



**Registration of a Charge**

Company name: **MONARCH AIRCRAFT ENGINEERING LIMITED**

Company number: **00902230**



X2J61WTC

Received for Electronic Filing: **17/10/2013**

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**Details of Charge**

Date of creation: **14/10/2013**

Charge code: **0090 2230 0013**

Persons entitled: **BIRMINGHAM AIRPORT LIMITED**

Brief description:

**Contains fixed charge(s).**

**Notification of addition to or amendment of charge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **RICHARD DAVIES**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 902230

Charge code: 0090 2230 0013

The Registrar of Companies for England and Wales hereby certifies that a charge dated 14th October 2013 and created by MONARCH AIRCRAFT ENGINEERING LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 17th October 2013 .

Given at Companies House, Cardiff on 17th October 2013



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



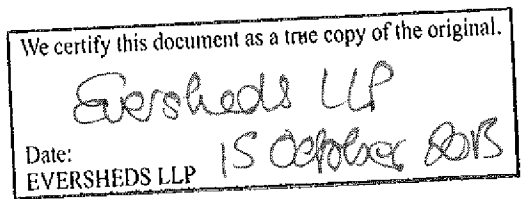
EVERSHEDS

Dated

*14 October*

2013

- (1) MONARCH AIRCRAFT ENGINEERING LIMITED
- (2) BIRMINGHAM AIRPORT LIMITED



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Assignment and charge of contracts

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This deed is made on *14 October 2013* between:

- (1) **MONARCH AIRCRAFT ENGINEERING LIMITED** (registered number 00902230) whose registered office is at Prospect House, Prospect Way, London Luton Airport, Luton, Bedfordshire LU2 9NU. (the "**Chargor**"); and
- (2) **BIRMINGHAM AIRPORT LIMITED** (registered number 02078273) whose registered office is at Diamond House, Birmingham Airport, Birmingham, West Midlands B26 3QJ. (the "**Lender**").

## 1. **INTERPRETATION**

### 1.1 **Expressly defined terms**

In this deed:

**"Agreement for Lease"** means the agreement for lease dated 7 December 2012 between the Chargor and the Lender

**"Authorisation"** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration

**"Business Day"** means a day, other than a Saturday or a Sunday, on which banks are open for general business in London

**"Charged Contracts"** means those contracts or agreements brief particulars of which are set out in Schedule 1 (*Charged Contracts*) and also where the context shall so require or permit any of such contracts or agreements and the expression "**Charged Contract**" shall also mean any one of such contracts or agreements

**"Collateral Warranties"** has the meaning given to it in the Facilities Letter

**"Contract Party"** means any party to a Charged Contract other than the Chargor and if more than one such party shall, where the context so requires, mean any one of them

**"Contract Proceeds"** means all proceeds of any Charged Contract from time to time in whatever form they may be, including:

- (a) all monies receivable under, arising out of, or evidenced by, any Charged Contract;
- (b) any other rights, titles, benefits or interests (whether present, future, proprietary contractual or otherwise including any retentions) of the Chargor in, under, arising out of any Charged Contract;
- (c) all claims competent to the Chargor to recover and receive damages or compensation arising out or relating to any breach or termination of any Charged Contract; and
- (d) the full benefit of all guarantees, indemnities, bonds, debentures, mortgages, charges or other security given in relation to any Charged Contract or any obligation of any Contract Party arising under any Charged Contract

**"Delegate"** means any delegate, agent, attorney or trustee appointed by the Lender

**"Default Rate"** means two per cent. per annum above the highest rate of Interest ordinarily applicable to the Secured Obligations from time to time

**"Development"** has the meaning given to it in the Facilities Letter

**"Discharge Date"** means the date with effect from which the Lender confirms to the Chargor that all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full and all relevant commitments of the Lender cancelled

**"Enforcement Party"** means any of the Lender, a Receiver or a Delegate

**"Event of Default"** means the occurrence of any of the events or circumstances described in clause 8 (*Enforceability*)

**"Expenses"** means: all fees, discounts, commissions and other banking or service charges, legal and other professional fees, premiums, costs or expenses, in each case calculated on a full indemnity basis and together with VAT, incurred by any Enforcement Party in connection with the Secured Assets, taking, perfecting, enforcing or exercising any power under this deed, the appointment of any Receiver or Delegate, the breach of any provision of this deed and / or the protection, realisation or enforcement of this deed, and includes the costs of transferring to the Lender or the Receiver any security ranking in priority to the security constituted by this deed, or the amount required to be paid to secure the unconditional and irrevocable discharge of such security, or any of the foregoing as the context shall require

**"Facilities Letter"** means a facility letter dated 7 December 2012 made between (1) the Chargor and (2) the Lender for the provision of certain loan facilities

**"Finance Documents"** has the meaning given to it in the Facilities Letter

**"Group"** means any group of companies for the time being comprising the Chargor, its Subsidiaries, any company of which the Chargor is a Subsidiary and any other Subsidiary of such company

**"Insolvency Act"** means Insolvency Act 1986

**"Insurances"** means all contracts or policies of insurance of whatever nature relating to the Charged Contracts (or their subject matter) which from time to time are taken out or maintained by or on behalf of the Chargor or (to the extent of its relevant interest) in which the Chargor has an interest

**"Interest"** means interest at the rate provided and calculated and compounded as agreed between the Lender and the Chargor from time to time, both before and after judgement

**"LPA"** means Law of Property Act 1925

**"Legal Charge"** means the legal charge dated 7 December 2012 made between the Chargor and the Lender

**"Party"** means a party to this deed

**"Permitted Security"** means any security granted in favour of the Lender from time to time or any security to which the Lender has consented in writing

**"Receiver"** means any one or more receivers and managers or (if the Lender so specifies in the relevant appointment) receivers appointed by the Lender pursuant to this deed in respect of the Chargor or in respect of the Secured Assets or any of them

**"Secured Assets"** means the assets charged, assigned or otherwise the subject of any security created by or pursuant to this deed and includes any part or parts of such assets

