pursuant to (b) above that the purchase will proceed notwithstanding the damage and the Purchase Price will be adjusted to reflect the cost of the repairs. The parties may also agree such other arrangements in relation to the sale as they deem fit.
- 1.7. If neither (a) nor (b) applies, i.e., if the damage is not repaired and if other arrangements are not mutually agreed, then either Seller or Purchaser may elect to terminate under (c). Seller is obliged to promptly return the deposit to Purchaser and neither party will have any other obligation or liability save for the reciprocal confidentiality obligations outlined in clause 13.13 of the MUAPA (*Confidentiality*).

The above scenarios are further outlined in Section B of the Termination and Deposit Refund Scenarios Table set out in Schedule V hereto.

2. CLAUSE 5.2: TOTAL LOSS BEFORE DELIVERY

- 2.1. If the Aircraft suffers a Total Loss prior to Delivery either Seller or Purchaser may terminate by notice to the other party. Under this provision, Seller is obliged to promptly return the deposit to Purchaser and neither party will have any other obligation or liability save for the reciprocal confidentiality obligations outlined in clause 13.13 of the MUAPA (*Confidentiality*).
- 2.2. Pursuant to clause 5.2.2 of the MUAPA (*Total Loss before Delivery*) if an incipient Total Loss event occurs, either Seller or Purchaser may terminate by notice to the other party. Seller is obliged to promptly return the deposit to Purchaser and neither party will have any other obligation or liability save for the reciprocal confidentiality obligations outlined in clause 13.13 of the MUAPA (*Confidentiality*).
- 2.3. It should be noted that under this provision the parties are not required to wait until a certain date has passed (for example, the Final Delivery Date) before terminating the agreement. Either Seller or Purchaser may elect to terminate the MUAPA at any time provided that an incipient Total Loss event has occurred. The parties may consider whether to amend the MUAPA in Part II of the Purchase Agreement to add a waiting period for incipient events of Total Loss, particularly for leased Aircraft where the agreed period may be tied to one or more waiting periods in the lease or for long-dated purchase commitments.

The above scenarios are further outlined in Section C of the Termination and Deposit Refund Scenarios Table set out in Schedule V hereto.

SECTION 5

CLAUSE 6 OF THE MUAPA

3. CLAUSE 6.1 : DELIVERY

- 3.1. Subject to the terms and conditions of the MUAPA, the sale of and transfer of title to the Aircraft shall take place by delivery of the executed Bill of Sale (**Annex 2, Appendix B**) by Seller to Purchaser.
- 3.2. Purchaser is required to confirm its acceptance of the Aircraft by delivery to Seller of the executed Acceptance Certificate (**Annex 2, Appendix A**). Risk of loss, destruction or damage to the Aircraft passes from Seller to Purchaser upon Delivery.
- 3.3. It should be noted that the Acceptance Certificate is stated to be “conclusive evidence of the matters stated therein”. Accordingly, the delivery of the executed Acceptance Certificate will be conclusive proof as between Purchaser and Seller that Purchaser has examined and investigated the Aircraft and is satisfied with the condition thereof (see **Section 6 below**). This is also repeated in clause 7 of the MUAPA (*Disclaimers and Warranties*).
- 3.4. If the Aircraft is subject to a lease at the time of sale, Purchaser is required to acknowledge that following transfer of title, the Aircraft will remain in possession of the lessee and Seller will not be obliged to effect physical delivery of the Aircraft to Purchaser.
- 3.5. If the Aircraft is not subject to a lease at the time of sale, this provision of the MUAPA should be excluded by the parties (**Part 1, point 18** of the **Purchase Agreement**).

4. CLAUSE 6.2 : DELIVERY DATE

There is a reciprocal obligation on both Seller and Purchaser to use “*commercially reasonable efforts*” to ensure Delivery occurs on the Scheduled Delivery Date.

5. CLAUSE 6.3 : DELIVERY LOCATION

- 5.1. The MUAPA provides three possible Delivery Locations for the Aircraft, being:
- (i) the location specified in the Purchase Agreement (Part 1, point 20 of the Purchase Agreement); or
 - (ii) international airspace; or
 - (iii) another jurisdiction provided that (a) the Lex Situs Opinion is issued to Seller and Purchaser (b) Seller and Purchaser are satisfied that no taxes will be imposed on either party or the Aircraft, other than those taxes which the parties agree in writing to bear.
- 5.2. In each case, Seller and Purchaser must agree on the Delivery Location. In respect of (iii) above, such agreement must be in writing.
- 5.3. The Lex Situs Opinion must be issued by counsel acceptable to both Seller and Purchaser, include customary opinions relating to efficacy of title transfer and imposition of taxes and be in a form acceptable to both parties.
- 5.4. If agreed by Seller and Purchaser, delivery of the airframe and the engines may occur in different locations and at different times and dates. If such is the case, the parties should specify, in Part I, point 20 and in Part II of the Purchase Agreement, the procedure to transfer title to the airframe and engines separately.

