

Minuut



Ministerie van Verkeer en Waterstaat

41

Aan
Mann Aviation Group (Engineering)
Limited
Attn:
Technical Director
Fair Oaks Airport, Chobham, Woking,
Surrey GU24 8HX ENGLAND

Classificatie

-

Contactpersoon

Datum

11 juli 2008

Ons kenmerk

SSO/F&I-2008/192

Onderwerp

Contract

Doorkiesnummer

1347

Bijlage(n)

-

Uw kenmerk

-

Getypt door/paraaf

Vergeleken door/paraaf

-

Verzonden door/paraaf

-

Ondertekening door/p-

Medewerking van/paraaf

Vervolg op

-

Rappeldatum

-

Verzenddatum

-

Verzendwijze

-

Na verzending retour aan

-

Afschrift aan

Adres

-

15 JUL 2008



Mann Aviation Group (Engineering) Limited

Attn: [REDACTED]

Fairoaks Airport, Chobham, Woking,
Surey GU24 8HX ENGLAND

Contactpersoon

[REDACTED]

Datum

11 juli 2008

Ons kenmerk

SSO/F&I-2008/192

Onderwerp

Contract

Doorkiesnummer

-

Bijlage(n)

Annexe 4

Uw kenmerk

-

Dear [REDACTED]

For some time now, the Ministry and MAGE Ltd. are trying to reach an agreement on the judicial conditions for the maintenance of the royal airplane, to be carried out by MAGE.

It has brought to my attention, that there are only two remaining elements to be resolved:

- An arrangement on the liability issue that will satisfy both parties and,
- Recent news about a possible take over by Westland, that so far remains to be unclear.

The purpose of this letter is, firstly, to clarify the position of the Ministry on the limitation of the liability due to non performance by MAGE.

Secondly, we would like to point out that we insist on being informed about the take over plans by Westland. Special interest in that matter is the certainty MAGE can provide for that our agreement will be met in case of a take over (fully or partially) before, during and after the work being carried out.

Concerning the first element, liability, the Ministry has pointed out that it should be able to hold MAGE accountable for any damages in the case of non performance.

It is common law that a principal can hold a contractor liable for these kind of damages.

An example of this kind of damage could be inferiority of the work, which could lead to the situation that the Ministry could decide to have the work carried out by an other company, either after termination of the contract or within the terms of the contract.

In the latest reaction of June 5th, MAGE has shown some understanding for the possibility of being held liable to a certain extent in case of non performance. The proposal by

Shared Services Organisatie

Financiën en Inkoop

Postbus 20906, 2500 EX Den Haag

Koningskade 4, 2596 AA Den Haag

Telefoon [REDACTED]

Fax [REDACTED]

E-mail [REDACTED]



MAGE, however, has been judged as completely inadequate by our lawyers. Not only because damages are only linked to a premature termination of the agreement, but also because of the fact that the proposal entails a limitation to the amount of 50,000.- euro, covering all possible events. In our view a very poor proposal considering the common Dutch governmental contracting conditions that state a limitation to the liability in the case of non performance of 3,000,000.- euro per event, in the case of contracts with a value over 500,000.- euro. This policy is among others based on the fact that in Dutch law the judge has a crucial role in the final decision of the actual amount of damages to be paid. If the judge thinks the claim for damages is disproportionate regarding the capacity of the person or company that is held liable, the judge will moderate the amount severely.

Considering the above, the Ministry proposes to limit the liability for MAGE for non performance to the amount of 1,000,000.- euro per event. The "event" in this case, is related to the maximum amount payable to MAGE in one phase of the contract. The enclosed annexe 4, article 16.9 describes the condition as proposed by the Ministry. Consequently the articles 16.9 and 16.10 as proposed by MAGE will be left out. This will be our final offer regarding the subject liability.

Concerning the second element, the possible take over, the Ministry would like to have certainty about the type of take over. Will the take over be conducted:

- by only the "buying of shares" and the acquiring company will act as shareholder or,
- by a complete "business take over", in a way that the acquiring company actually will be influencing day to day business.

In case of the latter, the Ministry insists to be insured that the take over party will fully respect the signed contract, before the actual signing of the contract.

I am confident that the information above mentioned shall lead to a quick positive reaction on your behalf, so we can close our deal by signing the contract soon.

Yours faithfully,

MINISTRY OF PUBLIC TRANSPORT,

[Redacted signature and name of the official]

ANNEXE 4

1 Definitions and Interpretation

1.1 In this Annexe the following expressions have the following meanings:

Aircraft Fokker 70 of the Queen of the Netherlands Royal Flight registration PH-KBX

Change has the meaning given to it in clause 8

Component any part or item of equipment, or any number of them assembled into a combination, which performs any function and which was (a) installed as part of the Services and (b) supplied to MAGE by either the Contracting Authority or any sub-contractor or other third party (whether free of charge to MAGE or not)

Contract the contract for works to be undertaken to the Aircraft, to which this document is an Annexe

Contract Price €3,403,842.00 or as otherwise may be established under the terms of the Contract

Contracting Authority The State of the Netherlands and anyone to whom it has lawfully assigned its rights and obligations under the Contract

Contracting Authority's Representative the person named as such in article 4.1 of the public service contract governed by General Government Terms and Conditions for public service contracts, or any person appointed under article 8 of the General Government Terms and Conditions for public service contracts

Delivery Date 29 May 2009 or such other date as the parties may agree in writing

Emerging Work any work beyond the scope of the Services that is identified by MAGE during the performance of the Services as being required or desirable prior to the issue of the Certificate of Release to Service to the Contracting Authority

Equipment and Fittings any and all equipment and fittings on board the Aircraft at the time of delivery, and remaining so during the performance of the Services.

