

Aircraft Aerial Application

Liability Policy



Notice

Your duty of disclosure

Before you enter into a contract of general insurance with us, you have a duty, under the *Insurance Contracts Act 1984*, to disclose to us every matter that you know, or could reasonably be expected to know, is relevant to our decision whether to insure you and, if so, on what terms.

You have the same duty to disclose those matters to us before you renew, extend, vary or reinstate a contract of general insurance.

Your duty however does not require disclosure of any matter:

- ▼ that diminishes the risk to be undertaken by us;
- ▼ that is of common knowledge;
- ▼ that we know or, in the ordinary course of our business, ought to know; and
- ▼ as to which compliance with your duty is waived by us.

Non-disclosure

If you do not answer our questions honestly or do not properly disclose to us, we may reduce or refuse to pay a claim or may cancel the policy. If you act fraudulently in answering our questions or not disclosing to us, we may refuse to pay a claim or treat the policy as never having existed.

Privacy Statement

The Privacy Act 1988 (as amended) now applies and requires us to inform you that:

Purpose of Collection

We collect personal information (this is information or an opinion about an individual whose identity is apparent or can reasonably be ascertained and which relates to a natural living person) from or about you, for the purposes of:

- ▼ providing insurance services to you,
- ▼ evaluate your application,
- ▼ evaluate any request for amendment to any insurance provided,
- ▼ issuing, administering and managing the insurance provided following acceptance of an application; and
- ▼ investigating and, if covered, manage claims made in relation to any insurance you have with us or other members of the group of companies to which we belong.

The personal information collected can be used or disclosed by us for a secondary purpose related to those purposes listed above, but only if you would reasonably expect us to use or disclose the information for this secondary purpose.

However for sensitive information, the secondary purpose must be directly related to the purposes listed above.

Disclosure

When necessary and in connection with the purposes listed above, we may disclose your personal information to, and/or receive some personal information from:

- ▼ other members of the group of companies to which we belong,
- ▼ your insurance intermediary or our agent,
- ▼ Government bodies, loss assessors, claim investigators, reinsurers,
- ▼ other insurance companies, mailing houses, claims reference providers, legal and other professional advisers,
- ▼ other service providers, hospitals, medical and health professionals.

Consequences if Information is not Provided

If you do not provide us with the information we need we will be unable to consider your application for insurance cover, administer your policy or manage any claim under your policy.

Access

You can request access to the personal information we hold about you by contacting us at the address shown on this proposal form.

In some circumstances we may not agree to allow you access to some or all of the personal information we hold such as when it is unlawful to give it to you. In such cases we will give you reasons for our decision.

Privacy Statement issued

Vero Insurance Limited, GPO Box 3999, Sydney NSW 2001.

Code of Practice

We have adopted the General Insurance Code of Practice. Please contact us for more information.

*Note: Words in **bold print** have the special meanings set out in the Definitions section of this policy.*

Agreement to Insure

- 1 The **insurer** agrees with the **insured** to pay on behalf of the **insured** all sums which the **insured** shall become legally liable to pay as damages for **bodily injury** and **property damage** caused by an **occurrence** and arising out of the ownership or use of the aircraft as detailed in the Schedule whilst engaged in **aerial application**.
- 2.1 The liability of the **insurer** under this policy shall not exceed the amount stated in item 4 of the Schedule less any applicable deductible. The **insurer** will defray in addition any legal costs and expenses incurred with its written consent in defending any action which may be brought against the **insured** in respect of any claim for damages covered by this policy, but should the amount paid or awarded in settlement of such claim exceed the limit of liability then the liability of the **insurer** in respect of such legal costs and expenses shall be limited to such proportion of the said legal costs and expenses as the limit of liability bears to the amount paid for damages.
- 2.2 In respect of claims covered by the policy, the **insurer** will pay expenses incurred by the **insured** for such immediate medical and surgical relief to others as shall be imperative at the time of the **occurrence**;

Territory of Use

- 3 This policy applies only whilst the aircraft is within the geographic limits of **Australia**.

Two or More Aircraft

- 4 When two or more aircraft are insured under this policy, the terms of this policy shall apply separately to each.

Deductible

- 5 It is understood and agreed that in the event of a claim arising in respect of **property damage** the **insured** shall bear the deductible shown in the Schedule in respect of each and every **occurrence**.