SECTION 6

CLAUSE 7 OF THE MUAPA

1. CLAUSE 7 : DISCLAIMERS AND WAIVERS

- 1.1.** The Aircraft is delivered and sold on an “*as-is, where-is*” basis. This disclaimer is made without prejudice to:
- (i) Seller’s representation that it has title to the Aircraft and that the Aircraft is not subject to any liens (except as expressly provided);
 - (ii) the customary provision that risk of loss passes upon Delivery;
 - (iii) the provisions acknowledging or providing for Purchaser’s inspection;
 - (iv) the provisions dealing with the impact of damage or fault being identified before Delivery where the parties have selected either inspection Option B (clause 4.2) or have agreed to a modified inspection Option A (clause 4.1).
- 1.2.** The practical effect of item (iv) above is that before accepting the Aircraft, Purchaser should satisfy itself that the Aircraft is satisfactory to it and, if any Delivery Condition Requirements are specified, that the Aircraft meets those specified conditions (save where Total Loss occurs prior to Delivery).
- 1.3.** It is anticipated that no Delivery Condition Requirements would be specified for an aircraft that is subject to a lease at the time of sale. In relation to an aircraft that is off-lease at the time of sale, whilst it is acknowledged that an “*as-is, where-is*” sale is not unusual for an off-lease aircraft, the MUAPA presumes that in such circumstances parties may wish to establish Delivery Condition Requirements and then permit Purchaser to satisfy itself that such conditions are met pursuant to the inspection procedures set out in Option B, Clause 4.2.
- In any case, if an inspection is permitted, then Purchaser will determine whether it is satisfied with the condition of the Aircraft (either according to the Delivery Condition Requirements or other standard the parties may wish to establish). If the Aircraft fails to satisfy the specified conditions or standards, the provisions of Clause 5 shall apply to determine whether the transaction will close and what the responsibilities of the parties will be.
- It is important to note however, that any specified delivery conditions will not constitute representations or warranties regarding the condition of the Aircraft that have relevance after acceptance by Purchaser of the Aircraft.
- 1.4.** In order to ensure the efficacy of these provisions is not impaired, the MUAPA has been drafted to explicitly provide that the provisions of clause 7 will not be prejudiced by virtue of the fact that the Aircraft is being sold on an “as is, where is” basis. Further, to ensure the disclaimers and waivers in clause 7 do not cut across the title warranty or other warranties provided by Seller, the wording “save as expressly stated in this agreement” has been inserted in the second paragraph of this clause.
- 1.5.** The MUAPA includes standard acknowledgements by Purchaser that Seller has not made any promise, representation or warranty, express or implied in relation to, among other things, the airworthiness, serviceability, value, condition, design or fitness for use of the Aircraft and the absence of any infringement of intellectual property rights or any defects. The purpose of these provisions is to clarify that delivery of the Acceptance Certificate by Purchaser is conclusive proof that Purchaser is satisfied with the condition of the Aircraft.
- 1.6.** In addition, Purchaser waives any rights, remedies or damages, including incidental and consequential damages it may have against Seller, subject to customary exclusions relating to liability arising from gross negligence and wilful misconduct. These references are not intended to undermine the general rule that Seller has no liability with respect to the condition of the Aircraft. Instead they are intended to clarify that the broad wording of the waivers contained in Clause 7 will not override other provisions of the MUAPA that do not relate to the condition of the Aircraft.

English law:

- 1.7.** Under English law the sale of aircraft is governed by the general law of contracts and sale of goods. The SoGA contains certain conditions and warranties that are implied into aircraft sale contracts, and a seller’s ability to limit or exclude its liability under these implied terms may be restricted by the Unfair Contract Terms Act 1977 (UCTA).
- 1.8.** The implied conditions are set out in Section 12, Section 13 and Section 14 of the SoGA. Section 12 contains a condition relating to title and warranties in respect of quiet enjoyment and freedom from encumbrances. Sections 13 and 14 include conditions relating to the description, quality and fitness for purpose. Subject to the terms of the UCTA, the implied conditions and warranties set out in the SoGA

may be negated or varied by express agreement or by course of dealing between the contracting parties.

- 1.9. Under UCTA liability cannot be excluded in certain specified circumstances. Section 6 of the UCTA states that liability for breach of the obligations set out in Section 12 of SoGA cannot be excluded by any contractual term. Under Section 6(2) of the UCTA, a term excluding or restricting liability for breach of the obligation set out in Sections 13 and 14 of the SoGA will be enforceable only where the buyer is not a consumer and to the extent that the relevant provision satisfies the "reasonableness test". As contracts for the sale of aircraft are commercial contracts entered into by parties in the course of business, it is unlikely that they will constitute consumer contracts.
- 1.10. Similarly, Section 2(1) of the UCTA provides that a party cannot exclude or restrict his liability for death or personal injury resulting from negligence and Section 2(2) provides that a term excluding or restricting liability for negligence (other than where death or personal injury is caused) is enforceable only to the extent that it satisfies the reasonableness test. A party's agreement to or awareness of any such term that purports to exclude or restrict liability for negligence will not of itself be taken as indicating that party's voluntary acceptance of any risk.
- 1.11. 'Reasonable' in this context is decided with regard to the circumstances that the parties know (or ought reasonably to know) or in the contemplation of the parties at the time of making the contract, the relative bargaining strength of the parties and various other subjective factors listed in Schedule 2 to the UCTA.
- 1.12. However, it should be noted that the restrictions imposed by the UCTA will not apply to any contract that is made by parties whose places of business (or, if they have none, habitual residences) are in territories of different States (i.e. outside the United Kingdom). A contract will fall within this exclusion only if:-
 - (i) the goods in question (being the aircraft) are, at the time of the conclusion of the contract, in the course of carriage, or will be carried, from the territory of one state to the territory of another; or
 - (ii) the acts constituting the offer and acceptance have been done in the territories of different states; or
 - (iii) the contract provides for the goods to be delivered to the territory of a state other than that within whose territory those acts were done.
- 1.13. Accordingly, the restrictions set out in UCTA will not apply to a contract involving contracting parties located in different jurisdictions and having a cross-border with regard to the sale transaction that is the subject of the contract.

