



## HELISPECS AERIAL APPLICATION TERMS & CONDITIONS

1. "Application" means the aerial application of chemicals, pesticides or fertilisers to the customer's property.
  2. The Customer warrants that it is the owner of the property the subject of the Application and that it has the full authority to enter into this agreement with Helispecs Aviation Pty Ltd (ACN 617 983 669) (**Helispecs**) & warrants to use its best endeavours to undertake the Application in accordance with the instructions contained in Helispecs Aerial Application Request Order submitted by the customer (**AARO**).
  3. The customer acknowledges and agrees that Helispecs is not bound to accept or to complete the Application requested by the customer in the AARO. **This clause is a fundamental term of this agreement.**
  4. The protections afforded to Helispecs by these terms and conditions extend to and protect equally the owner or the operator of any aircraft used in the Application, the pilot of any aircraft used in the Application, the servants or agents of either the owner, operator or pilot, contractors or subcontractors of the owner, and the operator or pilot or any associated or subsidiary companies of the owner, operator or pilot.
  5. In consideration of Helispecs undertaking the Application, the customer agrees to release and indemnify Helispecs, its officers, directors, agents, contractors, servants, employees, shareholders and suppliers of any aircraft from any and all liabilities, claims, demands, expenses, actions or causes of action whatsoever including any liability imposed by statute, arising out of any damage, loss or injury to the customer or third parties due to the Application or pre-application tasks whether such loss, damage or injury results from negligence of Helispecs, its officers, directors, agents, contractors, servants, employees or shareholders or from some other cause.
  6. Any liability of Helispecs for breach of any provision of or term implied by Chapter 3, Part 3.2, Division 1 of the *Australian Consumer Law* as set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* or equivalent State legislation shall not exceed the resupply of the Application in question or payment of the cost of resupply.
  7. In no event whether as a result of breach of contract, warranty, tort (including negligence) or otherwise shall Helispecs be liable for any special, consequential, incidental, exemplary, aggravated or penal damages or expenses including but not limited to loss of profit, goodwill, reliance loss, costs or claims by third parties. This warranty is exclusive of all other warranties or remedies whether written, oral, implied or statutory. Any and all implied warranties of merchantability, fitness for a particular purpose, course of dealing or usage of trade are hereby expressly disclaimed and excluded to the full extent allowable under the law.
  8. **Payment to the Helispecs shall be made within 14 days of invoice date (Government agencies 30 days maximum or as per terms of any written contract) and must** be received by Helispecs before any dispute or claim can be made in relation to the Application. Helispecs may also request customer details for a credit check, partial or full payment upfront if in the sole discretion of Helispecs it is deemed necessary or required before any Application takes place. If payment is made prior to Application by the customer and a credit remains after completion of the Application, such credit will be refunded into the customers nominated bank account within three (3) business days.
  9. The Customer agrees to pay interest on all overdue monies at a rate of 2 per cent (2 %) per month on such amount as may from time to time be outstanding, such interest to be calculable on and from the date appearing on the subject invoice or invoices as the case may be. The Customer further agrees that these are interest charges are reasonable and represent a fair assessment of the additional administrative and accounting costs and expenses which will be incurred by Helispecs as a result of overdue payments from the Customer.
  10. Any discounts given shall only apply if the account is paid in full by the due date. If the account is not paid in full by due date all discounts otherwise applicable, if any, are immediately revoked without the need for written or any other notice to that effect and the full invoiced amount must be paid in accordance with these terms and conditions.
  11. The Customer hereby agrees that once an invoice has been issued to them by Helispecs it is a demand for payment. The Customer hereby agrees **ALL** costs incurred by Helispecs in relation to collection of any outstanding monies owed to Helispecs, including but not limited to legal, court, PPSR/credit registrations and all Helispecs costs will be payable in **full** by the customer.
  12. **All pricing excludes GST.**
  13. The Customer agrees that:
    - (a) In this clause:
      - (i) 'collateral', 'financing statement', 'financing change statement', 'security agreement' and 'security interest' have the meanings given to those terms by the *Personal Property Securities Act 2009 (Cwlth)* as amended (**PPSA**); and
