

From: "jeffrey E." <jeevacation@gmail.com>

To: [REDACTED] <[REDACTED]>

Subject: Re: BBJ SN 30884 [CC-MERO.FID1500434]

Date: Tue, 25 Oct 2016 11:51:08 +0000

Inline-Images: image004.png; image001.png

tell them he is coming , on 31st

On Tue, Oct 25, 2016 at 7:27 AM, [REDACTED] <[REDACTED]> wrote:

Again asking for DAR to view in JFK, something's up??

Sent from my iPhone

Begin forwarded message:

From: "Nelson, Michael" <[REDACTED]>
Date: October 25, 2016 at 1:33:00 AM EDT
To: Darren Indyke <[REDACTED]>
Cc: Larry <[REDACTED]>, Rob DiCastrì <[REDACTED]>, "Claire Brugirard" <[REDACTED]>, Ashok Kumar <[REDACTED]>, Husham Osman <[REDACTED]>
Subject: RE: BBJ SN 30884 [CC-MERO.FID1500434]

Dear Darren,

Further to my email below, please let us know if you have any comments or queries in relation to the revised draft of the Aircraft Purchase Agreement.

In addition, are you able to assist with having a DAR look at the aircraft whilst it is in New York?

Kind regards,

Mike

Michael Nelson
Senior Associate | Clyde & Co
Direct Dial: [REDACTED]

Mobile: [REDACTED]

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From: Nelson, Michael [<mailto:> [REDACTED]]
Sent: 20 October 2016 22:42
To: Darren Indyke
Cc: Larry; Rob DiCastrì; Claire Brugirard; Ashok Kumar; Husham Osman
Subject: RE: BBJ SN 30884 [CC-MERO.FID1500434]

Dear Darren,

Thank you for your email below.

Please find attached a revised draft of the Aircraft Purchase Agreement (in clean and red-line).

Please note the following comments:

1. **Section 2(a)(v):** Royal Jet can't agree to rectify prior to delivery ADs and SBs with a compliance date far in the future. As a compromise, they can agree to rectify prior to delivery those ADs and SBs with a compliance date on or before 31 December 2016.

2. **Section 2(a)(viii):** Royal Jet proposes "*major damage history outside manufacturer's tolerances*".

3. **Section 2(a)(xi):** The determination by the DAR of the aircraft being able to obtain a US certificate of airworthiness is still under consideration by Royal Jet. Notwithstanding the US\$500,000 threshold on rectifications, Royal Jet is not keen to proceed where the extent of those rectifications will be subject to a DAR whose guidelines are unknown to Royal Jet. I understand that Claire from Royal Jet has been liaising with Larry on seeing the aircraft when it is in New York on 26 October. Would it be possible for a DAR to see the aircraft then to narrow the issues on this point? It may be helpful for the DAR to do this in order that the parties know if there is, in fact, any issue here and can then proceed accordingly.

4. **Section 3(d):** Royal Jet are unable to permit the Purchaser's representatives to "*participate in*" and "*assist with*" the pre-purchase inspection (but they are, of course, welcome to "*observe*"). This would not be appropriate for third parties to do, but there are also legal certification issues to consider.

5. **Section 3(e):** We propose that we compromise on a flight test duration of 2 hours. In addition, further flight tests should only be undertaken to check the rectification of discrepancies if that is necessary to evidence such rectification pursuant to the manufacturer's maintenance manual.

6. **Section 3(g) and (h):** We have followed the acceptance process set out in the LOI. The Purchaser should not have discretion to accept the aircraft regardless of its compliance with the Delivery Condition. Further, if the Purchase fails to participate in the acceptance process, it should be deemed to have technically accepted the aircraft (subject to rectification of discrepancies).

7. **Section 3(i):** Royal Jet can't agree to its failure "to agree to" a discrepancy being grounds for termination. Classification of discrepancies should be objective.

8. **Section 5(e)(i):** The provision in relation to the Escrow Agent receiving "*notice of any lien, claim or encumbrance asserted by any third party*" as preventing closing is not acceptable. Liens, claims or encumbrances registered with the International Registry is different, but if the Escrow Agent receives an unsubstantiated claim from an unknown third party, that should not delay closing and it is unusual to include a provision like this. The Purchaser is, of course, receiving warranties as to title free from liens claims and encumbrances from Royal Jet pursuant to the Warranty Bill of Sale.

