

P.O. Box 1824
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA)
)
 v.)
)
 F.G. MASON ENGINEERING, INC.)
)

CASE NO. B-90-29-JAC

PLEA AGREEMENT

John R. Gulash, Jr., Esq.
Gulash & Fleischmann
Attorneys-at-Law
135 Elm Street
P.O. Box 9118
Bridgeport, CT 06601

Re: United States v. F.G. Mason Engineering, Inc.

Dear Mr. Gulash:

This letter confirms the plea agreement entered into between your client F.G. Mason Engineering, Inc. (hereinafter "MEI" or the "defendant") and the Office of the United States Attorney for the District of Connecticut (hereinafter the "Government") concerning the referenced criminal matter.

The Plea and Offense

MEI agrees to waive its right to be indicted by a Grand Jury and also agrees to plead guilty to a one-count information which charges it with conspiracy to violate the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2, in violation of Title 18, United States Code, § 371.

The Penalties

The offense to which MEI will plead guilty carries a maximum penalty of five (5) years imprisonment, a

fine of not more than \$10,000, or both. Although, as a corporation, MEI obviously is not subject to imprisonment, a corporation may be placed on probation for a period of up to five years pursuant to 18 U.S.C. § 3561 and the probation may include such terms and conditions as are specified in 18 U.S.C. § 3563.

Inasmuch as the offense to which MEI will plead guilty is a felony which was committed or continued after October 31, 1987, it is subject to the alternative fine provisions of 18 U.S.C. § 3571. Instead of the amount of fine specified in the section of law setting forth the offense, the Court may sentence your client to pay a fine of up to \$500,000. Section 3571 also provides that if a defendant derived pecuniary gain from the commission of the offense, or if the offense resulted in pecuniary loss to another person, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss. To summarize, then, the maximum fine that may be imposed on your client is the greatest of the following amounts:

- (1) twice the gross gain to your client resulting from the offense;
- (2) twice the gross loss to others resulting from the offense;
- (3) \$500,000; or
- (4) the amount specified in the section defining the offense.

In addition, because the offense to which your client will plead guilty is a felony committed after November 10, 1984, your client would be obligated by 18 U.S.C. § 3013 to pay a special assessment of \$200. MEI agrees to pay this special assessment of \$200 on the day it is sentenced.

Finally, unless otherwise ordered, should the Court impose a fine of more than \$2,500 as part of the sentence, interest will be charged on the unpaid balance of a fine amount not paid within fifteen days after the judgment date. See 18 U.S.C. § 3612(f).

Cooperation

MEI agrees to cooperate fully with all investigative and prosecutorial authorities in the United States and in the Federal Republic of Germany as may be re-

quired. The defendant understands that all of its cooperation, testimony, statements, information and other assistance as provided below must be fully truthful, accurate and complete. This cooperation will include the following:

1. MEI agrees to make its officers, employees and agents available to be debriefed and to disclose fully and truthfully all information concerning MEI's knowledge and participation in criminal activities involving the payment or receipt of bribes or kickbacks by itself, its employees or agents, Adolph Poetschke or Poetschke, GmbH, Dirk Ekkehard Zoeller or other officials of the Government of the Federal Republic of Germany. The debriefings will be conducted by special agents of the Defense Criminal Investigative Service (DCIS), representatives of the United States Attorney's Office, and other investigative or prosecutorial authorities in the United States or the Federal Republic of Germany. All documents and objects that may be relevant to the investigation and which are in the defendant's possession, custody or control shall be furnished upon request.
2. MEI, through its employees, officers and agents, agrees to testify truthfully before grand juries or other tribunals and at any resulting trials, hearings, depositions or other proceedings in the District of Connecticut or elsewhere, including the Federal Republic of Germany, as may be required by the Government or prosecuting authorities in the Federal Republic of Germany. In the event any employees or agents of MEI are required to testify at proceedings in the Federal Republic of Germany, MEI agrees to pay the travel and lodging expenses of such individuals.

Sentencing Guidelines

The defendant understands that the Sentencing Reform Act of 1984 and the Sentencing Guidelines apply in this case. The defendant further understands that the Court is required to consider any applicable sentencing guidelines but may depart from those guidelines under some circumstances. The defendant expressly understands that the Sentencing Guideline determinations will be made by the Court, based upon input from the defendant, the Government and the United States Probation Officer who prepares the presentence investigation report. The defendant further

understands that it has no right to withdraw its guilty plea if its sentence or the Guideline application is other than it anticipated.