      - (ii) PPSR means the Personal Property Securities Register established under section 146 of the PPSA.
    - (b) The provisions of this clause 14 will survive termination of these terms and conditions or any other agreement between the Helispecs and the customer for the supply of services, for whatever reason.
    - (c) Sections 96 and 125 of the PPSA do not apply to any security interest created by these terms and conditions.
  14. The Customer:
    - (a) acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA; and
    - (b) hereby grants a security interest in all present and after acquired real and personal property of the customer to secure payment of all monies (including but not limited to all moneys now or hereafter owing on any account whatsoever to Helispecs and any interest) owing and performance of obligations by the Customer to Helispecs from time to time under these terms and conditions and under any other agreement or arrangement between the Customer and Helispecs.
  - (c) agrees:
    - (i) to promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Helispecs may reasonably require to:
      - (A) register a financing statement or financing change statement in relation to a security interest on the PPSR and otherwise do all things necessary and required by Helispecs to ensure that any security interest registered by Helispecs is a perfected security interest under the PPSA;
      - (B) register any document on any register reasonably necessary to secure Helispecs' security interest under these terms and conditions;
      - (C) register any other document reasonably required to be registered under the PPSA; or
      - (D) correct a defect in a statement referred to in clause 12(3)(d);
    - (ii) to indemnify, and upon demand reimburse, Helispecs for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any collateral that is the subject of a security interest;
    - (iii) not to make an amendment demand in respect of a security interest, apply to the Registrar to register a financing change statement in respect of a security interest, without the prior written consent of Helispecs; and
    - (iv) not to register, or permit to be registered, a financing statement or a financing change statement in relation to any property the subject of this security interest in favour of a third party without the prior written consent of Helispecs; and
  - (d) hereby agrees that for the purposes of sections 115(1) and 115(7) of the PPSA:
    - (i) sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 173(3) of the PPSA are excluded; and
    - (ii) sections 142 and 143 are excluded
  - (e) agrees that for the purposes of section 115(7) of the PPSA Helispecs need not comply with sections 132 and 137(3);
  - (f) waives its right to receive a verification statement in accordance with section 157 of the PPSA;
  - (g) agrees not to exercise its rights to make any request of Helispecs under section 275 of the PPSA to authorise the disclosure of any information under that section or to waive the duty of confidence that would otherwise permit non-disclosure under that section;
  - (h) agrees that if Helispecs exercises a right, power or remedy in connection with this document, that the exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless Helispecs states otherwise at the time of exercise. However, this clause does not apply to a right power or remedy which can only be exercised under the PPSA and nothing in this clause excludes any right power or remedy that Helispecs may exercise under the PPSA. Any rights and remedies that Helispecs may have under this document are in addition and not in substitution for any rights and remedies that that Helispecs may have under the PPSA;
  - (i) unconditionally ratifies any actions taken by Helispecs under clause 14; and
  - (j) irrevocably appoints Helispecs to be its attorney to do such acts and execute such documents as the Customer could personally do or execute (including the appointment of a substitute attorney) which in the opinion of Helispecs (acting reasonably) is necessary or expedient to give effect to any right, power or remedy conferred on Helispecs by these terms and conditions or the PPSA and to give effect to the matters contemplated by these terms and conditions.
15. If payment for any Application by Helispecs is outstanding by the contracting customer, according to these terms and conditions, Helispecs is entitled at its option not to undertake any further applications.
16. The customer agrees that pricing or estimates by Helispecs are only estimates (not quotations capable of acceptance by the Customer or an agreement to perform the Application at that price) and are based on information supplied by the Customer upon which Helispecs has relied and are not to be taken as final unless advised by Helispecs to the Customer in writing. Helispecs will endeavour to be as accurate as possible when giving prices or estimates however many considerations including but not limited to environmental and weather conditions on any given day, incorrect information, liquid fertilisers, label rates, variable mixes, half loads, ferry