Force Majeure delay due to reasons beyond the reasonable control of the party whose performance of its obligations is affected as a result, including but not limited to:

- a) acts of God, war, terrorism, riot or any damage to MAGE's facilities or to the facilities where the Services are to be undertaken;
- b) the unavailability of the Installation Facilities for any reason for use by MAGE at the required time (unless as a result of the wilful default of MAGE);

- c) the unavailability of the Flightvue Security System for any reason for use by MAGE at the required time (unless as a result of the wilful default of MAGE);
- d) any interruption to the Services, or damage to them, caused by a third party undertaking work to the Aircraft at any time between the Delivery Date and the Redelivery Date (other than MAGE's sub-contractors whilst performing part of the Services and not other work);
- e) industrial action;
- f) unusually severe weather;
- g) the unavailability of any required materials in the market place either at all or not at a reasonable cost or not within the requisite timescale;
- h) delay in the obtaining of any government licence consent or approval or in obtaining any import or export licence (unless as a result of the wilful default of MAGE);
- i) delay in obtaining technical data or approval from a manufacturer or supplier (unless as a result of the wilful default of MAGE);
- j) the act of any third party that delays the carrying out of the Services (unless as a result of the wilful default of MAGE);
- k) damage to the Aircraft (unless as a result of the deliberate act or negligence of the party claiming the benefit of Force Majeure), or mechanical failure of the Aircraft;

and this expression bears the same meaning when used in the General Government Terms and Conditions for public service contracts.

Goods any item supplied by MAGE for fitting into the Aircraft as part of the Services, including after it has been fitted

Installation Facility KLM's maintenance facility at Norwich Airport UK or such other facility as the parties may agree

Loose Equipment any item on board the Aircraft at the time of delivery that is not fixed to it

MAGE the Contractor, and anyone to whom the Contractor has lawfully assigned its rights and obligations under the Contract

On-Site Representative (OSR) any person who the Contracting Authority may appoint to fulfil that role under this Annexe

Redelivery Date 44 days after the Delivery Date, subject to postponement or rescheduling as provided in the Contract or as may be varied by a Change but if the period between the Delivery Date and the Redelivery Date includes 20 December 2008 to 4 January 2009 (inclusive) the Redelivery Date will be 16 days after it otherwise would have been.

Role Equipment any item on board the Aircraft at the time of delivery that has been installed to perform a specific function having regard to the use to which the Aircraft is put

Services the work described in Annexe 1 of the Contract (as may be varied as an agreed Change), plus any Emerging Work that is the subject of an agreed Change, and includes all Components and other parts or equipment installed by MAGE as part of the Services

Test Flight a flight arranged by and at the cost of the Contracting Authority during which the Aircraft's systems will be tested to agreed performance criteria

- 1.2 References to clause numbers are to clauses in this Annexe, unless the contrary is stated.
- 1.3 Expressions defined in the public service contract or in the General Government Terms and Conditions for public service contracts have the same meaning in this Annexe.

2 Appointment of MAGE

- 2.1 The Contracting Authority authorises MAGE to carry out such work to the Aircraft as may be necessary to perform the Services.
- 2.2 The Contracting Authority warrants to MAGE that, as at the date of the Contract and as continuing warranties until all obligations to be performed under the Contract have been discharged
 - 2.2.1 It has all necessary power and authority to enter into the Contract on its terms and to perform its obligations under the Contract
 - 2.2.2 No circumstances have arisen or will arise by which any third party (for example but not limited to any lender or owner) has or will have any right to exercise a lien over the Aircraft or of any equipment in it
 - 2.2.3 No government or regulatory authority has or will have any grounds to prevent the Aircraft from flying
 - 2.2.4 The entering into of the Contract on its terms, the carrying out of the Services, and the performance of any other obligation under the Contract does not violate any agreement contract restriction law regulation or other any other obligation binding on or applicable to the Contracting Authority or the Aircraft or the Services
 - 2.2.5 The documents and other information supplied by the Contracting Authority as required by clauses 5.3 and 5.4 will be complete, valid, and up-to-date as at the Delivery Date

and the Contracting Authority will indemnify MAGE fully against the consequences it suffers as a result of any breach of any of these warranties.