**"Secured Obligations"** means:

- (a) all indebtedness and all obligations or liabilities of any kind which may now or at any time in the future be due, owing or incurred by the Chargor to the Lender under any of the Finance Documents (other than the Collateral Warranties), whatever their nature or basis, in any currency or currencies and however they are described together with Interest and Expenses; and
- (b) (i) all the costs (whether actual or contingent, present or future) incurred or to be incurred by the Lender to reinstate the Premises as defined in the Agreement for Lease to a condition materially the same as immediately before the Development commenced or (ii) all the costs (whether actual or contingent, present or future) incurred or to be incurred by the Lender to complete the Development (save that only paragraph (b) (i) above shall be a Secured Obligation if the Agreement for Lease is terminated by the Chargor or pursuant to clauses 12.1.4 or 12.1.5 of the Agreement for Lease)

**"Security Period"** means the period beginning on the date of this deed and ending on the Discharge Date

**"Subsidiary"** means a subsidiary within the meaning of section 1159 of the Companies Act 2006

**"Third Parties Act"** means the Contracts (Rights of Third Parties) Act 1999

**"VAT"** means value added tax as provided for in the Value Added Taxes Act 1994 and any other tax of a similar fiscal nature.

## 1.2 Construction

In this deed:

1.2.1 any reference to:

1.2.1.1 the word **"assets"** includes present and future property, revenue, rights and interests of every kind;

1.2.1.2 the word **"guarantee"** includes any guarantee or indemnity and any other financial support (including any participation or other assurance against loss and any deposit or payment) in respect of any person's indebtedness;

- 1.2.1.3 the word "**indebtedness**" includes any obligation for the payment or repayment of money, whatever the nature or basis of the relevant obligation (and whether present or future, actual or contingent);
- 1.2.1.4 the word "**law**" includes law established by or under statute, constitution, treaty, decree, regulation or judgment, common law and customary law; and the word "**lawful**" and similar words and phrases are to be construed accordingly;
- 1.2.1.5 the word "**person**" includes any individual, company, corporation, firm, government, state or any agency of a state and any association, partnership or trust (in each case, whether or not it has separate legal personality);
- 1.2.1.6 the word "**regulation**" includes all guidelines, official directives, regulations, requests and rules (in each case, whether or not having the force of law) of any governmental, inter-governmental or supranational agency, body or department or of any regulatory or other authority or organisation (whether statutory or non-statutory, governmental or non-governmental);
- 1.2.1.7 the word "**security**" includes any assignment by way of security, charge, lien, mortgage, pledge or other security interest securing any obligation of any person and any other agreement or arrangement having a similar effect;
- 1.2.1.8 the word "**set-off**" includes analogous rights and obligations in other jurisdictions; and
- 1.2.1.9 the word "**tax**" includes any tax, duty, impost or levy and any other charge or withholding of a similar nature (including any interest or penalty for late payment or non-payment);
- 1.2.2 where something (or a list of things) is introduced by the word "**including**", or by the phrase "**in particular**", or is followed by the phrase "**or otherwise**", the intention is to state an example (or examples) and not to be exhaustive (and the same applies when other similar words or phrases are used);
- 1.2.3 each reference to the "**Chargor**", the "**Lender**" or to any "**Party**" includes its successors in title, and its permitted assignees or permitted transferees;
- 1.2.4 each reference to any "**Contract Party**" shall extend to any permitted assignee or transferee of, or successor in title to, any such person, and to any other person who is obligated to the Chargor under the terms of a Charged Contract;
- 1.2.5 each reference to any "**Contract Proceeds**" shall include each and any category or part of the Contract Proceeds independently of every other category or part

- 1.2.6 unless this deed expressly states otherwise or the context requires otherwise, (a) each reference in this deed to any provision of any statute or of any subordinate legislation means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this deed) and (b) each reference in this deed to any provision of any statute at any time includes any subordinate legislation made pursuant to or in respect of such provisions as in force at such time (whether made before or after the date of this deed and whether amended or re-enacted since the date of this deed);
- 1.2.7 each reference to this deed (or to any other agreement or deed) means, at any time, this deed (or as applicable such other agreement or deed) as amended, novated, re-stated, substituted or supplemented at that time, provided that the relevant amendment, novation, re-statement, substitution or supplement does not breach any term of any Finance Document;
- 1.2.8 each reference to the singular includes the plural and vice versa, as the context permits or requires;
- 1.2.9 the index and each heading in this deed is for convenience only and does not affect the meaning of the words which follow it;
- 1.2.10 each reference to a clause or Schedule is (unless expressly provided to the contrary) to be construed as a reference to the relevant clause of or Schedule to this deed;
- 1.2.11 wherever this deed states that the Chargor must not take a particular step without the consent of the Lender, the Lender has discretion whether to give its consent and can impose conditions on any such consent it gives; and
- 1.2.12 an Event of Default is "**continuing**" if it has not been waived.

### **1.3 Third Party Rights**

- 1.3.1 A person who is not an Enforcement Party has no right under the Third Parties Act to enforce or enjoy the benefit of any term of this deed except to the extent that this deed expressly provides for it to do so.
- 1.3.2 No consent of any person who is not a Party is required to rescind or vary this deed at any time.
- 1.3.3 This clause 1.3 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

## **2. COVENANT TO PAY**

### **2.1 Covenant**

The Chargor hereby, as primary obligor and not merely as surety, covenants with the Lender that it will pay, discharge and perform the Secured Obligations on demand after termination of the Agreement for Lease by the Lender (other than pursuant to clauses 12.1.4 or 12.1.5 of the Agreement for Lease) and/or on demand made on or at any time after the due date for payment provided in the

Finance Documents (other than the Collateral Warranties) and in the manner provided in the Finance Documents (other than the Collateral Warranties).

## **2.2 Default Interest**

Any amount which is not paid under this deed on the due date shall bear interest (after as well as before judgment) payable on demand at the Default Rate from time to time from the due date until the date of actual unconditional and irrevocable payment and discharge of such amount in full, save to the extent that interest at such rate on such amount and for such period is charged pursuant to any other document relevant to that liability and itself constitutes part of the Secured Obligations.