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from loading area/strip to Application area and small or unusual blocks will affect pricing/estimates and these are subject to change. If Helispecs fails to meet its required minimum hourly rate for aerial agricultural operations for any reason whatsoever, prices will reflect the time taken and charged back, based on Helispecs hourly Aerial Application rate as applicable from time to time. Helispecs reserves the right to include a fuel surcharge above the aerial application rate in times of high Jet A1 fuel prices.

17. A positioning/ferry fee will be charge on **All** helicopter operations for the mobilisation of helicopter and equipment to the Application site if the Operation is not requested to be an hourly rate charge as stated in clause 17 of these terms and conditions. Positioning/ferry between properties for the same customer may also attract positioning/ferry fee. Fixed Wing aircraft may require a positioning/ferry fee to be charged if Helispecs acting in its sole discretion, acting reasonably, considers such a fee to be applicable in the circumstances of the Operation.
18. The Customer or their agronomist or agent warrants that it will notify Helispecs of all relevant and accurate information necessary for the applicator to carry out all appropriate planning and hazard and risk assessment and management for the Operation. Such information shall include but not be limited to hazards (including power lines and SWER lines in or near the application area) obstructions, susceptible or organic crops/farms (including neighbours within a 5km radius), grazing livestock; environmentally susceptible areas; school bus runs and times; staff or contractors working in or near the Application area and times of their entry/exit. This information must be provided on the A4 map provided to the pilot. **(NO map NO application)**
19. The Customer or their agent accepts that it is at the sole discretion of Helispecs what means are taken to ensure the management of chemical drift. Such means could include but not be limited to aircraft set-up, application technique, water rates, use of buffer zones or suspending the Application until adequate weather or environmental conditions prevail.
20. If adverse environmental conditions, including adverse weather conditions, cause any delay in the Application from that represented in the AARF (the assessment of environmental conditions shall be within the sole discretion of Helispecs), Helispecs will not be liable for any costs, claims, suits, demands or any consequential damages or losses of the Customer due to the delayed Application.
21. The Customer accepts that there may be some areas of the Application site that may not be able to be treated optimally due to the presence of hazards to safe flying including but not limited to trees, power lines and associated infrastructure, paddock shape, environmentally sensitive crops/areas, buffers and waterways. The Customer indemnifies Helispecs and agrees to keep it indemnified against any loss of yield or other issues arising as a consequence.
22. By entering into this agreement, the Customer warrants and acknowledges that any chemical required by them to be applied by Helispecs is a registered chemical for the Application and that the Application conforms to the label of the pesticide and to any relevant State legislation.
23. The Customer warrants that the product rate and Application is in accordance with the relevant registered label and that the product is registered. If that is not the case the Customer agrees to indemnify Helispecs and keep it indemnified for any loss or damage including any loss of business by Helispecs, its employees, officers, servants or agents.
24. The Customer agrees to supply Helispecs personnel with all Material Safety Data Sheets for chemicals used for the Application.
25. The Customer agrees to ensure that all staff, contractors, visitors or others are not permitted to enter or be within the Application site, its immediate surrounds for the time commencing 30 minutes before the Application until 30 minutes after the completion of the Application or for the period prescribed for re-entry into the Application site on the chemical label, whichever is the longer.
26. Any requirement for neighbour notification either specified on label or through State legislation, industry code of practice or other means shall be the sole responsibility of the Customer.
27. Any use of odorous chemicals shall be at the sole risk of the Customer and the Customer indemnifies Helispecs and will keep it indemnified from any actions arising out of the use of such chemicals.
28. If any chemical or combinations supplied to Helispecs by the Customer for application causes damage to any equipment including any aircraft or reacts and causes direct cost, or if it prohibits the aircraft from carrying out other aerial applications due to equipment or aircraft being unserviceable then minimum daily rates of two hours will be charged by Helispecs at its full gross aircraft aerial application rate for the period the equipment or aircraft remains unserviceable. All cost/charges will be paid by the Customer within 14 days from the date of invoice issued by Helispecs. The Customer also indemnifies Helispecs and will keep it indemnified for any other losses associated with that damage, including but not limited to property damage.
29. Helispecs will not carry out any Application with a generic brand of chemical. The Customer must confirm with Helispecs prior to the Application that the chemicals provided for the Application are a non-generic brand of

chemical. If the Customer chooses to use a generic brand Helispecs accepts no liability whatsoever for any damage that may be caused by the use of a generic brand of chemical. The Customer indemnifies Helispecs and will keep it indemnified for any losses in regard to the aircraft hire if a generic brand of chemical is supplied for the Application. The Customer will, in addition, be liable to Helispecs for damages of the kind referred to in *Clause 30* if a generic brand of chemical is supplied to Helispecs and inadvertently used for the Application.