3 Use of sub-contractors

- 3.1 MAGE may sub-contract the whole or any part of the Services.
- 3.2 The Contracting Authority consents to MAGE transporting the Aircraft or any part(s) of it, by whatever means but at MAGE's risk, to and from sub-contractors' premises for any purpose connected with the carrying out of the Services.
- 3.3 MAGE is not liable for the performance of any part of the Services by any sub-contractor nominated by the Contracting Authority.

4 Scope of Services

- 4.1 MAGE will not be liable to perform any work other than the Services, other than (if applicable) Emerging Work.

5 Aircraft delivery

- 5.1 The Contracting Authority will deliver the Aircraft to the Installation Facility on the Delivery Date.

- 5.2 An Aircraft will not be considered to have been "delivered" until:

5.2.1 the Aircraft has arrived at the Installation Facility; and

5.2.2 the Contracting Authority has fully complied with clauses 5.3 5.4 and 5.5.

- 5.3 The Contracting Authority will:

5.3.1 provide to MAGE details of any changes to the Buyer Furnished Equipment and weight and balance statement from the information provided to MAGE before the date of the Contract; and

5.3.2 provide to MAGE information on service bulletins as and when requested to do so by MAGE; and

5.3.3 permit MAGE to inspect the Aircraft by arrangement (and as soon as practical after the request to do so has been made by MAGE) at a location in The Netherlands or in the United Kingdom to enable MAGE to carry out assessments of the Aircraft's structure and systems; and

5.3.4 procure for the benefit of MAGE free and unlimited access to "My Fokker Fleet" data for the duration of the Contract; and

5.3.5 provide to MAGE at Delivery the Aircraft's structure repair manual.

- 5.4 The Contracting Authority will ensure that all documents required by law to be kept on board the Aircraft are in fact on board when the Aircraft is delivered.

- 5.5 When the Aircraft is delivered, an "Aircraft Delivery Receipt" in form MA74 appended as Schedule 2 will be completed and signed by both the Contracting Authority and MAGE.

- 5.6 By the end of the working day following aircraft delivery, the Contracting Authority and MAGE will jointly conduct an inspection of the Aircraft and

5.6.1 prepare an inventory of all Role Equipment and Loose Equipment on board the Aircraft which will be signed off by both parties; and

5.6.2 the Contracting Authority will remove from the Aircraft and take with them any Role Equipment or Loose Equipment if so required by MAGE

and a Test Flight will be performed and the results recorded.

5.7 If the Aircraft is not delivered by the Delivery Date for any reason, the following provisions will apply:

- 5.7.1 If the delay is more than three (3) days MAGE will delay the Delivery Date (with a subsequent affect on the Redelivery Date) until such time as the Aircraft can accommodated at the Installation Facility to enable the Services to be performed without interruption and re-schedule performance of the Services accordingly (using reasonable commercial efforts to schedule the Services for commencement as soon as possible) and reserves the right to amend the Contract Price within reasonable terms; and
- 5.7.2 From and including the fourth (4th) day of delay, if the delay is not due to Force Majeure or not due to reasons other than the Contracting Authority's default, the Contracting Authority will pay MAGE as liquidated damages, the amount of 0.1% of the Contract Price per day of delay until the re-scheduled Delivery Date as compensation for the rescheduling of resources to meet other commitments as a result of the re-scheduling subject to a maximum of 5% of the original Contract Price (before any change); and
- 5.7.3 The Contracting Authority will pay any cancellation charges that MAGE has incurred to the Installation Facility for the use of those facilities and the use of installation labour as from the original Delivery Date; and
- 5.7.4 The Contracting Authority will pay all additional charges that MAGE will incur for the use of the Installation Facility and the use of installation labour at a time other than as from the original Delivery Date. MAGE will provide evidence of such additional charges to the Contracting Authority. In the event of such charges being less than they would have been as from the original Delivery Date, MAGE will credit the reduction against other money due under this clause.

The Contracting Authority will have no other liability to MAGE in these circumstances.

6 Scheduling of Services

- 6.1 MAGE will schedule performance of the Services so as to achieve their completion by the Redelivery Date.
- 6.2 Not used
- 6.3 The Contracting Authority will not do anything to prejudice the achievement of the Redelivery Date other than
 - 6.3.1 as a result of Force Majeure or reasons other than the Contracting Authority's default; or
 - 6.3.2 through the implementation of a Change; or
 - 6.3.3 the Contracting Authority's Representative or the OSR exercising his rights under the Contract in a reasonable manner.