New York law

- 1.14. Under New York law, the sale of aircraft is governed by Article 2 of the Uniform Commercial Code as in effect in the State of New York (**NYUCC**); provided that, the United Nations Convention on Contracts for the International Sale of Goods (1980) (**CISG**) automatically applies to contracts for the sale of goods between parties whose places of business are in different countries both of which are party to the CISG, unless the parties agree to exclude the application of the CISG, as provided in the second sentence of 13.6 of the MUAPA; provided further that, if the Aircraft is registered in the United States of America, provisions of the U.S. Federal Aviation Act of 1958, as amended (**FAA**), may be relevant and FAA counsel should be consulted.
- 1.15. A contract for the sale of goods can include, in addition to express warranties, certain implied warranties. Under Section 2-314 of the NYUCC, a warranty that goods shall be "merchantable" is implied in a contract for their sale if the seller is a person that deals with respect to goods of that kind. In addition, under Section 2-315 of the NYUCC, where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under Section 2-316 of the NYUCC an implied warranty that the goods are fit for such purpose.
- 1.16. Section 2-316 of the NYUCC deals with the exclusion or modification of warranties.
- 1.17. Section 2-316(1) of the NYUCC provides that words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of the NYUCC on parole or extrinsic evidence negation or limitation is inoperative to the extent that such construction is unreasonable.

- 1.18. Section 2-316(2) of the NYUCC provides that to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Sub-clause (ii) of the second sentence of Clause 7 of the MUAPA expressly excludes the implied warranty of merchantability and the implied warranty of fitness for use or for any particular purpose, in each case, in solid capital letters.
- 1.19. In particular, Section 2-316(3)(a) of the NYUCC provides that "unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like 'as is', 'with all faults' or other language which in common language calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty". The first sentence of Clause 7 of the MUAPA provides that the sale is "as is" and that in and of itself should be sufficient to exclude any implied warranties.
- 1.20. Section 2-316(3)(b) of the NYUCC provides that "when the buyer before entering into the contract has examined the goods ... as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him." Sub-clause (i) of the second sentence of Clause 7 of the MUAPA does not meet the requirements of Section 2-316(3)(b), which requires that the examination be before entering the contract, whereas sub-clause (i) of the second sentence of Clause 7 of the MUAPA does not deal with a pre-contracting opportunity to inspect. The "as is" acknowledgement in the first sentence of Clause 7 of the MUAPA should be adequate in and of itself but, if parties wish to include Section 2-316(3)(b) of the NYUCC as an additional protection, it would be preferable to amend the second sentence of Clause 7 of the MUAPA to comply with the statutory requirement of a pre-contracting opportunity to inspect.

SECTION 7

CLAUSE 8 OF THE MUAPA

1. CLAUSE 8 : MANUFACTURER'S WARRANTIES

- 1.1. The MUAPA provides for the assignment by Seller to Purchaser of its rights under any product warranties and service life policies relating to the Aircraft.

As the MUAPA is intended to be a very general agreement applicable to any aircraft sale transaction Clause 8 is expressly stated to apply only "to the extent that such assignment is permitted by the terms" of the warranties and service life policies. Accordingly, this clause will not necessarily require amendment or exclusion, even in the case of the sale of an older aircraft with limited remaining warranty rights. It is anticipated, however, that for newer aircraft or aircraft with warranty or service life policies that have the potential to be of significant value to Purchaser, the relevant agreements to be assigned to Purchaser would be listed in the Purchase Agreement (**Part 1, point 23** of the **Purchase Agreement**).

- 1.2. The parties should also ensure, for warranties or service life policies expected to be of value to Purchaser, consents or acknowledgements from the relevant manufacturer or other relevant party should be obtained.

SECTION 8

CLAUSE 9 OF THE MUAPA

1. CLAUSE 9.1 : INDEMNITIES

- 1.1. The inclusion of operational indemnities was considered when preparing the MUAPA and submissions were received from industry participants.
- 1.2. The submissions evidenced the wide ranging views held by industry participants in relation to this topic. Whilst some industry participants supported the inclusion of reciprocal indemnities for Seller and Purchaser whereby (subject to customary exclusions) Purchaser indemnifies Seller for losses incurred arising out of any act or breach prior to Delivery and Seller provides an equivalent indemnity for any

post Delivery matters, others considered the inclusion of such operational indemnities to be inconsistent with the concept of a sale on an “as is, where is” basis.

