



## TERMS OF ENGAGEMENT FOR THE PROVISION OF HELICOPTER SERVICES

These terms apply to all Services supplied by HELISIKA AGRICULTURAL LIMITED (Helisika) to the Customer and products used in carrying out the Services.

### 2. DEFINITIONS AND INTERPRETATIONS

2.1 In this Contract, unless the context requires otherwise:

**"Customer"** is the person or company who has requested services from Helisika.

**"GST"** is goods and services tax in accordance to the Goods and Services Tax Act 1985.

**"Products"** means any fertiliser and chemical sprays or other products used by Helisika in carrying out the Services.

**"Project"** is the name for the Services to be completed by Helisika for the Customer as set out in the Services Order.

**"Project Costs"** are the prices listed in a Services Order detailing the Services and Products to be provided by Helisika.

**"Estimate"** means the written estimate given by Helisika to the Customer in relation to the Services and Products to be provided.

**"Services"** means the services as requested by the Customer and agreed to be provided by Helisika in the Services Order or other written agreement between the parties.

**"Services Order"** means the record of the works and Products to be supplied which the Customer has requested to be carried out and supplied by Helisika which are recorded verbally by Helisika, by email or by written plan of the services required.

**"Helisika"** means Helisika Agricultural Limited.

### 3. SERVICES

3.1 Helisika agrees to provide the Customer with the Services and to use the Products on the terms contained in this Contract.

3.2 The Customer understands that Helisika's performance is dependent on the Customer's timely and effective performance of the customer's responsibilities as set out in each Service Order or under this Agreement and timely decisions and approvals by the Customer are required. Except to the extent that the applicable Service Order contains specific acceptance provisions, all Services carried out and Product used by Helisika will be deemed accepted by the Customer if, within ten (10) days after delivery the Customer has not provided to Helisika written notice identifying specifically any basis for not accepting the Services carried out or Products used.

### 4. ESTIMATES AND SPECIFICATIONS

4.1 The Services and Products to be used at the request of the Customer are as set out in the Services Order. Subject to clause 4.2 any Services or Products not in the Services Order will not be supplied or used by Helisika unless otherwise agreed. Helisika is not liable for any errors or omissions arising from lack of instruction by the Customer.

4.2 Helisika shall carry out all reasonable variations required by the Customer to the Services Order provided that all variations are in writing and the additional cost of the variation is agreed in writing; **however where the cost for any variation is less than 10% of the Project Costs plus GST then Helisika is authorised to carry out that work without obtaining a variation in writing.** Payment for each variation shall be due on invoice.

### 5. PRICE AND PAYMENT

5.1 The price of the Service and Products is defined as the Project Costs, except where modified in accordance to this contract.

5.3 Prices are in New Zealand dollars, unless otherwise stated.

5.4 The Project Cost is exclusive of GST unless otherwise stated.

5.5 Project Costs provided by Helisika to the Customer may be withdrawn at any time prior to acceptance by the Customer. All written and verbal Estimates or Project Costs that are not accepted by the Customer within 30 Working Days shall be deemed to be withdrawn by Helisika unless otherwise agreed in writing by Helisika.

5.6 Once the contract has been accepted and unless alternative arrangements are set out in the Services Order; (a) a [ ]% deposit is required. (b) the balance of Project Cost will be invoiced upon completion of the Project.

**5.8 Any invoice remaining unpaid for more than thirty (30) days from receipt will accrue interest at a rate of fifteen per cent (15.0%) per annum. The Customer will indemnify Helisika for all reasonable costs incurred in collecting overdue amounts owed by the Customer including all expenses, disbursements, legal costs, debt collection costs or any other cost incurred by Helisika to collect the amounts owing.**

### 6. INDEMNITY

5.9 The Customer hereby indemnifies Helisika and agrees at all times hereafter to keep Helisika (and its pilots) indemnified from and against all losses and expenses which it/they may suffer or incur as a consequence of any of any breach or non-observance of any of the terms, conditions, warranties or obligations contained in this Contract to be performed or observed by the Customer. On any default or failure by the Customer to observe and perform any of the terms and conditions of the Contract, the Customer will forthwith on demand by Helisika (and/or its pilots) pay to Helisika and make good all losses and expenses sustained or incurred by Helisika (and/or its pilots) (including all legal and collection costs incurred) by reason of or in consequence of any such default or failure by the Customer.

### 7. CUSTOMER RESPONSIBILITIES

The customer shall:



7.1 Be responsible for ordering and payment directly to the manufacturer(s) for all Products used by Helisika in carrying out the Services. Helisika may at its discretion order Product on behalf of the Customer however the Customer shall remain liable for payment to the manufacturer.

7.2 Determine the appropriate Product and the appropriate mixture required in relation to all spraying jobs. Where the Customer is uncertain in regard to the appropriate Product or mixtures then the Customer shall obtain advice from the manufacturer. The Customer acknowledges that it is solely responsible for the Product(s) used and it is not relying on any advice or representation from Helisika nor has it received from Helisika any assurance or guarantee as to the merits of a product.