The Government expressly reserves its right to address the Court with respect to an appropriate sentence to be imposed in this case. However, as part of the sentence, the Government and the defendant expressly agree, subject to the approval of the Court, that the defendants F.G. Mason Engineering, Inc. and Francis G. Mason will pay a total combined fine of \$75,000. It is expressly understood that the obligation to pay this fine will be a joint and several liability of Francis G. Mason and F.G. Mason Engineering, Inc. The defendant understands that, notwithstanding this agreement between itself and the Government as to the recommended amount of the fine, the Court is not bound by this agreement and may impose whatever fine it deems appropriate up to and including the maximum provided by law. It also is expressly understood that the Government will discuss the facts of this case with the United States Probation Office and will provide the probation officer with access to its files, with the exception of grand jury material.

Pursuant to § 6B1.4 of the Sentencing Guidelines, the defendant and the Government have entered into a stipulation which is attached to and made a part of this plea agreement. The defendant understands that the stipulation does not purport to set forth all of the relevant conduct and characteristics that may be considered by the Court for purposes of sentencing. The defendant expressly understands that this stipulation is not binding on the Court. The defendant also understands that the Government and the United States Probation Office are obligated to advise the Court of any additional relevant facts that subsequently come to their attention.

The Government agrees to recommend that the Court reduce by two levels the defendant's adjusted offense level under the Sentencing Guidelines, based upon the defendant's prompt recognition and affirmative acceptance of personal responsibility for the offense. This recommendation is conditioned upon the defendant's full and complete disclosure to both the Government and the Probation Office of the circumstances surrounding its commission of the offense. The defendant expressly understands that the Court is not obligated to accept the Government's recommendation on the two level reduction.

The parties reserve their respective rights to appeal and to oppose each other's appeal of the sentence imposed as permitted by statute.

Restitution

In addition to the other penalties provided by law, the Court may also order that the defendant make restitution under 18 U.S.C. § 3663. The scope and effect of the Order of Restitution are set forth in the attached Rider Concerning Restitution.

The defendant agrees to make restitution to the Government of the Federal Republic of Germany, which is the victim of the defendant's illegal conduct. Because there are outstanding contractual relations between MEI and the Government of the Federal Republic of Germany which have not been completed, the terms and conditions regarding restitution are set forth in a separate Settlement Agreement entered into between MEI and the Federal Republic of Germany, acting through its Ministry of Defense. In general, this Settlement Agreement requires MEI to make restitution to the Federal Republic of Germany in the amount of \$160,000, which will take the form of a credit granted by MEI against monies to be paid to MEI by the Ministry of Defense under existing contracts between them which have not been completed. In addition, MEI has agreed to provide certain discounts on future purchases of equipment or services should such purchases be made by the German Government. The defendant understands that a copy of the executed Settlement Agreement will be provided to the Probation Office and the Court prior to sentencing. The defendant also understands that the Court is not bound by this Settlement Agreement and may order the defendant to make restitution in whatever amount the Court deems appropriate under law.

Informing the Court/Others About Cooperation

The defendant expressly understands that the sentence to be imposed upon it is within the sole discretion of the sentencing Court. The Government cannot and does not make any promise or representation as to what sentence the defendant will receive. However, the Government does agree that it will inform the sentencing Court and the Probation Department of the nature and extent of the defendant's cooperation, including its investigative or prosecutive value, completeness, truthfulness and accuracy, or the lack thereof, as the case may be. In addition, the Govern-

ment will make this information known to any other administrative or governmental entity designated in writing by the defendant's counsel. In addition, if the Government determines that the defendant has made a good-faith effort to provide substantial assistance in the investigation or prosecution of other persons who have committed offenses against the laws of the United States or the Federal Republic of Germany, the Government will file a motion pursuant to § 5K1.1 of the Sentencing Guidelines, advising the sentencing Court of all relevant facts pertaining to that determination and requesting the Court to sentence the defendant in light of the factors set forth in § 5K1.1(a)(1)-(5). The defendant understands that the determination whether or not to file such a motion rests solely with the Government. The defendant further understands that even if such a motion is filed, the Court is under no obligation to grant or act favorably upon it. It is expressly understood that the sentence to be imposed on the defendant remains within the sole discretion of the sentencing Court.

