



# EAST MEETS WEST

## Understanding western business culture

By Greg Cirillo & Gary Horowitz

**F**ailures are unfortunate, but they can be avoided by developing a better understanding of the business culture and motivations of the party with whom you are dealing.

The following observations are based on the authors' direct and recent experiences of the impact that occurred when Eastern business culture meets Western business culture (essentially when Middle and Far Eastern buyers meet North American/Western European sellers) in an aircraft transaction.

It is hoped that by offering these observations, prospective buyers in the East will have a firm understanding of the Western seller, preventing the

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**Private aircraft transactions fizzle and fail for multiple reasons. Sometimes a failed transaction is a good thing because there was no meeting of the minds and ultimately no deal to be reached, but sometimes it fails due to differences in business culture and methodology that hinder and needlessly end a transaction.**

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business cultural divide from interfering with future aircraft transactions.

Business aircraft transactions are, at this point, predominantly governed by English language documents, US currency, and generally rely upon US or UK law and jurisdiction. This could change as the epicenter of business

aircraft purchases shifts East, but for the near-term at least, buyers and sellers will be working within a US/UK legal system and culture.

Aircraft transactions are often between parties that have no prior dealings, so there is no established trust between them. There may also be >>



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pre-conceived biases, and such aircraft transactions rarely involve face-to-face communications due to the distances between the parties, which makes it difficult for a party to develop personal comfort with the other party. All of these challenges are best overcome by the parties following the five steps for a “perfect” aircraft transaction:

1. The Offer Letter
2. The Preliminary Inspection
3. The Aircraft Purchase Agreement
4. The Pre-purchase Inspection
5. The Closing.

This process is designed to minimize surprises, and to protect both parties. The Aircraft Purchase Agreement is the centerpiece.

For aircraft transactions between Eastern buyers and Western sellers, a mutually agreed written Offer Letter followed by an Aircraft Purchase Agreement are vital, as these

documents are the best substitute for personal business relationships that otherwise do not exist between the parties.

The aircraft transaction is initiated with a counter-signed Offer Letter, and formalized by the signing of a binding Aircraft Purchase Agreement. The goal of the Aircraft Purchase Agreement is to have a detailed, written outline governing all actions, and a document that establishes the rights and remedies for all likely events.

Simply put, a negotiated and clearly understood Aircraft Purchase Agreement will organize and control an aircraft transaction. Most importantly, the Aircraft Purchase Agreement provides for continuous forward movement until the transaction is successfully closed or formally terminated.

In addition, a significant purpose of a detailed Aircraft Purchase Agreement is to avoid

misunderstandings and unexpected problems. It is not there to set up grounds for litigation. It is a misconception that Western (especially US) parties frequently file lawsuits to solve business disputes. In fact, litigation over aircraft transactions is very rare (particularly in multi-national business transactions) and only occurs when other alternatives are exhausted.

### Navigating “Off the Map”

If an Aircraft Purchase Agreement is well prepared, all events from signing to closing (or to termination) should be as stated in the Agreement. The time to negotiate over deal terms is before executing the Agreement.

Western transactional culture is defined by linear, uninterrupted negotiation and execution through to closing. Most Western sellers also expect that issues discussed and resolved will not return in later discussions, and that major issues that are not raised early in the transaction will not be raised as the parties discuss subsequent drafts of the Aircraft Purchase Agreement.

Non-linear negotiation (returning to resolved issues, or raising new issues late in the deal) is often associated with an unclear chain of authority within Western culture. This should be avoided.

The Western seller considers the Aircraft Purchase Agreement to be the map that leads the aircraft transaction to its end. Westerners will tend to consider any deviation from the Agreement (or any attempt to renegotiate the deal terms after the Agreement is signed) to be an act of “bad faith”, and potentially a breach of the Agreement.

Usually, the buyer’s deposit is subject to forfeit if the buyer breaches the Agreement after agreeing to accept

delivery of the aircraft in its current condition, subject to the correction of airworthiness discrepancies.

To avoid difficulty, a party to an aircraft transaction should fully understand what they are signing. They should sign only when irrevocably committed to the transaction, and avoid re-negotiating important deal terms after the Agreement is signed. When dealing with a Western seller, stick closely to the Aircraft Purchase Agreement, or be prepared for the aircraft transaction to unravel.

### Avoid Costly Delay

An aircraft that isn't flying is expensive. For that reason, once a private seller has made a decision to put their used aircraft on the market, the costs begin to grow, and the deal must progress

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quickly towards closing. A thirty day delay on a \$30 million aircraft sale may cost the seller \$125,000 or more.

The Western seller will put a very high value on achieving a smooth, prompt transaction, and a buyer that cannot respond quickly will risk having its candidacy discounted.

The Western seller will expect a buyer to accept and work to firm

contractual deadlines - and to meet its deadlines for performance (especially those deadlines involving the payment of money). Remember that delays cost the seller money, and when the reason for the delay is illogical or difficult to determine, the seller will immediately begin to assume the worst.