- 6.4 If performance of the Services is delayed by more than three (3) days due to
- 6.4.1 Any of the warranties set out in clause 2.2 not being (or not remaining) true; or
 - 6.4.2 A breach of clause 9.2; or
 - 6.4.3 The Contracting Authority failing, or delaying, to appoint a Contracting Authority's Representative or an OSR, or failing or delaying to appoint a replacement for a previous one; or
 - 6.4.4 The Delivery Date being delayed beyond that specified in clause 1.1; or
 - 6.4.5 The Contracting Authority's failure to pay any money due to MAGE by the due date; or
 - 6.4.6 The Contracting Authority failing to accept redelivery of the Aircraft when reasonably requested to do so by MAGE; or
 - 6.4.7 any other reason not permitted by this Contract,

or any of the above reasons in combination, and whether or not as a result of Force Majeure, then:

- 6.4.8 MAGE may suspend performance of the Services and postpone the Redelivery Date as provided in clause 11.3; and
- 6.4.9 (if the delay is due to the Contracting Authority's default) the Contracting Authority will pay MAGE, as liquidated damages, the amount of 0.1% of the Contract Price per day for the period of postponement of the Redelivery Date, for the rescheduling of resources to meet other commitments and additional administration costs, subject to a maximum of 5% of the original Contract Price (before any Change); and
- 6.4.10 The Contracting Authority will pay all additional charges that MAGE will incur for the use of the Installation Facility and the use of installation labour at a time other than as from the original Delivery Date. MAGE will provide evidence of such additional charges to the Contracting Authority

but the Contracting Authority will have no other liability to MAGE in these circumstances.

7 Force Majeure

- 7.1 The party whose obligations are, or may be, affected by Force Majeure will notify the other as soon as possible of that fact together with, if relevant, supporting evidence. The party so affected will use reasonable commercial efforts to mitigate the consequences of Force Majeure and will consult with the other as to how best mitigate the consequences.

8 Emerging Work and variations to Services

- 8.1 MAGE will not be liable to the Contracting Authority if it fails to identify Emerging Work.
- 8.2 Either party may propose a **Change**, by which MAGE is authorised to carry out a variation to the Services or Emerging Work, utilizing the form set out in Schedule 1 to this Annexe

(Change Form). In costing any Change, MAGE will apply the labour rates of £60 per hour. Neither party will be bound to accept a Change and MAGE is not obliged to consider any Change proposed by the Contracting Authority if at the time the Contracting Authority has failed to pay in full any money due to MAGE

- 8.3 No Change will be implemented until both parties have signed a completed Change Form.
- 8.4 If a completed Change Form is signed by both parties, then with effect from that date the Contract will be varied to the extent described in the Change Form.
- 8.5 If:
- 8.5.1 in MAGE's opinion, it will not be able to issue a Certificate of Release to Service unless the Contracting Authority agrees to a Change, and
 - 8.5.2 the Contracting Authority does not agree to that Change

MAGE may serve notice to terminate the Contract as provided in clause 14.

9 Contracting Authority's Representative and OSR

- 9.1 Unless advised in writing to the contrary, MAGE will be entitled to assume that the Contracting Authority's Representative has authority to represent and bind the Contracting Authority in relation to any matter covered by the Contract including, but not limited to
- 9.1.1 Negotiating and authorising changes to the Services and signing Change Forms on behalf of the Contracting Authority
 - 9.1.2 Accepting redelivery on behalf of the Contracting Authority
 - 9.1.3 Authorising payments to MAGE
- 9.2 The Contracting Authority will not, and will procure that the Contracting Authority's Representative does not, unreasonably withhold or delay agreement approval or consent to any matter put to him. This obligation does not oblige the Contracting Authority to accept any proposal to vary the Services, but does oblige the Contracting Authority not to unreasonably delay a decision as to whether or not to do so.
- 9.3 The Contracting Authority will procure that there is an OSR appointed to act full-time and to be available on site during normal working hours from the Delivery Date until the Redelivery Date. MAGE will be entitled to assume that the OSR has authority to represent and bind the Contracting Authority in monitoring the performance of the Services and acceptance of them.

10 Intellectual Property Rights

- 10.1 MAGE will procure for the benefit of the Contracting Authority a royalty-free licence to use all software installed by MAGE as part of the Services.

11 Aircraft Redelivery

- 11.1 MAGE will redeliver the Aircraft to the Contracting Authority, and the Contracting Authority will accept redelivery, on the Redelivery Date PROVIDED THAT MAGE will be under no

obligation to redeliver the Aircraft unless all sums due to it under the Contract at that time have been paid in full by cleared funds.

11.2 A Test Flight will be undertaken prior to redelivery, and the same tests undertaken as were undertaken at delivery.

11.3 The Redelivery Date will be postponed if:

11.3.1 the Aircraft is delivered after the Delivery Date (whether or not due to Force Majeure); or

11.3.2 any of the circumstances described in clause 6.4 or 11.4 apply; or

11.3.3 performance of the Services is delayed due to Force Majeure

the period of postponement to be reasonable in all the circumstances.

11.4 An Aircraft will not be considered to have been "redelivered" unless and until:

11.4.1 The Contracting Authority has accepted the Aircraft by signing the "Aircraft Redelivery Receipt" in form MA74 appended as Schedule 2; and

11.4.2 The Contracting Authority has paid to MAGE, in full, all sums due to it up to and including as at the Redelivery Date

11.5 MAGE will, on the Redelivery Date, issue to the Contracting Authority a Certificate of Release to Service PROVIDED THAT MAGE will be under no obligation to do so unless the requirements of clause 11.4 have been complied with in full. Prior to issuing the Certificate of Release to Service, MAGE is to have given the Contracting Authority a reasonable opportunity to satisfy itself that the Certificate of Release to Service may properly be issued under all relevant legislation, and MAGE will not negligently issue the Certificate of Release to Service.