- 1.3. Having considered the varying views presented, the MUAPA has been drafted to reflect a neutral position, such that the provision of operational indemnities by Seller and/or Purchaser is an issue to be determined by the parties based on the particular facts of each case. Accordingly, the MUAPA allows parties to amend the terms of the agreement to reflect the commercial agreement reached between the parties (**Part 1, point 24** of the **Purchase Agreement**).
- 1.4. Should parties wish to amend the MUAPA to include reciprocal indemnities, sample provisions are attached as Schedule I to this Users Guide.

2. **CLAUSE 9.2 : LIABILITY INSURANCES**

- 2.1. Consistent with what is believed to be customary practice, Purchaser is required to ensure that liability insurance is maintained in respect of the Aircraft with Seller named as additional insured from Delivery until the earlier of (a) the second anniversary of the Delivery, and (b) the date of completion of the next major airframe check for the Aircraft.
- 2.2. If the Aircraft is subject to a lease at the time of sale, parties should ensure that the timeframe inserted under (a) (i.e. anniversary of the Delivery Date) conforms to the provisions of the lease. Further, parties should consider whether the lessee has assumed a corresponding obligation to maintain liability insurance under the lease or novation agreement and the impact this may have on Purchaser's obligation under the MUAPA. Purchaser may consider whether to exclude or modify its obligations under Clause 9.2.1 to the extent that the lessee has a direct agreement with Seller in the lease or novation on the matters dealt with in Clause 9.2.1, particularly if such agreement varies from the terms of Clause 9.2.1.

SECTION 9

CLAUSE 10 OF THE MUAPA

1. **CLAUSE 10.1 : TERMINATION EVENTS**

- 1.1. There are three circumstances in which the MUAPA may be terminated:-
 - (i) if either Seller or Purchaser invokes a right of termination under clause 5 of the MUAPA (*Non-compliance, damage or fault or total loss before delivery*) (See **Section 4 above**);
 - (ii) if an Insolvency Event or any other termination event specified by the parties in the MUAPA (**Part 1, point 26** of the **Purchase Agreement**) occurs in relation prior to Delivery;
 - (iii) if Delivery does not occur on or prior to the Final Delivery Date specified by the parties in the MUAPA (**Part 1, point 21** of the **Purchase Agreement**).
- 1.2. In relation to (i), if termination occurs pursuant to clause 5 of the MUAPA, neither party will have any further obligation to the other save for (a) Seller's obligation to return the Deposit (See **Section 2 above**) and (b) mutual confidentiality obligations as set out in clause 13.13 of the MUAPA (*Confidentiality*).
- 1.3. If an Insolvency Event occurs in relation to Seller, or if the parties have specified additional termination events applicable to Seller (**Part 1, point 26** of the **Purchase Agreement**) and Purchaser is the terminating party, Purchaser may terminate and the Deposit will be returned by Seller, provided that Purchaser is not in breach of its material obligations under the MUAPA. If Purchaser suffers an Insolvency Event, or if the parties have specified additional specified termination events applicable to Purchaser (**Part 1, point 26** of the **Purchase Agreement**) and Seller is the terminating party, Seller may terminate and retain the Deposit. In each of the foregoing circumstances, the relevant terminating party reserves all of its rights and remedies under the MUAPA and applicable law.
- 1.4. If Delivery fails to take place on or before the Final Delivery Date, either party may exercise its right to terminate provided that it is not in breach of its material obligations under the MUAPA. In such event, neither party will have any obligation or liability to the other save for (a) Seller's obligation to return the Deposit (See **Section 2 above**) and (b) mutual confidentiality obligations as set out in clause 13.13 of the MUAPA (*Confidentiality*). If, however, the non-terminating party is in breach of its obligations under

the MUAPA, the terminating party reserves all rights and remedies it may have under the MUAPA and applicable law and if the terminating party is Seller, it will have no obligation to return the Deposit.

- 1.5. It should be noted that under this provision, refund of the Deposit is not determined on the basis of whether the terminating party is Seller or Purchaser, but rather if Purchaser is in breach of its material obligations under the MUAPA.

The above scenarios are further outlined in Section D of the Termination and Deposit Refund Scenarios Table set out in Schedule V hereto.

SECTION 10

CLAUSE 11 OF THE MUAPA

1. CLAUSE 11.1 AND CLAUSE 11.2 : REPRESENTATIONS AND WARRANTIES

- 1.1. Each of Seller and Purchaser is required to provide standard representations and warranties in relation to due incorporation, capacity, due execution and consents.
- 1.2. In addition, the MUAPA can be amended by the parties to include additional transaction specific representations and warranties. If, for example, an Aircraft is subject to a lease at the time of sale, Purchaser may consider whether to request Seller to represent and warrant that the Aircraft is not subject to a sublease, lessee is not in default and there are no outstanding maintenance reserves invoices, or parties may seek to obtain confirmation of these matters from lessee if appropriate. In relation to items that Seller is required to disclose to Purchaser, the parties may agree to put a disclosure letter in place.
- 1.3. Should parties wish to amend the MUAPA to include lease related representations and warranties, sample provisions are attached as Schedule II to this Users Guide.
- 1.4. It should be noted that the representations and warranties are made by Seller and Purchaser on the date of entry into the MUAPA. Seller and Purchaser will then provide a bringdown certificate on Delivery confirming that the representations and warranties are true and accurate on such date.