## **3. CHARGING CLAUSE**

### **3.1 Grant of security**

The Chargor, as a continuing security for the payment, discharge and performance of the Secured Obligations:

#### **3.1.1 Assignment by way of security**

assigns by way of security to the Lender all its rights, title and interest in the following assets:

3.1.1.1 the Charged Contracts; and

3.1.1.2 the Contract Proceeds,

subject to re-assignment on redemption as provided in clause 15.8 (*Release of security*);

#### **3.1.2 First fixed charge**

charges in favour of the Lender, by way of first fixed charge and all of its rights under the following assets:

3.1.2.1 The Charged Contracts; and

3.1.2.2 the Contract Proceeds,

in each case excluding those Charged Contracts or Contract Proceeds which have been validly and effectively assigned to the Lender pursuant to clause 3.1.1 (*Assignment by way of security*)).

### **3.2 Notice of assignment or charge**

The Chargor shall following an Event of Default, which is continuing, and upon receiving a request to that effect from the Lender or its legal advisers give notice of each such assignment of its right, title and interest (if any) in and to the Charged Contracts and the Contract Proceeds by sending a notice in the form set out in Schedule 2 (*Form of notice to Contract Parties*) (with such amendments as the Lender may agree) duly completed to each of the Contract Parties and the Chargor shall procure that immediately upon it receiving such request each such Contract Party delivers an acknowledgement to the Lender in the form of the acknowledgement of notice contained in the notice set out in Schedule 2 (*Form*

*of notice to Contract Parties*) (in the case of each of the Charged Contracts and the Contract Proceeds) with such amendments as the Lender may agree.

### **3.3 Exercise of rights and obligations under Charged Contracts**

3.3.1 Whilst no Event of Default exists and is continuing the Lender shall permit the Chargor to exercise its rights under any of the Charged Contracts to which it is party, provided that the exercise of those rights in the manner proposed would not result in an Event of Default.

3.3.2 Where an Event of Default exists and is continuing the Chargor shall exercise its rights under any of the Charged Contracts in accordance with the instructions of the Lender.

3.3.3 The Chargor shall at all times remain liable to perform all the obligations assumed by it under the Charged Contracts and the Lender shall assume no obligation of any kind whatsoever under the Charged Contracts, nor be under any liability whatsoever in the event of any failure by the Chargor to perform its obligations under the Charged Contracts and the Chargor will at all times indemnify the Lender from and against any demands, claims, damages, costs or expenses arising from or in relation to the Charged Contracts or any such failure by the Chargor.

### **3.4 Continuing security**

All the security granted or created by this deed is to be a continuing security which shall remain in full force and effect notwithstanding any intermediate payment or settlement of account or other matter or thing whatsoever and in particular the intermediate satisfaction by the Chargor or any other person of the whole or any part of the Secured Obligations.

### **3.5 Full title guarantee and implied covenants**

All the security created or given under this deed is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

### **3.6 Miscellaneous**

The fact that no or incomplete details of any particular Secured Assets are included or inserted in any relevant Schedule shall not affect the validity or enforceability of the charges created by this deed.

## **4. FURTHER ASSURANCE**

### **4.1 General**

4.1.1 The Chargor must at its own expense promptly do all such acts and things and execute such documents (including deeds, assignments, transfers, mortgages, charges, notices, instructions, assurances, agreements and instruments) as the Lender may reasonably require in favour of the Lender or its nominee(s):

4.1.1.1 to perfect and protect (including against any change in or revised interpretation of any law or regulation) the security created (or intended to be created) under or evidenced by this deed or for the exercise of any rights,

powers and remedies of the Lender provided by this or any other deed or document or by law; or

4.1.1.2 to confer on the Lender security over any Charged Contracts or Contract Proceeds of the Chargor located in any jurisdiction in terms which are valid and effective within such jurisdiction and are as nearly as possible equivalent or similar to the security intended to be conferred by or pursuant to this deed; or

4.1.1.3 following an Event of Default (in its absolute discretion) to facilitate the realisation of the assets which are, or are intended to be, the subject of this deed; or

4.1.1.4 following an Event of Default otherwise for enforcing the same or exercising any of the Lender's rights, powers, authorities or discretions under this deed,

and the Chargor shall take all such action as is available to it (including the making of all filings and registrations and the payment of all fees and taxes) as may be necessary for the creation, perfection protection, maintenance or enhancement of any security conferred or intended to be conferred on the Lender pursuant to this deed.

4.1.2 Any security document required to be executed by the Chargor pursuant to clause 4.1.1 will be prepared at the cost of the Chargor, and will be in such form and will contain such provisions as the Lender may reasonably require.

## **5. NEGATIVE PLEDGE AND DISPOSAL RESTRICTIONS**

### **5.1 Negative pledge**

During the Security Period, the Chargor must not without the Lender's written consent create, extend or permit to subsist any security over any of the Secured Assets, nor may it enter into any other preferential arrangement having a similar effect.

### **5.2 Exceptions**

Clause 5.1 does not apply:

5.2.1 to the security created or required to be created by this deed;

5.2.2 to the Permitted Security; nor

5.2.3 to any security or transaction to which the Lender has given its written consent;

## **6. REPRESENTATIONS AND WARRANTIES**

The Chargor represents and warrants to the Lender on the date of this deed and on each subsequent date upon which the representations and warranties set out in the Facilities Letter are repeated and upon which falls during the Security Period as follows:

**6.1 Status**

It is a limited liability company, duly incorporated and validly existing under the laws of England and Wales and has the power to own its assets and carry on its business and other activities as they are being conducted;

**6.2 Power and enforceability**

It has the power to enter into this deed and to perform its obligations and exercise its rights under it and the obligations expressed to be assumed by it under this deed are (and at all relevant times have been) legal, valid, binding and enforceable obligations (subject to the principle that equitable remedies are discretionary and subject to any applicable insolvency laws);

**6.3 No Event of Default**

6.3.1 no Event of Default has occurred or is continuing or might reasonably be expected to result from the execution of this deed or from effect being given to its provisions; and

6.3.2 no person who holds any other security over the Secured Assets or over any other asset of the Chargor has enforced or given notice of its intention to enforce such security.