7.4 Notify all neighbours and other effected parties of the natures of Services to be carried out and dates and duration of the Services. The Customer shall provide Helisika a record of such notice if requested by Helisika.

7.5 Accurately identify and disclose to Helisika all boundaries of the Customer's property and notify Helisika in writing of any areas of the Customer's property where spraying cannot take place for any reason. Where the customer fails to identify an area where spraying cannot take place and Helisika (and/or its pilots) incur any liability or are subject to any fines imposed by any local government authority, the Department of Conservation or by the Court Order then the Customer shall indemnify Helisika and its pilots in attendance with clause 5.9 above.

7.6 Obtain all resource consents (if any) required to be obtained in relation to the Services or Products used.

7.7 Ensure that all stock and machinery are kept clear of Heli sika's aircraft at all times while on the ground at the Customer's property.

7.8 Ensure that all Helisika health and safety requirements are adhered to and that the Customer clearly communicates its health and safety requirements to Helisika.

## **8. DEFAULT**

8.1 If the Customer defaults on a term in this Contract, Helisika reserves the right to discontinue the Service(s) provided to the Customer.

## **10. WARRANTIES AND LIMITATION OF LIABILITY**

10.1 Helisika warrants that the Services to be performed by it will (a) conform to their description as set out in the applicable Services Order; and (b) be performed in a professional manner with due care and skill. The Customer's exclusive remedy for any breach of this warranty will be to advise Helisika not later than 10 days after the work was performed of any defect in the Services or breach of the above warranty and upon receipt of written notice Helisika shall use commercially reasonable efforts to cure the defect or remedy the breach at its expense by either (in Heli sika's sole discretion) (i) the supplying of the

Services again; or (ii) paying the cost of having the Services supplied again; or (iii) returning that part of the fee for the Services paid to Helisika for the work related to the defect. Provided that where any defect or breach is brought to Heli sika's attention later than 10 days after that work was performed then Helisika shall be under no obligation to provide any remedy whatsoever. For the avoidance of doubt a lack of results or functionality shall not be a defect as the Customer has sole responsibility for the Products used by Helisika.

10.2 To the extent permitted by law, all express or implied warranties, representations, terms and conditions other than those expressly contained in this Contract are excluded. The Customer acknowledges that it has not relied on any other term, condition, representation, warranty, matter, statement or conduct in entering into this Contract. The warranties expressly set out in this Agreement are the only warranties that the Customer receives in respect of the subject matter of this Agreement. All other warranties, representations, conditions or terms of equivalent effect that might be implied by law including any implied warranties of merchantable quality and fitness for a particular purpose, are excluded to the full extent permitted by law.

10.3 The Customer agrees that it is purchasing the Services and Products under this Agreement for the purposes of a business and the provisions of the Consumer Guarantees Act 1993 will not apply to the Services or the Product. The only warranties provided in relation to the Product are those by the manufacturer of the Product. Helisika provides no separate warranties and assumes no responsibility for the operation or effectiveness of the Product and does not warrant that the Product will operate in any particular way, produce any particular results or for any period of time

10.4 Heli sika's liability to the Customer under this Agreement is limited to the obligations set out in this Agreement and excludes any liability for any indirect or consequential loss, special damage and harm or injury suffered by the Customer or any other person arising out of or as a consequence of this Agreement, the performance of the Services or the use of the Products or any act or omission (including negligence) of Helisika.

10.5 If as a result of an aircraft emergency or issue with any load Helisika is required release a load in flight then Heli sika's liability for any damage to the load and/loss or damage suffered to the Customer's property carried by the helicopter and/or on the ground shall be limited to the amount of any insurance claim that that is paid out by Helisika 's insurance payment. For the avoidance of doubt where the loss or damage is not covered by insurance for any reason then Helisika shall have no liability to the Customer for the loss suffered.

## **11. CANCELLATION AND SUSPENSION**



11.1 Helisika reserves the right to cancel the Service(s) at any time.

11.2 If Helisika initiates its right of cancellation and the Customer is not in breach of this Contract, then Helisika will refund any fees paid in advance by the Customer.

11.3 Helisika is not liable to refund any money paid prior to a cancellation of the Services in the Contract, if cancelled by the Customer.

## **12. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**

**12.1 Where the Customer is a company any director of the Customer personally guarantees all the obligations of the Customer under this Contract.**

## **13. GENERAL**

13.1 This Contract can only be amended or supplemented in writing signed by representatives of both parties.

13.2 The parties will meet and discuss in good faith any dispute between them arising out of this Contract. Neither party may require arbitration or issue any legal proceedings (other than urgent injunction relief) in respect of any dispute unless that party has first taken all reasonable steps to resolve the dispute in good faith with the other party.

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**Signed by the Customer**

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**Signed by the Guarantor**