SECTION 11

CLAUSE 12 OF THE MUAPA

1. CLAUSE 12 : CAPE TOWN CONVENTION

In order to determine whether the Cape Town Convention will apply to the sale under the MUAPA, the parties must consider certain factors including if the airframe is registered in a contracting state or if Seller is situated in a contracting state at the time of conclusion of the MUAPA. If the Cape Town Convention is applicable, the MUAPA obliges the parties to register the international interest in the aircraft objects with the International Registry during the Delivery procedure, or as soon as practicable thereafter once Purchaser has issued confirmation that it is in receipt of Purchaser Price.

SECTION 12

CLAUSE 13 OF THE MUAPA

1. CLAUSE 13.6 : GOVERNING LAW

- 1.1. Parties can select the laws of England or the laws of the State of New York as the governing law (**Part 1, point 29** of the **Purchase Agreement**).
- 1.2. If the laws of the State of New York are selected, the MUAPA should explicitly state that the United Nations Convention on Contracts for the International Sale of Goods (1980) shall not apply. This Convention has not been ratified by the United Kingdom.

1.3. Parties may also agree to submit to the jurisdiction of the courts of England or the courts of the State of New York and the United States District Court (as applicable) and will specify whether such submission is on an exclusive basis or non-exclusive basis (**Part 1, point 30** of the **Purchase Agreement**).

2. **CLAUSE 13.11 : COSTS AND EXPENSES**

2.1. The MUAPA provides that each of Seller and Purchaser shall bear its own costs and expenses unless otherwise specified (**Part 1, point 32** of the **Purchase Agreement**).

2.2. Parties may wish to amend the MUAPA to specify who will be responsible for third party costs such as costs relating to local law opinions, filings or registrations, or, if the Aircraft is subject to a lease at the time of sale, any lessee costs.

3. **CLAUSE 13.12: FURTHER ASSURANCES**

Parties should consider whether any filings or registrations are required to be made in the relevant jurisdictions in connection with the sale of the Aircraft.

4. **CLAUSE 13.15 : THIRD PARTY RIGHTS**

This provision should be deleted if the parties select the laws of the State of New York as the governing law.

SECTION 13

EXECUTION FORMALITIES

1. **EXECUTION FORMALITIES**

The execution formalities required for the Purchase Agreement will be determined by a number of factors including the governing law selected by the parties, the jurisdiction of incorporation of the signatories and the constitutional documents of the signatories.

It should be highlighted that each transaction is to be approached according to its own facts and there may be other procedures, restrictions or requirements relating to the particular transaction or party that need to be considered. Neither AWG nor IATA express any view on whether the suggested signing procedure should be adopted in a particular transaction.

1.1. **English law**

Where the laws of England have been selected as the governing law, the following points should be considered:-

(i) **execution**: the Purchase Agreement has been drafted as an agreement to be executed under hand. Sample execution blocks for an English company executing the Purchase Agreement are attached at Schedule III. The constitutional documents of a company may dictate the form of execution block to be used (i.e. whether the signatures of a single director or two directors is required) and accordingly, the constitutional documents of a company should be reviewed to ensure the execution block used conforms with the requirements set out in the a company's constitutional documents.

If a transaction party is incorporated outside England, the form of execution block to be used for the transaction party will be determined by the laws of the jurisdiction of incorporation of that transaction party. Accordingly, local counsel advice should be sought to ensure that all local law execution formalities have been complied with.

(ii) **virtual signing**: where it is not possible or practical to have a physical closing with all attending a closing meeting and signing the documents, it may be necessary for signing to take place by email. It is important to note that as a result of the decision of the English High Court in R (on the Application of Mercury Tax Group Limited and another) v HMRC, where documents are governed by English law and signing is to take place by email, formal signing procedures should be followed.

The signing procedure to be implemented will vary depending on the form of document to be executed for example, the signing procedure for a deed will differ to that for a simple contract. Set out in Schedule

IV is a suggested procedure which may be used for dealing with virtual signings and closings of English law governed simple contracts.

1.2. New York law

Under New York law, for a party to be bound by an agreement, such party must execute the agreement with the intention of being bound. The intention of a party to be bound by the terms of an agreement is demonstrated by such party delivering an executed copy of such agreement to the other parties. If the agreement expressly so provides, an agreement may be executed and delivered in counterparts, each of which shall constitute an original, but all of which taken together shall constitute a single contract. If desired, an agreement can expressly provide for electronic delivery of such counterparts.

A counterpart is a copy of the entire agreement. Delivery of an executed unattached signature page does not, in and of itself, demonstrate a party's intention to be bound to the terms of an agreement. If for some reason it is deemed necessary for parties to deliver executed unattached signature pages, there are various ways for a party to demonstrate its intention to be bound by the particular text of an agreement, none of which have been judicially sanctioned. Schedule II suggests an approach that could be used in connection with New York law agreements, but counsel will have to satisfy themselves that whatever approach is used will permit them to demonstrate in court that a party has evidenced an intention to be bound by a particular text of the agreement.