**6.4 Non-conflict with other obligations**

neither the execution of this deed by the Chargor, nor the Chargor's compliance with its terms will:

6.4.1 conflict with or result in any breach of any law or regulation applicable to it;

6.4.2 cause any limitation on any of its powers or on the right or ability of its directors to exercise those powers to be exceeded; nor

6.4.3 constitute a default, acceleration of payment or termination event (however described) under any agreement or instrument binding upon it.

**6.5 Authorisations**

all Authorisations required or desirable for the execution, delivery, issue, validity or enforceability of this deed or of the performance of the Chargor's obligations or the exercise of its rights under this deed have been obtained and have not been (and the Chargor is not aware of any circumstance having arisen whereby they might be) withdrawn or varied in whole or part;

**6.6 Commercial benefit, etc.**

6.6.1 it has given due consideration to the terms and conditions of the documents evidencing the Secured Obligations and of this deed and has satisfied itself that there are reasonable grounds for believing that by executing this deed it will derive commercial benefit; and

6.6.2 that it enters into this deed in good faith and for the purposes of its business;

## **6.7 Priority of security**

the assignments and charges contained in clause 3 (*Charging clause*) constitute first priority security over the assets which are expressed to be secured by such assignments and charges and those assets are not subject to any security other than the security mentioned in clause 5.2 (*Exceptions*);

## **6.8 Charged Contracts**

- 6.8.1 the particulars of the Charged Contracts set out in Schedule 1 (*Charged Contracts*) are correct and complete;
- 6.8.2 each of the Charged Contracts is in full force and effect and constitutes legal, valid, binding and enforceable obligations of the Chargor and the relevant Contract Parties;
- 6.8.3 it has not rescinded or otherwise terminated or novated any of the Charged Contracts and there have been no amendments to nor defaults under the Charged Contracts;
- 6.8.4 it has not waived, compromised, assigned nor agreed to waive, compromise or assign any of its present or future rights, title or interest in and to the Charged Contracts or the Contract Proceeds otherwise than as provided in this deed;
- 6.8.5 no right of action is vested in the Chargor nor in any Contract Party in respect of any representation, breach of condition breach of warranty or breach of any other express or implied term of any of the Charged Contracts; and
- 6.8.6 it is not aware of any fact or circumstance which would or might prejudice or affect the ability of the Lender to enforce any of the Charged Contracts or any term or condition of any of the Charged Contracts nor to recover and retain the Contract Proceeds.

## **7. UNDERTAKINGS**

The Chargor undertakes to the Lender in the terms of the following provisions of this clause 7, all such undertakings to commence on the date of this deed and to continue throughout the Security Period.

### **7.1 Perform**

It will at all times comply with the terms (express or implied) of this deed and of all contracts relating to the Secured Obligations.

### **7.2 Not to jeopardise security**

It will not do anything or allow anything to be done which may in any way depreciate, jeopardise or otherwise prejudice the value to the Lender of the security constituted by this deed or the priority of its ranking as expressed in this deed.

### **7.3 Charged Contracts**

It will:

- 7.3.1 perform all its obligations under the Charged Contracts in a diligent and timely manner;
- 7.3.2 not rescind, terminate, novate or permit rescission, termination or novation of the Charged Contracts nor make or agree to make any amendments or modifications to the Charged Contracts or waive or compromise any of its material rights under the Charged Contracts nor release any Contract Party from its obligations under the Charged Contracts except in any case with the prior written consent of the Lender (acting reasonably); and
- 7.3.3 promptly inform the Lender of any material disputes relating to the Charged Contracts.

#### **7.4 Deposit of documents**

It will promptly at the Lender's request following an Event of Default, which is continuing, deposit with the Lender (or as the Lender directs):

- 7.4.1 all deeds and documents of title relating to the Charged Contracts, the Contract Proceeds including any other deeds or documents necessary or desirable to assist the Lender to register or enforce the security created by this deed; and
- 7.4.2 all such other documents relating to the Secured Assets as the Lender may from time to time reasonably require.

#### **7.5 Retention of documents**

The Lender may retain any document delivered to it pursuant to clause 7.4 (*Deposit of documents*) or otherwise until the Discharge Date and if, for any reason it has returned any such document to the Chargor before such time, it may by notice to the Chargor require that the relevant document be redelivered to it and the Chargor must without delay comply (or procure compliance) with such notice.

#### **7.6 Power to remedy**

It agrees that if it fails to comply with any of the covenants and undertakings set out or referred to in Clauses 7.1 to 7.5 inclusive it will allow (and hereby irrevocably authorises) the Lender and/or such persons as the Lender nominates to take such action (including the making of payments) on behalf of the Chargor as is necessary to ensure that such covenants are complied with.

#### **7.7 Expenses**

It agrees to pay all Expenses on demand and that if it does not do so, the Expenses will bear Interest at the Default Rate from and including the date of demand to and including the date of actual payment.

#### **7.8 Indemnity**

It agrees to indemnify the Lender and will keep the Lender indemnified against all losses and Expenses incurred by the Lender as a result of a breach by the Chargor of its obligations under clauses 7.1 to 7.5 and in connection with the exercise by the Lender of its rights contained in clause 7.6 above (*Power to remedy*). All sums that are the subject of this indemnity will be payable by the

Chargor to the Lender on demand and if not so paid will bear interest at the Default Rate. Any unpaid interest will be compounded with calendar monthly rests.

## **8. ENFORCEABILITY**

8.1 For the purposes of all powers implied by the LPA or any other applicable statute the Secured Obligations shall be deemed to have become due and payable and this deed will become immediately enforceable and the powers of the Lender and any Receiver exercisable on the date of this deed, but, as between the Lender and the Chargor, the power of sale shall be exercisable only upon the occurrence of an Event of Default and for so long as it is continuing.

8.2 The Events of Default are:

8.2.1 the Chargor does not pay on the date due the Secured Obligations, unless the non-payment:

8.2.1.1 is caused by technical or administrative error; and

8.2.1.2 is remedied within 3 Business Days of the due date.

