

Oh Don't Worry, No One Really Reads It...

I think that sometimes, as the title points out, no one really reads an offer letter, or worse a signed contract for the purchase or sale of an aircraft.

There should be, and I might point out usually is, a great amount of time put into creating an offer letter, or negotiating a final contract. Why not expect it to be followed like a road map to a successful conclusion?

Of course the best deals are the ones that, once negotiated, just stay on track and there really is no need to continue to refer back to the contract. But that only happens if it is read and understood in the first place. A very bright aviation attorney once said a very profound thing to me: "If it is not in the four corners of the document, it means nothing." Maybe I am overstating the profound nature of that comment, but how often do you hear in a deal that one side or the other just completely ignores the written road map and starts veering down a different road only to say when questioned, "No big deal, this is how everyone deals with this issue." The truth is, however, that that is not how this issue will be dealt with in the transaction if within the four corners of the contract a different resolution is called for.

Sometimes the issue is not even about whether the contract is being read, but rather if the contract or offer is being understood. It is critical once signed that all parties who will be tasked with following the road map during the drive, understand its terms and conditions. So often, just a sheer lack of understanding can cause perfectly good deals to come apart due to emotional strain. Think carefully about all the players on your side of the deal who will be tasked with understanding the deal. We often will cut out parts of the contract that apply to different participants and walk them through their parts as if it were a script for a play. No need for every actor to memorize the entire script, just his or her part and a few lines above and below.

For instance, when we go to a pre-buy and sit down for an incoming debrief, we send our maintenance director who is accompanying the plane with the sections of the contract that address scope or length of the pre-buy,

delivery conditions of the aircraft, and agreed upon mechanical and records responsibility of both buyer and seller. They then read these sections to all involved who are sitting around the debrief table.

One example of a typical area of misunderstanding may be AD or Mandatory service bulletin compliance dates. Some buyers may have negotiated a compliance for these to be out in the future rather than compliance at day of closing. Another example is the date at which the aircraft is to be current on its manufacturer's maintenance program.

This is another area that, if not understood, can and will cause problems and yet can be so easily managed if properly understood from the beginning. An additional area to watch is if the aircraft is to be current to the day of closing, or did the negotiations yield a future date of compliance, like current to 90 days after closing? But if everyone involved reads these sections, everyone leaves on the same page.

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Every deal can be different. We've pointed out actions for specific sections and that distributing them to the appropriate actor is a great idea, especially if you have hired a contract technical person to accompany your aircraft through a pre-buy. If they do not approach the delivery conditions with a thorough knowledge of the specifics of this deal, you can expect problems. One of the other areas where misunderstanding can occur is to the untrained legal mind (which most executors of a negotiated deal have) and in the defined terms section of the contract.

My favorite purchase and sale contracts start out with a set of defined terms. Some are as simple as defining what time zone will be considered when establishing closing times, deposit delivery times, etc. and they may include an Aircraft Documents'

definition, a clear definition of the Aircraft itself. From this section forward, every defined term can then be described in capital letters without the full definition. One of the most misunderstood terms can be "discrepancy".



Once defined in the definition section, the capitalized word Discrepancy can be used throughout the document, and because clearly defined, it can help alleviate any misunderstandings in the Contract.

For example, we often have people say to us after receiving the full discrepancy list from the inspecting facility that we have to fix all Discrepancies found because that is what the contract says. They may even quote a section of the contract that refers to the delivery conditions and gain what they think is their justification for asking for all Discrepancies to be corrected. But, because we've pre-defined the term Discrepancy, we can show that the definition states that not all discrepancies are to be corrected by the seller to be in compliance with the contract - only those that effect airworthiness and the proper function of a system. It may very clearly call out that normal wear and tear items and cosmetic items or systems without manufacturers' tolerances do not have to be fixed to be in compliance!

So back to the title of this article, "Don't worry, no one really reads it..." I guess I should have titled the article, "Those that do not read and understand a contract will not have a successful transaction with all emotions in check." It just seemed a little too long for a title.

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