Schedule I

Sample Indemnity provisions

General Indemnity

1. Without prejudice to clause [x]¹, Seller agrees, from and after Delivery, to indemnify and hold harmless Purchaser Indemnitees for and against Claims and Losses relating to any General Indemnity Event, save for Claims and Losses to the extent:
 - (i) arising from events or circumstances occurring after Delivery which are not caused by or attributable to any act or omission prior to Delivery;
 - (ii) arising from the willful misconduct, gross negligence or contractual breach of that Purchaser Indemnitee;
 - (iii) arising from liability, if any, of that Purchaser Indemnitee under legal relations with Seller independent of this Agreement;
 - (iv) comprising ordinary course administrative or operating expenses of that Purchaser Indemnitee or expenses for which that Purchaser Indemnitee has been expressly allocated responsibility hereunder;
 - (v) within the scope of [identify tax indemnity provision, if relevant]; or
 - (vi) [the subject of an indemnity by another person, including without limitation the Lessee, in favor of Purchaser].²

2. Purchaser agrees, from and after Delivery, to indemnify and hold harmless Seller Indemnitees for and against Claims and Losses relating to any General Indemnity Event, save for Claims and Losses to the extent:
 - (i) arising from events or circumstances occurring before Delivery which are not caused by or attributable to any act or omission after Delivery;
 - (ii) arising from the willful misconduct, gross negligence or contractual breach of that Seller Indemnitee;
 - (iii) arising from liability, if any, of that Seller Indemnitee under legal relations with Purchaser independent of this Agreement;
 - (iv) comprising ordinary course administrative or operating expenses of that Seller Indemnitee or expenses for which that Seller Indemnitee has been expressly allocated responsibility hereunder;
 - (v) within the scope of [identify tax indemnity provision, if relevant]; or
 - (vi) [the subject of an indemnity by another person, including without limitation the Lessee], in favor of Seller].³

3. Payments under 1 and 2 shall be made by the relevant party (i) within 10 Business Days following the date of demand and (ii) on an After Tax Basis.

For the purposes of this General Indemnity provision:-

¹ Insert reference to Disclaimer and Waiver provision

² **Note:** consider whether to provide for this exclusion if Parties prefer to have Claims and Losses be recoverable solely from Lessee if the lease indemnity provides coverage.

³ **Note:** consider whether to provide for this exclusion if Parties prefer to have Claims and Losses be recoverable solely from Lessee if the lease indemnity provides coverage.

After Tax Basis means the payment of amounts necessary to ensure that (after giving effect to any deductions or withholding Tax, including on any additional payments) the full amount owing hereunder is received by the recipient.

Claims and Losses means any and all third party claims, suits, judgments, orders, losses, liabilities, damages, costs, and expenses (however described, characterised or classified), including reasonable professional fees and expenses, for any injury to or death of any person and for any damage to or loss of any property, in each case incurred or binding and regardless of (a) the legal theory or economic assumptions on which they are based, (b) whether they are described as penalties and/or fines, and/or (c) whether they are susceptible to appeal or mitigation.

General Indemnity Event means an event or circumstance directly or indirectly related to or arising from the ownership, possession, use, operation, control, maintenance, modification, repair, overhaul, condition or status of the Aircraft, in each case, regardless of the source or cause of any related Claims and Losses, including, without limitation, those based on theories of strict or derivative liability on account of proprietary interests in the Aircraft or status under this Agreement.

Purchaser Indemnitees means Purchaser, [*identify any other additional indemnitees*], and their respective affiliates, officers, directors, employees and agents.

Seller Indemnitees means Seller, [*identify any other additional indemnitees*], and their respective affiliates, officers, directors, employees and agents.

Schedule II

Sample Lease Related Representations and Warranties

Seller represents and warrants the following in relation to the Aircraft, the Lease and the Lessee [save as disclosed in the Disclosure Letter] :

1. the [Lease Documents] relating to the Aircraft constitute the whole agreement between Seller and Lessee immediately prior to Delivery relating to the Aircraft, and include a complete list of all amendments, supplements, novations, and written consents, approvals and waivers relating to the Lease (other than [transaction documents, warranties]) and there are no oral waivers currently in effect that would modify or amend the terms thereof.
2. to the knowledge of Seller, no [Event of Default] under [specify relevant clauses of the [Event of Default] provisions which respect to which Seller is comfortable providing any representation or warranty] has occurred and is continuing.
3. There are no outstanding invoices from Lessee to Seller in respect of repayments from supplemental rent or maintenance reserves under the Lease[or under [Clause of the Lease]⁴.
4. The claims of Lessee under [specify any provisions in the Acceptance Certificate which provide for the payment of money or the provision of parts or other Lessor performance post-acceptance] have been fully satisfied by Lessor and Lessee will have no further claims thereunder.