### Credibility Counts

The parties to an aircraft transaction often have no prior relationship, and the seller's confidence that the buyer will act in accordance with its commitments may be the most valuable part of the transaction. When a buyer acts unpredictably (for example, is unresponsive for extended periods of time, or responds with unclear intentions), or if the buyer fails to meet clear obligations, their

credibility as a result of prior actions, or prior transactions.)

### The Deposit

Aircraft Purchase Agreements typically require that the buyer makes cash deposits (usually in escrow), and as the seller makes commitments (taking the aircraft off the market, moving it to an inspection facility and allowing inspection to begin) the Agreement requires the buyer to be prepared to forfeit part (or all) of that deposit.

The deposit is normally made by the buyer after the non-binding Offer Letter is signed, but before the Aircraft Purchase Agreement is executed. The deposit is very important to the Western seller, as it is the ultimate proof of a buyer's serious intention and ability to purchase an aircraft.



credibility suffers - and that will impact the remainder of the transaction.

More importantly, a buyer could be in danger of acquiring a reputation in the market that will hinder future transactions with Western sellers. (We have personally seen sellers accept aircraft bids several hundred thousand dollars below a higher bid, simply because the higher bidder lacked

Remember that a Western seller that commits to sell its aircraft to a particular buyer loses other potential buyers, loses the use of the aircraft, and incurs expenses by allowing the buyer access to the aircraft. Therefore, the deposit is evidence of the buyer's commitment to the transaction in equal measure to the seller's commitment. >>

An Aircraft Purchase Agreement is structured to require mutually increasing commitments of the parties to each other. The payment of a deposit is therefore the strongest message that the buyer is committed to an aircraft purchase.

## Who Carries Ultimate Authority?

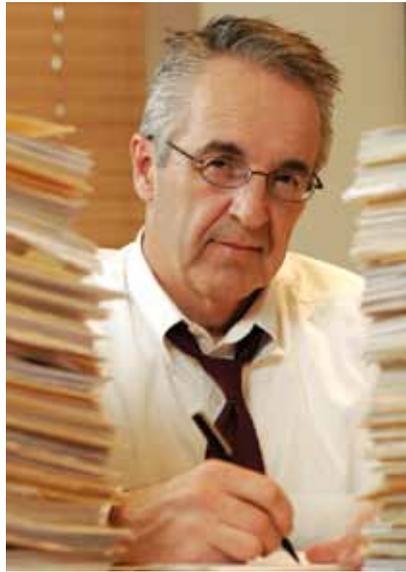
Western sellers expect to deal with persons who are fully authorized and empowered to execute and perform an aircraft acquisition. If the person at the negotiating table for the buyer needs to “call back to the office” in order to take a significant step in the buying process, negotiations will be slow - especially if the buyer’s office repeatedly over-rules commitments made by its representative.

In reality that is sometimes unavoidable, and it should be disclosed when the person at the negotiating table has limited authority. We have seen transactions turn sour when the decision-maker at the negotiating table is suddenly over-ruled by someone who has not previously participated in the transaction.

## Pick Your Advisors (then rely on them)

Your advisor and your attorney are important parts of an aircraft acquisition strategy. They are resources for advancing your acquisition objectives, but they can also help you understand the expectations of Western aircraft sellers.

As legal counsel, we have often seen Eastern aircraft buyers hesitate at the prospect of hiring an attorney because the role of legal counsel is not fully understood. In Western transactions, legal counsel is engaged as a trusted advisor to assist in:



Attorneys are ethically obliged to protect the client’s interests. The Western lawyer will protect only its Eastern client’s interest in an aircraft transaction.

1. Capturing the client’s desires in the contracts that govern the transaction;
2. Identifying alternatives and compromises to resolve disagreements;
3. Ensuring compliance with applicable laws.

Attorneys are ethically obliged to protect the client’s interests, and suffer suspension or loss of license for failing to do so. Your advisor brings the technical knowledge and familiarity with transactions to guide you to the right aircraft, at the right price, and to closing. It does not matter to a Western lawyer with an Eastern client that there is a Western seller - the Western lawyer will protect and represent only its Eastern client’s interests.

## New Aircraft Versus Used Aircraft

There is a misconception in the West that the Eastern aircraft buyers prefer

new aircraft over used aircraft. This is an over-simplification. If you consider all of the business cultural gaps discussed here, it becomes clear that Eastern aircraft buyers simply prefer the new aircraft transaction process: Eastern buyers prefer dealing with new aircraft manufacturers because of the higher level of trust and comfort that comes with dealing directly with a known and reputable manufacturer offering warranties and support.

In addition, a manufacturer has the global staff and the presence to conduct business face-to-face (an option rarely available in used aircraft transactions). Lastly, an aircraft manufacturer will be willing to work with the buyer for months (or longer), negotiating the terms of a new aircraft sale, without pressure.

The lesson within this article is that when the business culture gap can be closed, the flow of used aircraft transactions between the East and West is likely to increase exponentially!

Private aircraft transactions between Western and Eastern parties have their challenges, but by following the simple guidelines discussed and putting aside minor differences to seek common ground, the prospects for a successful transaction are greatly increased. <<



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