8.2.2 any breach by the Chargor of the representations and warranties at clause 6 (*Representations and warranties*) or the undertakings at clause 7 (*Undertakings*);

8.2.3 the Chargor does not comply with, or it becomes unlawful to any extent for the Chargor to perform, any of its obligations under this deed or the Charged Contracts;

8.2.4 any person other than the Lender rescinds or repudiates this deed or any of the Charged Contracts or purports to do so or shows an intention to do so;

8.2.5 any person takes possession of or exercises or attempts to exercise any power of sale in relation to the Secured Assets;

8.2.6 the Charged Contracts are frustrated or repudiated or there is an event of default (however such event is described) under any of the Charged Contracts; and

8.2.7 termination of the Agreement for Lease by the Lender (other than pursuant to clauses 12.1.4 or 12.1.5 of the Agreement for Lease).

## **9. ENFORCEMENT OF SECURITY**

9.1 At any time after the Lender's power of sale has become exercisable, the Lender may without further notice:

9.1.1 appoint one or more than one Receiver in respect of the Secured Assets or any of them and if more than one Receiver is appointed the Receivers may act jointly and severally or individually; or

9.1.2 take possession of the Secured Assets; or

9.1.3 in its absolute discretion enforce all or any part of the security created by this deed in such other lawful manner as it thinks fit.

- 9.2 The Lender may remove the Receiver and appoint another Receiver and the Lender may also appoint an alternative or additional Receiver.
- 9.3 The Receiver will, so far as the law permits, be the agent of the Chargor and the Chargor alone will be responsible for the acts or defaults of the Receiver and will be liable on any contracts or obligations made or entered into by the Receiver. The Lender will not be responsible for any misconduct, negligence or default of the Receiver.
- 9.4 The powers of the Receiver will continue in full force and effect following the liquidation of the Chargor.
- 9.5 The remuneration of the Receiver may be fixed by the Lender but will be payable by the Chargor. The amount of the remuneration will form part of the Secured Obligations.
- 9.6 The Receiver will have the power on behalf and at the cost of the Chargor:
- 9.6.1 to do or omit to do anything which he considers appropriate in relation to the Secured Assets; and
- 9.6.2 to exercise all or any of the powers conferred on the Receiver or the Lender under this deed or conferred upon administrative receivers by the Insolvency Act (even if he is not an administrative receiver), or upon receivers by the LPA or any other statutory provision (even if he is not appointed under the LPA or such other statutory provision).
- 9.7 Without prejudice to the general powers set out in clause 9.6 a Receiver will also have the powers and discretions set out in Schedule 3 (*Receiver's specific powers*).
- 9.8 If (notwithstanding any representation or warranty to the contrary contained in this deed) there shall be any security affecting the Secured Assets or any of them which ranks in priority to the security created by this deed and the holder of such prior security takes any steps to enforce such security, the Lender or any Receiver may, at its option, take a transfer of, or repay the indebtedness secured by, such security.
- 9.9 The Lender may, at any time after an Event of Default pursuant to clause 8 (*Enforceability*), exercise, to the fullest extent permitted by law, all or any of the powers authorities and discretions conferred on a Receiver by this deed, whether as attorney of the Chargor or otherwise and whether or not a Receiver has been appointed.
- 9.10 The Lender may, in writing, either in its appointment of a Receiver or by subsequent notice to that Receiver, restrict the right of such Receiver to exercise all or any of the powers conferred on Receivers by this deed.

## 10. APPLICATION OF PROCEEDS

### 10.1 Recoveries by Receiver

The proceeds arising from the exercise of the powers of the Receiver will, subject to any claims ranking in priority to the Secured Obligations, be applied by or at the direction of the Receiver in or towards discharging or satisfying, in the following order of priority:

- 10.1.1 the costs, charges and expenses of and incidental to the Receiver's appointment and the payment of his remuneration;
- 10.1.2 any costs, charges, expenses and liabilities of or incurred by any Enforcement Party in the exercise of any of its powers including all rents, taxes, rates and outgoings whatever affecting the Secured Assets, all premiums on Insurances properly payable under this deed or any applicable statute, the cost of executing necessary or proper repairs to the Secured Assets, and the payment of annual sums or other payments, and the interest on all principal sums, having priority to the Secured Obligations;
- 10.1.3 the Secured Obligations, in accordance with the provisions of the Facilities Letter and otherwise in such order as the Lender may determine; and
- 10.1.4 the claims of those persons entitled to any surplus.

## **10.2 Right of appropriation**

The Lender is entitled to appropriate money and/or assets to Secured Obligations in such manner or order as it thinks fit and any such appropriation shall override any appropriation by the Chargor.

## **10.3 Suspense Account**

The Lender may place (for such time as it thinks prudent) any money received by it pursuant to this deed to the credit of a separate or suspense account (without liability to account for interest thereon) for so long and in such manner as the Lender may from time to time determine without having any obligation to apply that money or any part of it in or towards discharge of the Secured Obligations.

## **11. PROTECTION OF THIRD PARTIES**

### **11.1 No duty to enquire**

A buyer, lessee or licensee or other person dealing with any Enforcement Party will not be concerned to enquire whether any of the powers which it has exercised or purported to exercise has arisen or become exercisable and may assume that it is acting in accordance with this deed.

### **11.2 Receipt conclusive**

The receipt of the Lender or any Receiver shall be an absolute and a conclusive discharge to a purchaser of the Secured Assets and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Lender or any Receiver.

## **12. PROTECTION OF LENDER**

### **12.1 Lender's receipts**

The Lender shall not be obliged to account to the Chargor, nor to any other person, for anything other than its own actual receipts which have not been distributed or paid to the person entitled (or who the Lender, acting reasonably, believes to be entitled) in accordance with the requirements of this deed.

## **12.2 Exclusion of liability**

- 12.2.1 No Enforcement Party will be liable to the Chargor for any expense, loss, liability or damage incurred by the Chargor arising out of the exercise of its rights or powers or any attempt or failure to exercise those rights or powers, except for any expense, loss, liability or damage arising from its gross negligence, fraud or wilful misconduct.
- 12.2.2 The Chargor may not take any proceedings against any officer, employee or agent of any Enforcement Party in respect of any claim it might have against such Enforcement Party or in respect of any act or omission of any kind by that officer, employee or agent in relation to this deed.
- 12.2.3 Any officer, employee or agent of any Enforcement Party may rely on this clause 12.2 under the Third Parties Act.