11.6 If MAGE fails to deliver the Aircraft on the Redelivery Date for reasons of its own default (and not being Force Majeure) then:

11.6.1 the first three (3) days of the delay will be considered a grace period;

11.6.2 from and including the fourth (4th) day of delay, MAGE will allow to the Contracting Authority against the Contract Price, as liquidated damages, an amount of 0.1% of the Contract Price per day of delay as compensation for delay, subject to a maximum of 5% of the original Contract Price (before any Change)

but MAGE will have no other liability to the Contracting Authority in these circumstances.

11.7 MAGE will have no liability to the Contracting Authority if and to the extent that the Redelivery Date is delayed because of (a) Force Majeure or (b) for reasons other than MAGE's default.

12 Contract Price

12.1 The Contracting Authority will pay the Contract Price to MAGE

12.2 The Contract Price is payable in the following instalments:

- a) 15% on the signing of the Contract
- b) 20% at PDR (defined below)
- c) 30% at CDR (defined below)
- d) 15% on commencement of structure build
- e) 20% at redelivery

where:

- f) **PDR** is a formal meeting with the Contracting Authority's Representative, for which minutes will be produced and actions allocated. Documents produced for this meeting will be:
 - First draft of compliance check list
 - Draft family tree of each modification
 - Layout drawings for each zone.
 - Budgetary weight and balance comparisons of the existing and new systems.
 - Initial incremental electrical load analysis.

and

- g) **CDR** is a formal meeting with the Contracting Authority's Representative, for which minutes will be produced and actions allocated. Documents produced for this meeting will be:
 - Initial release of modification leaflets
 - Final draft version of compliance checklist
 - Final draft family tree of each modification
 - review of calculated weight and balance comparisons of the existing and new systems.
 - Final draft incremental electrical load analysis.

12.3 On receipt of each payment due under this clause, MAGE will, insofar as it has not previously done so:

12.3.1 Assign to the Contracting Authority any intellectual property rights in drawings produced by MAGE or by any sub-contractor exclusively in connection with the Services; and

12.3.2 Transfer to the Contracting Authority title to any Goods then acquired by MAGE for installation into the Aircraft as part of the Services (with the intent that MAGE retains possession of those Goods for installation into the Aircraft). MAGE will, at the time of the transfer, provide to the Contracting Authority an inventory of all such Goods having a value of more than £500 each. MAGE anticipates that the

following will be transferred to the Contracting Authority at the CDR: FlightVu Security System, In-Flight Entertainment equipment, Satcom internet and e-mail system, new seats; and

- 12.3.3 Confirm in writing to the Contracting Authority that, if the Contracting Authority lawfully terminates the Contract before title to the relevant Goods has passed to it, MAGE will assign to the Contracting Authority the benefit of all purchase orders it has placed for Goods that have not been delivered at the time of termination subject to the Contracting Authority being responsible for any future payments due under those purchase orders.
- 12.4 The Contract Price includes payments due to sub-contractors utilized by MAGE.
- 12.5 The Contract Price is based on an exchange rate of £1 = € 1.25 and £1 = US\$1.99. If, as at the date that any instalment of the Contract Price becomes payable, either rate has fluctuated by more than 2% (up or down), or have fluctuated so as, in combination, to result in a sterling equivalent plus or minus 3% of the Contract Price, the Contract Price will be re-calculated accordingly and any difference taken into account fully in calculating the instalment then due.
- Exchange rates will be calculated by reference to the latest available spot rate on the date the relevant instalment comes payable, as published by the Bank of England.
- 12.6 Payments will be made in Euros to MAGE's account with a UK bank as advised to the Contracting Authority.
- 12.7 Title to Components and to the remainder of the Services remains vested in MAGE until such time as the Contract Price and any other sums due to MAGE under the Contract have been paid in full, and notwithstanding the fact that the Aircraft may have been redelivered to the Contracting Authority. If the Aircraft has been redelivered in these circumstances, the Contracting Authority is in possession of those Components and Services as bailee and if so required by MAGE will keep them separate from its own property and will deliver them up to MAGE on demand.
- 12.8 The Contracting Authority will not reduce any payment due to MAGE under the Contract on the basis of set-off or deduction arising under the Contract or from any other agreement between the parties.
- 12.9 All payments specified in the Contract are exclusive of VAT. The Services are a taxable supply which, under current legislation, is zero-rated. Should this status change, the Contracting Authority may propose a Change.
- 12.10 If any sum due to MAGE is not paid in full within thirty (30) days after the due date, then (and without prejudice to any other right or remedy available to MAGE) MAGE will be entitled (in addition to its rights under the General Government Terms and Conditions for public service contracts) to
- 12.10.1 convert the sum payable into UK Sterling at the exchange rate prevailing at the date the payment was due, such rate being that which would have been offered to MAGE by its bank for conversion of that amount on that day

- 12.10.2 suspend performance of the Services until payment of the sum in full
- 12.10.3 terminate the Contract
- 12.10.4 appropriate any payment made by the Contracting Authority to MAGE, whether under the Contract or otherwise, towards or in payment of the outstanding sum
- 12.10.5 exercise any right of lien it may have in law or in equity
- 12.10.6 a general and particular lien over all the property of the Contracting Authority (including the Aircraft and its log book) which may from time to time be in MAGE's possession for any moneys due to MAGE under the Contract or under any other agreement between MAGE and the Contracting Authority

or any combination thereof.