⁴ *specify AD cost-sharing provision, if applicable*

Schedule III

Sample Execution Blocks for an English company

Simple Contract executed by individual on behalf of English company

Executed by [NAME OF DIRECTOR],
director, for and on behalf of

[NAME OF EXECUTING COMPANY]

.....
Director

Simple Contract executed by an attorney on behalf of English company

Executed by [NAME OF ATTORNEY]
as attorney for

[NAME OF DONOR/EXECUTING COMPANY]

.....
Attorney

Schedule IV

Suggested signing procedure for virtual closings where documents governed by English law

Simple contracts

- (a) The proposed arrangements for the virtual signing/closing should be agreed between all parties' lawyers in advance of closing
- (b) Once the documents are finalised, the final execution versions should be emailed (as complete pdf or Word attachments) to all parties and/or their lawyers. To facilitate ease of process, a separate pdf or Word document containing only the relevant signature page may be attached.
- (c) Each signatory prints and signs the signature page only (there is no need to print off the full document).
- (d) Each party then returns by email (i) the final execution version of each document and (ii) each signed signature page (as a pdf attachment), to its lawyers / the lawyers co-ordinating the signing/closing. For the avoidance of doubt the execution versions of the documents and the pdf signature pages should both be attached to the same email.
The email should include the following confirmations / authorisations by the signing party in favour of the lawyers co-ordinating the signing/closing:-
 - (i) granting authority to attach the relevant signature page to the final execution version of the document
 - (ii) granting authority to date the document and release it to the other parties once all signature pages have been received
- (e) At or shortly after signing/closing, a final version of the duly executed document (including all executed signature pages) should be circulated to all parties to evidence execution of the final document.

Schedule V

Termination and Deposit Refund Scenarios

General notes on inspections:

- (1) The MUAPA assumes that the Purchaser has completed at least a cursory inspection of the aircraft/records - and therefore in the MUAPA, the options are either (A) indicating that the inspection is complete and the aircraft is satisfactory or (B) a complete, in-depth inspection of an off-lease aircraft is permitted in order to determine compliance with an agreed set of delivery conditions (and not, for example, to decide whether Purchaser is generally happy with the configuration, capabilities or other generic points – which would generally occur prior to signing).

- (2) The MUAPA also assumes that option (B) will be completed immediately prior (or very shortly prior) to Delivery - once the inspection is completed and defects accepted or rectified (or a price adjustment agreed) the parties would move toward closing. In practice, a Purchaser might indicate its acceptance of the condition of the aircraft informally but would not normally deliver a formal acceptance of an aircraft until immediately prior to closing, allowing the Purchaser to re-evaluate the aircraft if a significant event occurred between informal acceptance and closing.

SCENARIO	OUTCOME	RELEVANT CLAUSES	COMMENTS
Section A – Inspections			
Inspection completed prior to signing purchase agreement		4.1 (Option A)	No walk-around permitted before Delivery, but the fault/damage prior to delivery provisions in 5.1 apply.
Inspection permitted after signing purchase agreement, and discrepancies from Delivery Condition Requirements are found, in which case, Purchaser will notify Seller of such discrepancies, and clause 5.1 will apply	See below regarding damage/fault/clause 5.1, for termination and deposit refund provisions.	4.2 (Option B); 5.1	It is expected that this option will be selected by parties only in circumstances where the relevant Aircraft is out of service and not subject to a continuing lease at the time of sale. This may also be appropriate for the forward sale of a leased aircraft but care will have to be used to conform the MUAPA inspection procedures with the lease return inspections.
Inspection satisfactory after signing, but walk-around not satisfactory	See below regarding damage/fault/clause 5.1 for termination and deposit refund provisions	4.2.5; 4.2.2; 5.1	<p>Purpose of the walk-around is limited to confirming compliance with Delivery Condition Requirements.</p> <p>In the event of non-compliance with Delivery Condition Requirements (as determined by Purchaser), clause 4.2.2 applies.</p>

SCENARIO	OUTCOME	RELEVANT CLAUSES	COMMENTS
Section B - Damage or fault before Delivery			
If damage or fault occurs, or if Delivery Condition Requirements not met, prior to Delivery	If a lease is specified and damage does not exceed the agreed threshold, parties must move forward to closing.	5.1(i)(a)	<p>If the damage is below the threshold and the Aircraft is subject to a lease, it is assumed that the Purchaser will proceed with no adjustment to the price, relying on the Lessee to repair the damage in accordance with the lease – with the implicit understanding that this repair is not required to be completed prior to Delivery.</p> <p>A failure of the Purchaser to proceed with the transaction based solely on the existence of damage below the threshold would entitle Seller to terminate, retain the Deposit and possibly seek other remedies.</p>
	If a lease is specified but the damage exceeds the threshold, then Purchaser may elect to terminate and the Deposit would be refunded	5.1(i)(c); 10.1(i); 3.2.2(i)	It is presumed that the Damage Threshold will be set at a level which indicates the limit of materiality for damage that the Purchaser is prepared to accept – below the Damage Threshold it must proceed and above the Damage Threshold it may elect to terminate and receive a refund of the Deposit.
	If a lease is not specified, Seller may elect to attempt to repair the Aircraft (if damage does not exceed the Damage Threshold), and if Seller so elects, Purchaser must give Seller until the Final Deliver Date to complete repairs. If the repairs are not completed, Buyer may elect to terminate and the Deposit would be refunded	5.1(ii)(a); 10.1(i); 3.2.2(i)	The Damage Threshold will determine whether Purchaser is obliged to proceed with the transaction with the damage being repaired – in this case, in the absence of a lease, with the repair being (i) completed prior to Delivery and (ii) completed by Seller.