The defendant and the Government contemplate that the defendant's cooperation will include, but not necessarily be limited to, testifying in the Federal Republic of Germany in connection with proceedings against Dirk Ekkehard Zoeller and others. At the present time it is not anticipated that the trial of the Zoeller matter will take place before the fall of 1991. Because the parties agree that it would be impracticable to postpone the defendant's sentencing until after the conclusion of the trial of the Zoeller matter, the defendant, by and through its President, Francis G. Mason and its general manager Catherine Mason, agrees to travel to the Federal Republic of Germany at such time within six months of the date of this agreement as may be required by the Government to provide sworn statements before a judge of that country concerning their knowledge of the case. The Government and the defendant jointly agree to ask the Court to continue the defendant's sentencing for up to six months so that this process may be concluded before the defendant is sentenced. In connection with such continuance, the defendant expressly waives any rights it may have to a speedy sentencing, under the Constitution, the Speedy Trial Act, the Federal or Local Rules of Criminal Procedure or the Local Plan for the Prompt Disposition of Cases. The providing of a sworn statement before a judge in Germany does not in any way relieve the defendant of its obligation to have its officers, agents or employees, including Francis G. Mason and Catherine Mason, appear in

person at the trial(s) of the Zoeller matter, if requested by authorities of the Federal Republic of Germany.

Use of Information against Defendant

Except as provided below, the Government will not use any information disclosed by the defendant during the course of its cooperation against it in any subsequent, unrelated criminal prosecution. The defendant understands that the information it discloses will be brought to the attention of the sentencing court and will be used in computing its Sentencing Guideline range. Moreover, as set forth below, if the defendant breaches this agreement, the Government may prosecute it for any federal criminal violation for which it has incurred criminal liability and may use any information or testimony provided by the defendant, as well as leads or evidence derived therefrom, against it in any such prosecution. Nothing in this agreement shall be construed to protect the defendant from prosecution for perjury, false statement or obstruction of justice, or any other offense committed by it after the date of this agreement, and the information provided by the defendant during the course of its cooperation may be used against it in any such prosecutions.

Breach of Agreement

If the Government determines that the defendant has intentionally given false, misleading or incomplete information or testimony to representatives of the Government of the United States or the Government of the Federal Republic of Germany; has committed or attempted to commit any further crimes; has failed to cooperate fully; or otherwise has violated any provision of this agreement, then the Government may deem this agreement null and void.

In the event the Government voids this plea agreement, the defendant will be subject to prosecution for the underlying offense(s) as well as any other federal criminal violations for which it is liable, including but not limited to perjury, false statements and obstruction of justice. Any such prosecution may be premised upon (1) any information or statements provided by the defendant's officers, agents or employees to any investigative or prosecutorial authorities of the United States or the Federal Republic of Germany, (2) any testimony given by its officers, agents or employees at any hearing, grand jury appearance, deposition, trial or other proceeding before any tribunal in the United States or the Federal Republic of Germany, and (3)

any leads derived from such information, statements or testimony. The defendant understands that such information, statements, testimony and leads derived therefrom may be used against it in any such prosecution. Moreover, the defendant agrees that all such information, statements or testimony shall be admissible in criminal proceedings against it, and it expressly waives any claim for suppression or exclusion of such information, statements or testimony under the Constitution, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal or local rule or statute. Finally, the defendant waives any claim that such prosecution is time-barred where the statute of limitations has expired between the signing of this agreement and the commencement of any such prosecution.

Waiver of Right to Indictment

MEI understands that under the Fifth Amendment to the United States Constitution it has the right to have the facts of this case presented to a federal grand jury, consisting of between sixteen and twenty-three citizens, twelve of whom would have to find probable cause to believe that it committed the offense set forth in the information before an indictment could be returned. The defendant agrees to waive its right to have this case presented to a grand jury and consents to have the case against it proceed on the basis of the information to be filed by the United States Attorney.

Waiver of Trial Rights and Consequences

The defendant understands that it has the right to be represented by an attorney at every stage of the proceedings and that, if it cannot afford an attorney, one will be appointed to represent it.

The defendant understands that it has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against it and the right to compulsory process for the attendance of witnesses to testify in its defense. The defendant understands that by pleading guilty it waives and gives up those rights and if the plea of guilty is accepted by the Court, there will not be a further trial of any kind.

The defendant understands that if it pleads guilty, the Court may ask its representative who appears for the purpose of the plea questions about the offense to

which it pleads guilty, and that if that person answers those questions falsely under oath, on the record, and in the presence of counsel, such person's answers may later be used against MEI and the person answering the questions in a prosecution for perjury or making false statements.