- 12.11 The Contracting Authority will pay to MAGE its reasonable costs and expenses in relation to the exercise of a lien, including but not limited to storage charges and insurance costs.

13 Warranty as to Services

- 13.1 Subject to the terms of this clause MAGE warrants that the Services will be free of defective workmanship for a period of

- 13.1.1 (in the case of structures installed as part of the Services) 36 months from the Redelivery Date; or

- 13.1.2 (in the case of systems installed as part of the Services) 12 months from the Redelivery Date; or

- 13.1.3 (in the case of Components) as provided in clause 13.8

- 13.2 MAGE's warranty does not extend to

- 13.2.1 Any Component (except as provided in clause 13.8)

- 13.2.2 Damage to the Services caused by any Component, inherent defect, rust, corrosion, entry of foreign materials, bird strikes, or any risk against which the Aircraft its airframe and installations would normally be insured by a prudent owner or is in fact insured against

- 13.2.3 Failure to operate, maintain, preserve, or otherwise care for the Services or the Aircraft in accordance with the manufacturer's or MAGE's requirements or recommendations or aviation authority requirements

- 13.2.4 Any part of the Aircraft that was not within the scope of the Services.

- 13.3 MAGE will not be liable to consider any warranty claim if

- 13.3.1 The claim is not notified to MAGE within the period specified in clause 13.1, in accordance with the provisions of clause 13.4; or

- 13.3.2 Any person other than MAGE, or the Contracting Authority in performing maintenance in accordance with the manufacturer's or MAGE's requirements or

recommendations or aviation authority requirements, or their respective authorised agents, have performed works to the Services; or

- 13.3.3 Any part of the Contract Price, or any other sum due to MAGE in relation to the Services, remains unpaid and is not in bona fide dispute
- 13.4 MAGE will not be liable to consider any warranty claim unless
- 13.4.1 The Contracting Authority notifies MAGE in writing of any claim of defective workmanship within 10 days from the date of discovery of the claimed defective workmanship and
- 13.4.2 The Aircraft is made available for inspection by MAGE in the UK or in the Netherlands within ninety (90) days from the date of discovery of the claimed defective workmanship and
- 13.4.3 (if the person claiming the benefit of the warranty is not the Contracting Authority), proof of ownership of the Aircraft has been provided to MAGE
- 13.5 Following return of the Aircraft to MAGE for the purposes of investigating any claim of defective workmanship:
- 13.5.1 MAGE will investigate the alleged defect, in the presence of the Contracting Authority (or his authorised representative) if either party so requires
- 13.5.2 MAGE will prepare and submit to the Contracting Authority a written report of its findings
- 13.5.3 If no defective workmanship is found, the Contracting Authority will pay to MAGE the cost of investigating the defect and preparing the report, such cost to be calculated according to the number of man hours spent in so doing and applying MAGE's then prevailing hourly rate. If any part of the investigation or preparation of the report is undertaken by a sub-contractor, the Contracting Authority will reimburse to MAGE the costs it incurs to the sub-contractor plus a fee of 20% of those costs (subject to a minimum of £100) to cover its costs in liaising between the Contracting Authority and the sub-contractors.
- 13.5.4 If defective workmanship to the Services is found, and the requirements of clauses 13.1, 13.3, and 13.4 have been met, MAGE will bear the cost of investigating the defect and preparing the report (including the costs of any sub-contractors) and will, at its own cost, rectify the defect as quickly as practicable. Such works of rectification will be warranted, on the same terms as the Services were warranted, for the residue of the warranty period described in clause 13.1
- 13.6 The Contracting Authority will bear all charges incurred in transporting the Aircraft to a place of inspection (whether or not a defect in the Services is found). MAGE will bear its own costs in attending the place of inspection, unless no defect in the Services is found in which case those costs will be reimbursed by the Contracting Authority.
- 13.7 Subject to clause 13.5, MAGE's liability for any warranty will be limited to the cost incurred by MAGE in investigating and rectifying any defect in the Services found. Without limitation, MAGE will have no liability to compensate the Contracting Authority, through whatever

means, for the unavailability of the Aircraft (either generally or in the performance of a particular role) arising as a result of defective workmanship, or for the failure of any equipment system or installation on board the Aircraft.