## **12.3 Effect of possession**

If the Lender or any Receiver enters into possession of the Secured Assets or any of them, this will not oblige either the Lender or the Receiver to account as mortgagee in possession, and if the Lender enters into possession at any time of the Secured Assets or any of them it may at any time at its discretion go out of such possession.

## **12.4 Chargor's indemnity**

The Chargor agrees with the Lender to indemnify the Lender and any Receiver or Delegate on demand against any costs, loss or liability incurred by any of them in respect of:

- 12.4.1 any exercise of the powers of the Lender or the Receiver or any attempt or failure to exercise those powers; and
- 12.4.2 anything done or omitted to be done in the exercise or purported exercise of the powers under this deed or under any appointment duly made under the provisions of this deed.

## **13. POWER OF ATTORNEY**

### **13.1 Grant of power**

The Chargor irrevocably and by way of security appoints the Lender and each Receiver and any person nominated for the purpose by the Lender or the Receiver (in writing, under hand, signed by an officer of the Lender or by the Receiver) severally to be the attorney of the Chargor (with full power of substitution and delegation) for the purposes set out in clause 13.2 below.

### **13.2 Extent of power**

The power of attorney granted in clause 13.1 above allows the Lender, the Receiver or such nominee, in the name of the Chargor, on its behalf and as its act and deed to:

- 13.2.1 perfect the security given by the Chargor under this deed; and

- 13.2.2 execute, seal and deliver (using the Chargor's seal where appropriate) any document or do any act or thing which the Chargor may, ought or has agreed to execute or do under this deed or which the Lender, the Receiver or such nominee may in their absolute discretion consider appropriate in connection with the exercise of any of the rights, powers, authorities or discretions of the Lender or the Receiver under, or otherwise for the purposes of, this deed.

### **13.3 Ratification**

The Chargor covenants with the Lender to ratify and confirm all acts or things made, done or executed by any attorney exercising or purporting to exercise the powers conferred in accordance with this clause 13.

## **14. APPLICATION, VARIATION AND EXTENSION OF STATUTORY PROVISIONS**

### **14.1 Application of statutory covenants**

The covenants set out in sections 2 to 5 of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to bind the Chargor only if, in any case, the relevant covenant imposes upon the Chargor a burden, liability or obligation that would not otherwise arise under this deed.

### **14.2 Conditions applicable to power of sale etc.**

14.2.1 For the purposes only of section 101 of the LPA, (but otherwise subject to the provisions of clause 8 (*Enforceability*)), the conditions set out in that section as to when such powers arise do not apply and the Secured Obligations become due and the statutory power of sale and other powers of enforcement arise immediately following the execution of this deed; and

14.2.2 the Lender and any Receiver may exercise the statutory power of sale conferred by the LPA free from the restrictions imposed by section 103 of the LPA, which shall not apply to this deed.

### **14.3 Extension of powers of sale, etc.**

14.3.1 The power of sale and the other powers conferred by the LPA or otherwise are extended and varied to authorise the Lender in its absolute discretion to do all or any of the things or exercise all or any of the powers which a Receiver is empowered to do or exercise under this deed.

14.3.2 The Lender and any Receiver shall also have and enjoy all the other powers, privileges, rights and protections conferred by the LPA and the Insolvency Act on mortgagees, receivers or administrative receivers (each as amended and extended by this deed and whether or not a receiver or administrative receiver has been appointed) but so that if there is any ambiguity or conflict between the powers contained in such statutes and those contained in this deed, those contained in this deed shall prevail.

#### **14.4 Consolidation of mortgages**

The restriction on the consolidation of mortgages in Section 93 of the LPA does not apply to this deed nor to any security given to the Lender pursuant to this deed.

#### **14.5 LPA provisions relating to appointment of Receiver**

Section 109(1) of the LPA shall not apply to this deed.

#### **14.6 Application of proceeds**

Sections 105, 107(2), 109(6) and 109(8) of the LPA will not apply to the Lender nor to a Receiver appointed under this deed.

### **15. OTHER MISCELLANEOUS PROVISIONS**

#### **15.1 Powers, rights and remedies cumulative**

The powers, rights and remedies provided in this deed are in addition to (and not instead of), powers, rights and remedies under law.

#### **15.2 Exercise of powers, rights and remedies**

If an Enforcement Party fails to exercise any power, right or remedy under this deed or delays its exercise of any power, right or remedy, this does not mean that it waives that power, right or remedy. If an Enforcement Party exercises, or partly exercises, a power, right or remedy once, this does not mean that it cannot exercise such power right or remedy again, fully or in part.

#### **15.3 Discretion**

15.3.1 The Lender may decide:

15.3.1.1 whether and, if so, when, how and to what extent (i) to exercise its rights under this deed and (ii) to exercise any other right it might have in respect of the Chargor (or otherwise); and

15.3.1.2 when and how to apply any payments and distributions received for its own account under this deed,

and the Chargor has no right to control or restrict the Lender's exercise of this discretion.

15.3.2 No provision of this deed will interfere with the Lender's right to arrange its affairs as it may in its absolute discretion decide (nor oblige it to disclose any information relating to its affairs), except as expressly stated.

#### **15.4 Set-off**

15.4.1 No right of set-off or counterclaim may be exercised by the Chargor in respect of any payment due to the Lender under this deed.

#### **15.5 Information**

The Chargor authorises the holder of any prior or subsequent security to provide to the Lender, and the Lender to receive from such holder, details of the state of account between such holder and the Chargor.

**15.6 No assignment by Chargor**

15.6.1 Subject to clause 15.6.2 neither party may assign, transfer or otherwise dispose of all or any of its rights, obligations or benefits under this deed without the prior written consent of the other.

15.6.2 The Lender will be entitled to (1) assign any of its rights and/or (2) transfer or otherwise dispose of any of its rights, benefits or obligations under this deed to (i) any of its Subsidiaries or (ii) to any other company which is itself a Subsidiary provided always that such transferee (the "**Transferee**") will assign or transfer back (as the case may be) its rights, benefits or obligations under this deed if that Transferee ceases to be a Subsidiary of the Lender or the Lender ceases to be a Subsidiary of that Transferee (as the case may be). The Chargor undertakes to execute all documents the Lender may reasonably require to give effect to an assignment, transfer or other disposal.