Acknowledgement of Guilt; Voluntariness of Plea

The defendant acknowledges that it is entering into this agreement and is pleading guilty freely and voluntarily because it is guilty. The defendant further acknowledges that it is entering into this agreement without reliance upon any discussions between the Government and it (other than those described in this plea agreement letter), without promise of benefit of any kind (other than the concessions contained in this plea agreement letter), and without threats, force, intimidation or coercion of any kind. The defendant further acknowledges its understanding of the nature of the offense to which it is pleading, including the penalties provided by law. The defendant also acknowledges its complete satisfaction with the representation and advice received from its undersigned attorney.

Scope of Agreement

The defendant acknowledges and understands that this agreement is limited to the undersigned parties and cannot bind any other federal authority, or any state, local or foreign authority. The defendant acknowledges that no representations have been made to it with respect to any civil or administrative consequences that may result from this plea of guilty because such matters are solely within the province and discretion of the specific administrative or governmental entity involved. Finally, the defendant understands and acknowledges that this agreement has been reached without regard to any civil tax matters that may be pending or which may arise involving it.

Collateral Consequences

The defendant further understands that it will be adjudged guilty of the offense to which it pleads guilty and may thereby be deprived of certain rights. The defendant understands that the Government reserves the right to notify any state or federal agency by whom it is licensed, or with whom it does business, of the fact of its conviction.

Satisfaction of Federal Criminal Liability; Breach

The defendant's guilty plea, if accepted by the Court, will satisfy any federal criminal liability of the defendant in the District of Connecticut as a result of its participation in the conduct which forms the basis of the information to which it is pleading guilty, that is, its participation in the scheme to pay bribes and/or kickbacks to Dirk Ekkehard Zoeller, an official of the Government of the Federal Republic of Germany, for the purpose of influencing Zoeller's acts or decisions, or inducing Zoeller to use his influence to affect or influence the acts or decisions of the Government of the Federal Republic of Germany in order to obtain or retain business for MEI.

The defendant understands that if, before sentencing, it violates any term or condition of this agreement, engages in any criminal activity or fails to appear for sentencing, the Government may void this agreement.

No Other Promises

The defendant acknowledges that no other promises, agreements or conditions have been entered into other than those set forth in this plea agreement, and in separately executed agreements between the Government and Francis G. Mason and Catherine Mason which are being filed with the Court simultaneously herewith, and none will be entered into unless set forth in writing, signed by all parties.

This letter shall be presented to the Court, in open Court, and filed in this case.

Very truly yours,

STANLEY A. TWARDY, JR.
UNITED STATES ATTORNEY

ROBERT J. LYNN /s/
UNITED STATES ATTORNEY

The defendant certifies that it has read this plea agreement letter and its attachments, and that it fully understands and accepts the terms thereof.

FRANCIS G. MASON ENGINEERING, INC.

By: FRANCIS G. MASON, /s/
ITS DULY AUTHORIZED PRESIDENT
DATE: June 25, 1990

I have read the above and explained it to my client, who advises me that it understands and accepts its terms.

JOHN R GULASH, JR., ESQ. /s/
Attorney for the Defendant
DATE: June 25, 1990

RIDER CONCERNING RESTITUTION

The Court may order that the defendant make restitution under 18 U.S.C. § 3663. The order of restitution may include:

1. If the offense resulted in damage to or loss or destruction of property belonging to the victim,
 - (a) return of the property to the owner, or
 - (b) payment to the owner of an amount of money equal to the greater of the value of the property on the date of the damage, loss or destruction, or the value of the property as of the date of sentencing.
2. If the offense resulted in bodily injury to the victim, payment of an amount of money equal to the cost of necessary medical, psychiatric, and psychological services, including physical and occupational therapy.
3. If the offense resulted in death, payment of necessary funeral and related expenses.
4. In any case, if the victim consents, restitution in services in lieu of money may be ordered, as may restitution to a person or organization designated by the victim.

Should the Court impose restitution as part of the sentence, interest will be charged on the unpaid balance if the restitution amount is not paid within 30 days after the sentencing date.

The order of restitution shall be a condition of probation or supervised release. Failure to make restitution as ordered may result in a revocation of probation, or a modification of the conditions of supervised release, or in the defendant being held in contempt under 18 U.S.C. § 3583(e). The Court may also order that the defendant give notice to any victim(s) of its offense under 18 U.S.C. § 3555. Finally, the order of restitution has the effect of a civil judgment against the defendant.