- 13.8 In the case of Components, MAGE will use all reasonable endeavours to either (a) assign to the Contracting Authority the benefit of any warranty given in respect of them to MAGE or (b) (at the Contracting Authority's cost) enforce for the benefit of the Contracting Authority any warranty given in respect of them to MAGE, but MAGE will have no other liability in respect of Components.
- 13.9 No warranty, express or implied, is given by MAGE in respect of the Services or rectification of defects except as provided in this clause.

14 Termination

- 14.1 MAGE may terminate the Contract by giving written notice to the Contracting Authority to that effect if
- 14.1.1 Any of the warranties contained in clause 2.2 is found to be untrue or becomes so; or
 - 14.1.2 The Contracting Authority is in material and persistent breach of its obligations under the Contract; or
 - 14.1.3 MAGE is entitled to suspend the Services under the terms of clause 6.4 for a period longer than seven (7) days; or
 - 14.1.4 Clause 8.5 applies; or
 - 14.1.5 The Contracting Authority unreasonably refuses to accept redelivery of the Aircraft; or
 - 14.1.6 Any monies due to MAGE, whether under the Contract or any other agreement made between MAGE and the Contracting Authority, remain unpaid for forty five (45) days or more.
- 14.2 If MAGE fails to discharge its obligations under the Contract, the Contracting Authority is entitled to give notice of default. MAGE is deemed to be immediately in default, however, once it is clear that there is no prospect whatsoever of it discharging the obligations in question within the stipulated time limit for reasons other than Force Majeure. The notice of default will be given in writing, and MAGE will be given a reasonable period of time in which to discharge its obligations. Time is of the essence here: MAGE is in default if it fails to discharge its obligations by the deadline set.
- 14.3 The notice of default referred to in clause 14.2 is not required if the time limit by which the agreed Services should have been performed has been extended prior to its expiry. If the defaulting party fails to discharge its obligations as described in clause 14.2 by the end of the extended time limit for reasons other than Force Majeure, MAGE is held to be immediately in default as from that date.
- 14.4 The Contracting Authority is entitled to terminate the Contract out of court by registered mail, without being required to send any demand or notice of default, if MAGE applies for or is

granted a provisional or definitive suspension of payments, files for bankruptcy, is declared bankrupt, if its business is wound up, if it ceases trading, or if a substantial proportion of its assets are seized.

- 14.5 The Contracting Authority may terminate the Contract without cause at any time by giving notice to that effect to MAGE.
- 14.6 Termination by either party is not an exclusive remedy, and will be without prejudice to the exercise of any other right or remedy that either party may have against the other.
- 14.7 Termination by either party will be without prejudice to the enforcement of any obligations that arose beforehand.
- 14.8 In the event of termination by either party
 - 14.8.1 MAGE will be entitled to so much of the Contract Price as has then fallen due, plus a fair and reasonable payment for Services undertaken or committed and Components or other parts provided or committed to and not then invoiced or fallen due; and
 - 14.8.2 The Contracting Authority will not be entitled to redelivery of the Aircraft unless and until all sums properly due to MAGE have been paid.

15 Confidentiality

- 15.1 In this clause **Information** means any information in any written or other tangible form disclosed to MAGE by or on behalf of the Contracting Authority in connection with the Contract.
- 15.2 Subject to clauses 15.5 and 15.6, MAGE will:
 - 15.2.1 Treat in confidence all Information it receives
 - 15.2.2 Shall not disclose any Information to any third party without the prior consent of the Contracting Authority, which consent will not be unreasonably withheld, except that MAGE may disclose Information, in confidence, without prior consent, to such persons and to such extent as may be necessary for the performance of the Services;
 - 15.2.3 Shall not use any Information other than for the purposes of the Contract; and
 - 15.2.4 Shall not copy any Information except to the extent necessary for the purpose of exercising its rights of use and disclose under the Contract.
- 15.3 MAGE will take all reasonable precautions necessary to ensure that all Information disclosed to it:
 - 15.3.1 Is disclosed to its employees and sub-contractors only to the extent necessary for the performance of the Contract; and
 - 15.3.2 Is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purposes of performing work or having work performed under the Contract or any sub-contract under it.

15.4 MAGE shall ensure that its employees are made aware of MAGE's arrangements for discharging its obligations under this clause 15 before they receive Information and shall take such steps as may be reasonably practical to enforce such arrangements.

15.5 Clauses 15.2 and 15.3 shall not apply to any Information to the extent that MAGE:

15.5.1 Exercises rights of use or disclosure granted otherwise than in consequence of, or under, the Contract; or

15.5.2 Has the right to use or disclose Information in accordance with other conditions of the Contract; or

15.5.3 Can show that the Information was or has become published or publicly available for use otherwise than in breach of any provision of the Contract or any other agreement between the parties; or

15.5.4 Can show that the Information was already known to it (without restrictions on disclosure or use) prior to receiving it under or in connection with the Contract; or

15.5.5 Can show that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who himself is under no obligation restricting its disclosure; or

15.5.6 Can show from its records that the same information was derived independently of that received under or in connection with the Contract

provided that the relationship to any other Information is not revealed.