**15.7 Avoidance of settlements and other matters**

15.7.1 Any payment made by the Chargor, or settlement or discharge between the Chargor and the Lender, is conditional upon no security or payment to the Lender by the Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency, administration or liquidation for the time being in force and accordingly (but without limiting the Lender's other rights under this deed) the Lender shall be entitled to recover from the Chargor the value which the Lender has placed upon such security or the amount of any such payment as if such payment, settlement or discharge had not occurred.

15.7.2 If the Lender, acting reasonably, considers that any amount paid by the Chargor in respect of the Secured Obligations is capable of being avoided or ordered to be refunded or reduced for the reasons set out in clause 15.7.1, then for the purposes of this deed such amount shall not be considered to have been irrevocably paid.

**15.8 Release of security**

On the Discharge Date (but subject to clause 15.7 (*Avoidance of settlements and other matters*)) the Lender shall at the request and cost of the Chargor execute and do all deeds, acts and things as may be necessary to release the Secured Assets from the security constituted hereby or pursuant hereto.

**16. COMMUNICATIONS**

16.1 Each notice, consent and other communication in respect of this deed will be effective only if made by letter or fax, delivered to the relevant address or fax number specified on the execution page(s) of this deed (or to any substitute address or fax number notified in writing by the relevant Party for this purpose) and marked for the attention of the specified department/individual, if applicable. Each communication by letter will be effective only if delivered by

hand, sent by first class post (if sent from and to an address in the UK) or sent by airmail (if sent from or to an address elsewhere).

16.2 Each communication will become effective as follows (references to times are to times in the place of delivery of the communication):

16.2.1 a hand-delivered letter will be effective as soon as it is delivered (or, if it is delivered after 5pm or on a day that is not a Business Day, it will be effective at 9am on the next Business Day);

16.2.2 a letter sent by post from and to an address in the UK will be effective at 9am on the second Business Day after it is posted and a letter sent by airmail from or to an address elsewhere will be effective at 9am on the tenth Business Day after it is posted;

16.2.3 a fax will be effective one hour after the sending fax machine (or other system) generates a confirmation that the communication has been sent in full (or, if this occurs after 5pm or on a day that is not a Business Day, it will be effective at 9am on the next Business Day); and

16.2.4 each communication to the Lender will become effective only when actually received by the Lender.

## 17. **GOVERNING LAW**

### 17.1 **Governing law**

This deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

### 17.2 **Jurisdiction**

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute regarding the existence, validity or termination of this deed) and any non-contractual obligations arising out of or in connection with it (a "**Dispute**"). Each Party agrees that the courts of England are the most appropriate and convenient courts to settle any Dispute and accordingly neither Party will argue to the contrary. This clause 17.2 is for the benefit of the Enforcement Parties only. As a result, no Enforcement Party will be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, each Enforcement Party may take concurrent proceedings in any number of jurisdictions.

## 18. **THIS DEED**

### 18.1 **Execution of this deed - counterparts**

If the Parties execute this deed in separate counterparts, this deed will take effect as if they had all executed a single copy.

### 18.2 **Execution of this deed - formalities**

This deed is intended to be a deed even if any Party's execution is not in accordance with the formalities required for the execution of deeds.

### 18.3 **Partial invalidity**

18.3.1 If, at any time, any provision of this deed is or is found to have been illegal, invalid or unenforceable in any respect under the law of any jurisdiction, this does not affect the legality, validity or enforceability of the other provisions of this deed, nor the legality, validity or enforceability of the affected provision under the law of any other jurisdiction.

18.3.2 If any Party is not bound by this deed (or any part of it) for any reason, this does not affect the obligations of each other Party under this deed (or under the relevant part).

#### 18.4 **Other security**

This deed is in addition to, and does not operate so as in any way to prejudice or affect, or be prejudiced or affected by, any other security or guarantee which the Lender may now or at any time after the date of this deed hold for or in respect of the Secured Obligations.

#### 18.5 **Ownership of this deed**

This deed and every counterpart is the property of the Lender.

This document is executed as a deed and delivered on the date stated at the beginning of this deed.

# 1 SCHEDULE 1

## Charged Contracts

	<b>Brief description of Charged Contract</b>	<b>Date of Charged Contract</b>	<b>Parties to Charged Contract</b> (Include addresses for service of notices of those parties who are not parties to this deed)
1	Performance Bond (Conditional Bond)	21 February 2013	(1) John Sisk & Son Limited whose registered office is at 1 Curo Park, Frogmore, St Albans, Hertfordshire AL2 2DD; (2) Liberty Mutual Insurance Europe Limited whose registered office is at Floor 3, 2 Minster Court, Mincing Lane, London EC3R 7YE; and (3) Monarch Aircraft Engineering Limited
2	Parent Company Guarantee	5 March 2013	(1) John Sisk & Son (Holdings) Limited whose registered office is at Wilton Works, Naas Road, Clondalkin, Dublin 22, Republic of Ireland; and (2) Monarch Aircraft Engineering Limited

## 2 SCHEDULE 2

### Form of notice to Contract Parties

To: [name and address of Contract Party]

Dated: [date]

Dear Sirs,

[here identify relevant Charged Contract] [the "**Contract**"] made between (1) [Chargor] (the "**Chargor**" and (2) [name of counterparty]

We [Chargor] hereby notify you that by a deed dated [date] (the "**Deed**") made by the Chargor in favour of Birmingham Airport Limited (the "**Lender**") we have assigned by way of security and charged to the Lender as first priority assignee and chargee all of our rights, title and interest in the Contract and in the proceeds of the Contract.

