

MRO Contracts

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Introduction

- Gates and Partners
- London, Singapore and Paris
- Aviation Specialists

Why take legal advice?

- Regulatory considerations - compliance
- Commercial considerations – protecting your position by ensuring the agreement properly reflects the commercial deal
- Legal pitfalls – numerous!
- OEM Flying Hour Agreements

Form of Contract

- No Industry Standard Form
- Many variations
- Often favour one party to an unreasonable extent
- Liability provisions are often poorly drafted and therefore lack sufficient clarity. Also often referred to as non-negotiable!

EASA Regulation

- EU Regulation 2042/2003 Annex I (as amended 2008)
- Part M Requirements on Operator
- 77 item checklist!
- Annex II Part 145 Approval of MRO

Legal Issues

- Liability and indemnities
- Sole remedies
- English Law not codified

Liability in Airline Engineering Services Agreements

- Traditional approach – exclusive remedy warranties and indemnity against third party claims
- Limited remedies
- Liability risk should be proportionate to economic gain
- Contrast single component repair and long term total care package.

Indemnities

- An indemnity is an undertaking by one party to compensate another party for loss, damage or expense
- Liability only limited by the wording and can be wider than would be available under damages remedy
- Take great care over indemnities in agreements and be sure of your insurance cover

Law and Jurisdiction

- Separate issues
- Choice of Law – the law of which country will govern the contract
- Jurisdiction – which courts will resolve disputes
- Beware procedure will be governed by local law eg costs in USA
- Arbitration
- Enforcement

Flying Hour Maintenance Agreements

- Offered by all major engine and APU OEMs
- Also offered by MROs to support aircraft, engines and components
- Often linked to purchase discounts and performance guarantees
- Complex and high value agreements which need to be carefully negotiated

Pricing Structure

- Traditional Structure – fixed term with each item of equipment required to operate minimum hours for the whole term
- Fully Reserved Structure – flying hours on each item of equipment funds next shop visit.
- Greater flexibility – note engines leaving the programme should be due a refund of a proportion of the per hour and per cycle charges since last shop visit

Fixed Term

- First FHAs tended to be on fixed term basis
- Issues with this include: commercial disadvantage at end of term for remaining fleet life; buyer assessment on pricing is difficult (eg if engine life on wing is greater than planned number of shop visits in term may be lower); lack of flexibility to remove engines

Minimum Term

- Agreements for life in fleet with a minimum term after which engines may be removed from the programme may be more attractive
- Removes issues associated with fixed term agreements

Control of Services

- Continuing Airworthiness Management is the responsibility of the operator
- Retain appropriate control over the on going development of the Engine Management Programme
- Removals planning
- Workscope approval

Service Scope

- Detailed Service Description Essential
- Bare Engine
- QEC
- Nacelle and nacelle hardware
- Airframer provided hardware
- On-wing maintenance and MPD Creep
- SB incorporation
- LLPs/LRUs

Qualified/Non-Qualified Work

- Important definitions as they define what is included in the per hour and cycle charges and what incurs additional charges.
- What if a non-qualified shop visit occurs on or after the MTBR for the equipment?
- If shop visit is a refurbishment shop visit even before the MTBR the operator has already contributed to the cost

Remedies

- Standard offering liability limited to exclusive remedy warranty with no remedies for poor performance
- Note warranty benefit will probably be assigned back to the service provider
- Probably no right to terminate for poor performance
- In effect few or no remedies available

Remedies

- Negotiate appropriate performance standards or service levels
- Negotiate appropriate remedies for breach of service levels eg Liquidated Damages payable without proof of loss
- Negotiate LD caps which are reasonable based on annual spend
- Negotiate right to terminate if cap is reached
- Escalate remedies and caps



THANK YOU