30. If the Customer has any chemical sensitive crops that require spraying, including but not limited to market gardens, orchards, flowers, seedlings or requires Applications onto any type of greenhouse for sun protection purposes, Helispecs will not be held liable for any crop damage howsoever caused. The Customer will satisfy himself that the equipment used by Helispecs is fully decontaminated. The Customer may decontaminate the equipment but once the Application starts Helispecs is not be responsible for and will not accept **any** liability whatsoever for any crop damage. The Customer agrees that this clause operates and may be pleaded as an absolute bar to any claim the Customer might otherwise have against Helispecs.
31. Helispecs accepts absolutely no responsibility for any crop damage when water or liquid fertiliser has been delivered or supplied in any type of tank or vessel that has been used for the storage and cartage of any liquid, chemical or water.
32. The customer agrees that when they require, plant growth regulators, liquid or foliar fertilisers, eg, Flexi- N (UAN) or similar to be applied or tank mixed with other pesticide/herbicide, or fungicides, Helispecs accepts no responsibility for burning, stripping, uneven spread or yield loss on crops or pastures due to the nature of the product, mixing, or other chemical products added for Application.
33. All chemicals will be supplied to Helispecs at ground level and clean water is to be made available at all sites for hand washing, rinsing of containers and washing of equipment used for the Application.
34. The Customer agrees that any observation regarding chemicals, their use, rate, application or any other comment from Helispecs, staff, officers, directors, agents, contractors, servants, employees, shareholders and suppliers is a general comment and is not intended as and must not be taken as advice or a recommendation in any way and Helispecs will not be held responsible in any way whatsoever for any such comments. The Customer should at all times seek any advice regarding chemicals or application from their agronomist or other suitably qualified person.
35. When Helispecs is required to spread granulated fertilisers, the product must be supplied dry, free flowing and lump free. the customer will also supply any labour units required to open leg bins of grain doors on trailers.
36. When other contractors are contracted to work alongside Helispecs by the grower/farmer, in event of mechanical failure, weather or other factors, if Helispecs is unable to continue to finish the operation, no claim will be made against Helispecs for cost incurred by the grower/farmer from other contractors.
37. If due to hard drive or any Differential Global Positioning System (**DGPS**) failure, Helispecs is unable to download and supply a printout of the job completed the Customer agrees that it remains liable to pay the account in full on the due date.
38. The Customer accepts and agrees that if there is any discrepancy in regard to area of Application, the area of Application recorded on the DGPS will be the final figure used for invoicing by Helispecs.
39. The Customer hereby agrees and warrants that if it is approached by any government instrumentality including but not limited to the EPA, Work Cover, CASA or equivalent, with any enquiry regarding the Application the Customer will immediately notify Helispecs and provide whatever assistance Helispecs may require concerning the government instrumentality's enquiry including but not limited to all documents relating to the Application.
40. The Customer represents and warrants that it was not induced to enter into this agreement by and did not rely on any representations or warranties made by Helispecs or Helispecs servants or agents about the subject matter of this agreement. The Customer further acknowledges and warrants that these terms and conditions comprise the whole agreement between the parties and may not be varied except in writing.
41. The signing of these terms and conditions will cover **all** future aerial Applications conducted by Helispecs on behalf of the Customer from the date signed, until superseded by the signing of a new copy of Helispecs terms and conditions for aerial applications.
42. Upon signing these terms and conditions the person signing warrants if they are not the customer, that:
  - (a) they have authority to bind the customer;
  - (b) this document creates valid and binding obligations upon the customer; and
  - (c) this document is enforceable in accordance with its terms.
43. *The person signing the Helispecs Aerial Application order acknowledges that they have read and understood the Helispecs Terms & Conditions and that they have been advised that in the event of any queries arising in respect of the meaning and effect of any of these terms and conditions they should take legal advice before signing them.*

**THE CUSTOMER BY SUBMITTING AN ORDER UNDERSTANDS AND HEREBY ACCEPTS THESE TERMS AND CONDITIONS FOR AERIAL APPLICATION BY HELISPECS AVIATION PTY LTD.**