We further notify and irrevocably and unconditionally:

1. notify you that we may not agree to amend, modify or terminate the Contract without the prior written consent of the Lender;
2. authorise and instruct you to disclose information in relation to the Contract to the Lender promptly on request, without any enquiry by you as to the justification for such disclosure or reference to or further authority from us;
3. authorise and instruct you to pay or release all monies to which we are entitled under the Contract directly into [TBC] or, if the Lender so instructs you, into such other account as the Lender shall specify;
4. authorise and instruct you that, whenever you serve any notice upon us under the Contract, you should supply a copy of such notice to the Lender at its address given in the copy of this notice (or as otherwise notified to you by it from time to time);
5. notify you that the provisions of this notice may only be revoked with the written consent of the Lender; and
6. notwithstanding the foregoing the Chargor shall continue to be liable for the performance and discharge of all obligations under the Contract in accordance with its terms and the Contract provides that the Lender shall be under no obligation of any kind in respect of the Contract or such obligations.

Please sign and return the enclosed copy of this notice to the Lender (with a copy to us) by way of confirmation that[:

- A. you have not received notice that the Chargor has assigned its rights under the Contract to a third party or created any other interest (whether by way of security or otherwise) in the Contract in favour of a third party; and
- B. you agree to the terms set out in this notice and to act in accordance with its provisions.

The provisions of this notice and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully,  
for and on behalf of  
[Chargor ]

To: [name and address of Lender]

Copy to:[name and addresses of Chargor]

We hereby acknowledge receipt of the above notice and confirm our agreement to the matters set out in paragraphs A and B above.

Signed:.....

for and on behalf of [name of Contract Party]

Dated: [date]

### **3 SCHEDULE 3**

#### **Receiver's specific powers**

The Receiver will have full power and authority:

**1. POSSESSION**

- 1.1 to enter upon, take possession of the Secured Assets;
- 1.2 to collect and get in all rents, fees, charges or other income of the Secured Assets;

**2. SALE AND DISPOSAL**

without restriction, to sell, charge, grant, vary the terms or accept surrenders of, leases or tenancies of, licences to occupy, or options or franchises over or otherwise deal with and dispose of the Secured Assets or any property acquired in exercise of its powers under this deed;

**3. BORROWING**

for the purpose of exercising any of the rights, powers, authorities and discretions conferred on the Receiver by or pursuant to this deed and/or for defraying any losses or Expenses which may be incurred by him in their exercise or for any other purpose, to raise or borrow moneys from the Lender or others or incur any other liability on such terms, whether secured or unsecured, as he may think fit, and whether to rank in priority to this security or not;

**4. EMPLOYMENT ETC.**

to appoint and discharge employees, officers, consultants, advisers, managers, agents, solicitors, accountants or other professionally qualified persons, workmen and others for any of the purposes of this deed or to guard or protect the Secured Assets upon such terms as to remuneration or otherwise as he may think fit and to discharge any such persons appointed by the Chargor prior to his appointment;

**5. LEGAL ACTIONS AND COMPROMISES**

- 5.1 In the name of the Chargor, to bring, prosecute, enforce, defend and discontinue all such actions, suits and proceedings, in relation to the Chargor, the business of the Chargor or the Secured Assets as in any case he shall think fit;
- 5.2 to settle, adjust, refer to arbitration or expert determination, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person or body who is or claims to be a creditor of the Chargor or relating in any way to the Secured Assets;

**6. RECEIPTS**

to give valid receipts for all moneys and execute all assurances and things which may be proper or desirable for realising the Secured Assets;

7. **CONTRACTS**

to enter into, vary, cancel or waive any of the provisions of any contracts which he shall in any case think expedient in the interests of the Chargor or the Lender;

8. **CHARGED CONTRACTS**

to exercise any rights under the Charged Contracts and to perform (at its discretion) any obligations under the Charged Contracts;

9. **SUPPLIES**

to purchase materials, tools, equipment, goods or supplies on such terms and at such price as the Receiver in the Receiver's absolute determination thinks fit;

10. **INSURANCES AND BONDS**

to insure the Secured Assets, any assets acquired by the Receiver in exercise of his powers, and any business or works, and effect indemnity insurance or other similar insurance, in every case in such amounts, against such risks and with such offices as the Receiver shall think fit, and obtain bonds and give indemnities and security to any bondsmen;

11. **FORM COMPANY**

11.1 to promote or establish any company or to acquire shares in any company (whether as a subsidiary of the Chargor or otherwise) to facilitate the exercise of his powers under this deed;

11.2 to transfer to any such company all or any of the Secured Assets or other assets acquired by the Receiver in exercise of his powers;

11.3 to exercise or cause to be exercised all voting and other rights attaching to, and to charge, sell or otherwise transfer any shares in any such company;

12. **TRANSACTION**

to carry into effect and complete any transaction;

13. **REDEEM SECURITY**

to redeem any prior security (or procure the transfer of such security to an Enforcement Party) and settle and pass the accounts of the person entitled to the prior security so that any accounts so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor and the money so paid shall be deemed to be an expense properly incurred by the Receiver;

14. **GENERAL**

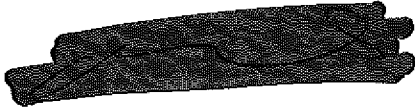
either in the name of the Chargor or in the name of the Receiver to execute documents and do all other acts or things which the Receiver may consider to be incidental or conducive to any of the Receiver's powers or to the realisation or use of the Secured Assets.



## EXECUTION

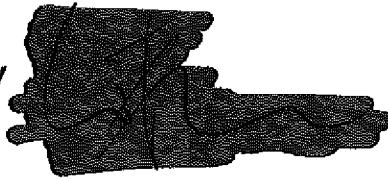
### The Chargor

Executed as a deed by  
**Monarch Aircraft Engineering Limited**  
acting by a director and its secretary  
or by two directors



Director

Director/Secretary



The Lender

Executed as a deed by  
**Birmingham Airport Limited**  
acting by a director and its secretary  
or by two directors

Director

Director/Secretary

### Communications to be delivered to:

*FAO: The Finance Director  
Monarch Aircraft Engineering  
Limited  
London Luton Airport  
Luton  
LU2 9LX  
Fax: 01582 706188.*

### Communications to be delivered to:

*FAO: The Finance Director/  
Chief Financial Officer  
Diamond House  
Birmingham  
B26 3QF  
Fax: 0121 767 7310*