9. **Section 8(a) (now deleted):** The Purchaser will have an opportunity to inspect the records during the pre-purchase inspection. Any issues and discrepancies can be raised then, but Royal Jet can't give warranties as to condition which survive closing (generally, the only warranties that survive closing in relation to the aircraft should relate to title).

10. **Section 14:** We have now included a mirroring indemnity from Royal Jet to Purchaser for issues prior to delivery to coincide with the indemnity from the Purchaser to Royal Jet for issues after delivery. That is not unusual. In relation to the post-delivery insurances, we'd request that you check with your insurance broker that they can comply with this (normally, there is no issue adding another party as an additional insured at no cost). From Royal Jet's perspective, it is not uncommon in the aviation industry for a purchaser to arrange for a seller to be named as an additional insured as, from a seller's perspective, whilst they usually have the benefit of an indemnity, the strength of that indemnity may be limited and, as liabilities arising from aircraft accidents to passengers and persons on the ground may be extremely high, a seller will invariably insist on insurance protection. A period of two years is the industry norm (the underlying theory being that during this period the aircraft will undergo a major overhaul and the possibility of a third party being able to sustain a claim against a seller for a post-sale accident is considerably reduced).

Please note that the revised draft remains subject to the further review and comment of Royal Jet.

We look forward to hearing from you (particularly in relation to point 3 above as this may help progress in relation to the DAR / US certificate of airworthiness issue).

Kind regards,

Mike

Michael Nelson
Senior Associate | Clyde & Co
Direct Dial: [REDACTED] | Mobile: + [REDACTED]

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From: Darren Indyke [mailto:[REDACTED]]
Sent: 19 October 2016 02:27
To: Nelson, Michael
Cc: Larry; Rob DiCastrì; Claire Brugirard
Subject: Re: BBJ SN 30884 [CC-MERO.FID1500434]

Mike,

Please see below my comments to the last draft of the Purchase Agreement. Please note that in the interest of saving time, I am sending the draft to my client (with whom I have not discussed it) at the same time that I am sending it to you. The attached revision is therefore subject to further comment and revision after I have had an opportunity to discuss it with my client.

1. Would you please send me directly the most recent version of Exhibit A, which includes a reference to the two Auxiliary Fuel Tanks.
2. I have made certain changes to your revisions imposing limits on the Pre-Purchase Inspection based on my consultation with the DAR. They are noted on the attached document.
3. I have made delivery condition changes as marked on the attached document based on my consultation with the DAR as well.
4. Although I can understand why you would wish to exclude the administrative aspects of FAA registration from the purchase agreement, I cannot agree that an FAA Registration qualified aircraft need not be delivered. Items which would cause the Aircraft not to qualify are to be considered Discrepancies. Ultimately if the cost to achieve that compliance is more than \$500K you have the option of walking away without reimbursing me. Since you agreed to that Threshold, I believe this requirement is reasonable.
5. I agree that discrepancies should not be based on aesthetic issues, like the wood. However, my client's discretion to accept (with or without Discrepancies to be corrected) or reject, should not be tied to

whether its reasons qualify as Discrepancies, particularly in light of the unanticipated issues (that were not strictly Airworthiness items) already discovered. The incentive not to walk away is already built in because my client will be paying for the costs and expenses of the Pre-Purchase Inspection.

6. In the same way that the Purchaser is required to accept (with or without correction of Discrepancies) or reject the aircraft with a notice, the Seller should be required to give notice of its intentions to proceed or not after receipt of a technical acceptance certificate. The same two business days notice should apply to the Seller after it gets a Certificate of Technical Acceptance.

7. The imbalance of no warranties other than title and generally no post closing obligations for the Seller but a requirement of a continuing indemnity and insurance obligation for the Purchaser is unacceptable. I have never agreed to such post closing obligations.

8. I also noted that you did not wish for Seller to provide any representation as to the truth, accuracy and completeness of the Aircraft records. Is there a reason for this?

9. I will have to discuss your insistence on England and Wales as the governing law. Neither party is a citizen of England or Wales and most of the financial risk until closing is on the Purchaser. I have typically insisted on Purchaser's jurisdiction for governing law, but will ask about England and Wales.

I look forward to hearing from you regarding the foregoing and the attached revision.

Best,

DARREN K. INDYKE
DARREN K. INDYKE, PLLC
575 Lexington Avenue, 4th Floor
New York, New York 10022
Telephone: [REDACTED]
Telecopier: [REDACTED]
Mobile: [REDACTED]
email: [REDACTED]

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