SCENARIO	OUTCOME	RELEVANT CLAUSES	COMMENTS
			Note that Seller has no obligation to repair damage or fault. One could consider placing some obligation on Seller to repair certain kinds of damage, fault or Delivery Condition Requirement noncompliance if the Aircraft is not to be delivered subject to a lease, but that is probably not practical (e.g., there is no way to predict lead-time / parts availability / MRO capabilities, even for what might be relatively small dollar issues), and the MUAPA therefore does not attempt to place such an obligation on Seller.
	The parties may agree to reduce the Purchase Price by an amount they agree to be the estimate of the repair cost	5.1(ii)(b)	There is no obligation on any party to so agree.
	If none of the above apply, either party may terminate with no further obligation or liability and the Deposit shall be returned	5.1(ii)(c); 10.1(i); 3.2.2(i)	
Section C - Total Loss			
Total Loss occurs prior to Delivery	Either party may terminate; Deposit refunded	5.2.1; 10.1(i); 3.2.2(i)	
Incipient Total Loss occurs	Either party may terminate; the Deposit would be refunded	5.2.2, 10.1(i), 3.2.2(i)	It is not required that any waiting period be applied to an incipient event.
Section D - Other Termination Events			
A party becomes insolvent prior to Delivery	If the Seller is the insolvent party, the Purchaser may terminate and Purchaser would be entitled to seek a refund of the Deposit if the Purchaser is not otherwise in breach of its obligations	10.1(ii)(a); 3.2.2(ii)	Clause 10.1(ii)(a) should be read in conjunction with the deposit refund provisions in Clause 3.2.2(ii). An insolvency event for Purchaser or Seller will yield slightly different timing considerations.

SCENARIO	OUTCOME	RELEVANT CLAUSES	COMMENTS
			<p>If the Seller is the insolvent party, the MUAPA presumes that Purchaser should not have to stand by to see if Seller can perform its obligations, leaving its Deposit subject to potentially greater risk – if it is not itself in breach, and if it can immediately terminate under applicable law and obtain, or at least expedite a claim for, refund of the Deposit, then it should have the right to do so. This is the way Clauses 10.1(ii)(a) and 3.2.2(ii) operate.</p> <p>Conversely, if Purchaser is the insolvent party, then the MUAPA provides Seller two options: (i) subject of course to applicable law, it can terminate immediately and refund the Deposit or (ii) it can stand by to see if Purchaser is nonetheless able to perform, at which point either Purchaser will close the transaction and Seller will have obtained the benefit of its bargain or Purchaser will fail to close by the Final Delivery Date (or will otherwise default) and Seller will have other termination rights that may entitle it to retain the Deposit and exercise other remedies.</p>
	<p>If the Purchaser is the insolvent party, the Seller may terminate but cannot retain the Deposit if it terminates due only to the existence of the insolvency event</p>		<p>In lieu of the financial loss qualifier one could consider adding a 'test' relating to capability to close but that would necessarily be subjective and probably best to avoid.</p>

SCENARIO	OUTCOME	RELEVANT CLAUSES	COMMENTS
<p>An event specified in the Annex as a special termination event occurs prior to Delivery</p>	<p>If there are additional specified termination events (e.g., material breach before the Final Delivery Date) and if the terminating party is the Purchaser (and it is not otherwise in breach of its obligations) then the Deposit is refunded; otherwise, Seller retains the deposit. In either case, parties reserve their rights in connection with the termination</p>	<p>10.1(ii)(b); 3.2.2(ii)</p>	<p>Consideration was given to having a termination event for breach by Purchaser or Seller of any covenants under the Purchase Agreement prior to closing; however, it was decided that on balance the parties will prefer to allow any covenant or other breaches to be cured prior to the Final Delivery Date, rather than have a nearer-term right to terminate after a grace period.</p> <p>If the period between execution of the Purchase Agreement and the Final Delivery Date is particularly lengthy, or if the parties otherwise feel that a termination event for breach of the Purchase Agreement is appropriate, this or indeed other termination events may be added by specifying same (and grace periods, if any) in Part 1 point 26; however, for each such event the Deposit refund implications should be considered.</p>
<p>Delivery does not occur prior to the Final Delivery Date</p>	<p>From and after Final Delivery Date, either party can terminate, so long as it is not in breach of any of its material obligations and:</p> <p>(1) the Purchaser, is not in breach of any of its material obligations, it will obtain a refund of the deposit;</p> <p>(2) all obligations and liabilities terminate, unless the non-terminating party is in breach (in which case, the parties have such rights as they may have at law/equity).</p>	<p>10.1(iii); 3.2.2(iii)</p>	<p>The MUAPA presumes that parties will want to have a closing deadline – the Final Delivery Date – after which, if both parties have been using commercially reasonable efforts to procure satisfaction of the conditions precedent within their control and if neither is in default, then either party may decide to stop pursuing the transaction and will instead terminate the agreement with full Deposit refund.</p> <p>If parties wish to have a truly “non-refundable” deposit, then the concept of a closing deadline with a ‘no fault’ termination right for Seller may not be</p>

SCENARIO	OUTCOME	RELEVANT CLAUSES	COMMENTS
			<p>appropriate.</p> <p>Under the MUAPA, each party has to use reasonable efforts to satisfy certain identified conditions - but only those generally presumed to be within its control, and the relevant Annex has been ordered to group the conditions together that are considered to be within the control of each party.</p> <p>Deposit refund does not depend upon whether the terminating party is the Seller or Purchaser - the only issue is whether Purchaser is in breach. If the Purchaser is in breach, then the Deposit is not returned.</p>