15.6 MAGE will not be in breach of this clause 15 where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial, or legal obligation. Where such a disclosure is made, MAGE will ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of MAGE under this clause.

15.7 Nothing in this clause 15 shall effect MAGE's obligations of confidentiality where information is disclosed orally in confidence.

16 Insurance and allocation of Risk

16.1 MAGE will, between delivery and redelivery of the Aircraft, have in place a hangarkeepers liability policy with limits of no less than £50,000,000 for any one occurrence which will cover the Aircraft and its Equipment and Fittings (but not Role Equipment that the Contracting Authority has been asked to remove) against physical loss or physical damage caused by the negligence of MAGE or of any of its sub-contractors occurring during the performance of the Services at the Installation Facility and will at the request of the Contracting Authority provide to it a certificate of insurance or similar evidence confirming compliance with this obligation.

16.2 MAGE will, at its own cost, but subject to a maximum liability of £50 million for each and every claim, repair, reinstate and make good any physical damage caused to the Aircraft and its Equipment and Fittings caused by the negligence of MAGE or of any of its sub-contractors occurring during the performance of the Services at the Installation Facility.

- 16.3 Risk of damage to Goods lies with MAGE until redelivery of the Aircraft. MAGE is responsible for the insurance of Goods against all physical loss or damage from the point of delivery to the MAGE until redelivery of the Aircraft (and notwithstanding the fact that title may have passed to the Contracting Authority under clause 12.3.2).
- 16.4 Risk of damage to the Aircraft and its Equipment and Fittings, and the responsibility to insure them against all loss or damage other than for physical loss or physical damage caused by the negligence of MAGE or of any of its sub-contractors occurring during the performance of the Services at the Installation Facility, lies with the Contracting Authority at all times. This applies both whilst the Aircraft is on the ground or in the air during any period between delivery and redelivery of the Aircraft.
- 16.5 MAGE will not be obliged to insure any Loose Equipment on the Aircraft, or Role Equipment that the Contracting Authority has been asked to remove, and MAGE accepts no liability for their loss or damage, howsoever caused.
- 16.6 MAGE will not be liable to the Contracting Authority for any loss or damage to the Aircraft, or any other property of the Contracting Authority, howsoever caused during or out of the carrying out of the Services except as provided in clause 16.2 and 16.3.
- 16.7 If MAGE fails to fulfil its obligations under clause 16.2 within a reasonable time and without good cause (the Contracting Authority recognising that MAGE will need the insurance proceeds to be paid before MAGE can do so) the Contracting Authority may, having given to MAGE not less than 28 days' notice of its intention to do so, itself repair reinstate and make good any physical damage caused to the Aircraft and/or the Equipment and Fittings caused by the negligence of MAGE or of any of its sub-contractors occurring during the performance of the Services at the Installation Facility and the reasonable and proper cost thereof shall be borne by MAGE.
- 16.8 Nothing in the Contract limits or excludes MAGE's liability for
- 16.8.1 Death or personal injury resulting from its negligence; or
- 16.8.2 Fraudulent misrepresentation
- 16.9 For the liability not falling under the scope of article 16.1 through and including article 16.8 and articles 5, 6 and 11 of Annexe 4, the following articles are in force:
- 16.9.1 If one of the parties (the Contracting Authority or MAGE) fails to discharge its obligations under the Contract, the other party may give notice of default. The defaulting party is deemed to be immediately in default, however, if it is clear that there is no prospect whatsoever of discharging the obligations in question within the stipulated time limit for reasons other than force majeure. The notice of default will be given in writing, and the defaulting party will be given a reasonable period of time in which to discharge its obligations. This is a strict deadline. The defaulting party is in default if it fails to discharge its obligations by the deadline set.
- 16.9.2 The notice of default referred to in the preceding paragraph is not required if the time limit by which the agreed Services should have been performed has been extended prior to its expiry. If the defaulting party fails to discharge its obligations as described in the preceding

paragraph by the end of the extended time limit, the defaulting party is held to be immediately in default as from that date.

16.9.3 A party who imputably fails to discharge its obligations is liable to the other party for any loss incurred by the other party

16.9.4 The liability referred to in article 16.9.3 is limited per event to an amount of Euro 1000.000,-

SCHEDULE 1

CHANGE FORM

Issued under clause 8 of Annexe 4 of a Contract dated [] between [] and []

Reference number:

Date of issue:

PART 1 - CHANGE PROPOSAL

1.1 General description of Proposed Change

1.2 Proposed specification of Emerging Work or variation to Services

1.3 Consequent Change to Redelivery Date

1.4 Consequent Change to Contract Price

1.5 Any other consequent Changes

PART 2 - AGREEMENT TO CHANGE

The parties agree that the Change described above will take effect, and the Contract (as varied by any previous Change Form) will be varied as set out above. Otherwise, the Contract remains in full force and effect.

Signed
(for and on behalf of MAGE)
Date:

Signed
(for and on behalf of Contracting Authority)
Date:

SCHEDULE 2
FORM MA74
Appended