

Pre-Purchase Inspections: Buyer Beware

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It is important for potential buyers to note that used business jet aircraft are most often purchased “where is, as is.” In the simplest terms, this means that the buyer is purchasing the aircraft in its current condition, without the benefit of any warranties or guarantees. During the purchase process, buyers have one opportunity to avoid substantial maintenance costs; that is to conduct a pre-purchase inspection of the aircraft.

Prior to purchasing an aircraft, a buyer should retain an independent qualified aircraft maintenance operator to assist in the selection and inspection of the aircraft. Involving a qualified maintenance professional prior to the transfer of ownership of the aircraft can avoid costly surprises that are often easily identified during a pre-purchase inspection. While the expenses of obtaining a pre-purchase inspection, including the cost of positioning the aircraft, are typically born by the buyer, they pale in comparison with the potential savings in post-purchase maintenance fees.

A pre-purchase inspection is an examination of both the hull and the engines of the aircraft. It is generally conducted by a third-party maintenance operator prior to the buyer’s acceptance of the aircraft. Buyers should choose a maintenance operator that holds an FAR Part 145 Certificate to ensure that the operator is familiar with the ever-changing industry maintenance rules and regulations. This is not the time to save a few dollars by avoiding the pre-purchase inspection or using the seller’s maintenance shop to complete the inspection. A buyer needs a complete and unbiased assessment on the condition of the aircraft in order to make an informed decision as to whether to continue with the purchase.

A qualified third-party maintenance operator will often recommend that the pre-buy inspection include a Phase I-IV or a Phase V of the aircraft, as well as boroscope of the engines and a test flight. These inspections allow the maintenance operator to make a thorough assessment of the entire aircraft. The maintenance operator will generate a list of discrepancies, generally referred to as a “squawk list”, based on the results of the inspections. The squawk list includes both airworthy and non-airworthy items that the maintenance operator recommends be addressed prior to the purchase of the aircraft. An airworthy item is an item which affects the aircraft’s capability for lawful flight. A non-airworthy item does not currently concern the aircraft’s airworthiness. A common example of a non-airworthy item is a flaw or a tear in the seam of the interior upholstery of the aircraft. It is important to note that non-airworthy items can become airworthy and may carry a substantial future cost to the buyer; a maintenance operator can identify these items in advance so that the buyer can plan accordingly.

A well-drafted aircraft purchase agreement typically includes a provision requiring the seller to fix all airworthy items listed on the squawk list prior to the closing of the aircraft purchase. Non-airworthy items may or may not be fixed at the same time. Typically, the seller reviews the squawk list and agrees to fix the items it considers to be airworthy. Often the buyer is responsible

for the repair of any non-airworthy items, but some of these costs may be negotiated with the seller.

Conflict frequently arises when the term “airworthy” is interpreted differently between the buyer and the seller. However, as the buyer is under no obligation to purchase the aircraft at this point, the buyer retains the ability to walk away if the parties cannot agree on the list of items to be fixed by the seller. Once they receive the squawk list, the buyer and seller will usually have three to five business days to negotiate and identify the airworthy items and decide whether to proceed forward with the closing. The buyer must then issue an acceptance, conditional acceptance, or rejection of the aircraft. Upon the buyer’s acceptance of the aircraft, any deposit becomes non-refundable. A buyer may also issue a conditional acceptance dictating that all airworthy items must be corrected prior to the closing. If the aircraft is rejected, the deposit is returned to the buyer and the aircraft is returned to the seller. The cost of re-positioning the aircraft is negotiated as part of the sale price.

The pre-purchase inspection is considered the most important part of the purchase process. The complex nature of aircraft creates substantial, and often unexpected, maintenance costs. The pre-purchase inspection affords the buyer a clear understanding of the condition of the aircraft while these costs are still the responsibility of the seller. It allows the buyer to make an informed decision as to whether or not to proceed forward with the purchase, as well as to budget for future maintenance expenses.ⁱ

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