Exclusions

- 6 This policy does not apply:
 - 6.1 **Restriction on Use**
To the use of the aircraft for other than aerial application or while the aircraft is neither owned, operated nor in the care, custody or control of the **insured**;
 - 6.2 **Pilots**
While the aircraft is being piloted by any person other than as stated in item 7 of the Schedule except that the aircraft may be operated on the ground by any person competent for that purpose;
 - 6.3 **Passengers and Crew**
To **bodily injury** sustained by any passenger or any pilot or member of the crew of the aircraft whilst acting in their capacity as such;
 - 6.4 **Insured's property**
To **property damage** to property owned or occupied by or rented to the **insured** or in the care, custody or control of the **insured**.
 - 6.5 **Deliberate spraying**
To **property damage** to any crops, pastures, trees, vines or other property to which the **aerial application** is deliberately made whether in error or not.
 - 6.6 **Contractual liability or waiver**
To liability assumed or rights waived by the **insured** under any agreement, except to the extent that such liability would have attached to the **insured** in the absence of such agreement.
 - 6.7 **Sub-contractors**
To liability arising from any work undertaken by the **insured's** sub-contractors.
 - 6.8 **Loss of chemicals, fertiliser etc**
To liability for any chemical, fertiliser, seed or baits lost, damaged or destroyed as a result of the dumping of the same or arising out of any crash, fire, explosion or collision of the aircraft.

- 6.9 **Employees and Workers' Compensation**
- 6.9.1 to **bodily injury** to any director or employee of the **insured** or partner in the **insured's** business whilst acting in the course of his employment with or duties for the **insured**.
- 6.9.2 to any part of a claim in connection with the entitlement of a worker or employee to compensation in respect of loss of income or earnings by reason of any workers' compensation, employees' compensation, accident compensation, occupational health and safety or similar legislation, other than a subrogation claim brought by an **insurer** to recover sums paid pursuant to such legislation, which is not otherwise excluded by this policy.
- 6.10 **Residential area**
To the application of any chemical within any zoned residential area;
- 6.11 **Liability of farmer etc**
To liability of the farmer, grower, owner or occupier of the property intended to be subject to **aerial application**, unless specifically included in the Schedule or by endorsement as an additional **insured** and the appropriate additional premium has been paid.
- 6.12 **Special chemicals**
To **bodily injury** or **property damage** caused by or resulting from the use of:
- 6.12.1 inorganic arsenical preparations or compounds such as sodium arsenate, sodium arsenite and the like and/or dust formulations of defoliants or desiccants; or
- 6.12.2 endosulphin where the crops sprayed are cotton crops that are subsequently used as animal feed.
- 6.13 **Prohibited chemicals**
To **bodily injury** or **property damage** caused by or resulting from the use of unregistered or prohibited chemicals or non-compliance by the **insured** with any manufacturer's printed directions and/or any Federal or State laws, regulations or the requirements or directions of any appropriate authority in respect of the chemical or seed being applied;
- 6.14 **Exemplary damages**
To aggravated, exemplary or punitive damages or for any fines or penalties;
- 6.15 **War, hijacking and other perils**
To claims excluded by the attached WAR, HIJACKING AND OTHER PERILS EXCLUSION CLAUSE (AVN.48B);
- 6.16 **Noise and pollution**
To claims excluded by the attached NOISE AND POLLUTION AND OTHER PERILS EXCLUSION CLAUSE (AVN.46B), with paragraph 1(b) deleted;
- 6.17 **Liability to another insured**
To the liability of one **insured** to another **insured**;
- 6.18 **Radioactive Contamination**
- 6.18.1 To loss of or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss;
- 6.18.2 To any legal liability of whatsoever nature
directly or indirectly caused by or contributed to by or arising from:
- (i) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (ii) ionising radiations or contamination by radioactivity from, or the toxic, explosive or other hazardous properties of, any other radioactive source whatsoever.

Conditions

Assignment

- 7 This policy shall not be assigned in whole or in part except with the consent of the **insurer** verified by endorsement hereon.

Compliance

- 8 The **insured** shall comply with the *Air Navigation Act 1920* (Commonwealth, as amended) the *Civil Aviation Act 1988* (Commonwealth, as amended), all regulations and orders made thereunder, all other applicable statutory and regulatory requirements relating to aircraft or flying, and all air navigation and airworthiness orders and requirements issued by any competent authority affecting the safe operation of the aircraft and shall ensure that:
- 8.1 The aircraft is airworthy at the commencement of each flight;
- 8.2 All log books and other records in connection with the aircraft which are required by any official regulations in force from time to time shall be kept up to date and shall be produced to the insurer or its agents on request;

8.3 The employees and agents of the **insured** comply with such statutory and regulatory requirements and orders.

Due Diligence

9 The **insured** shall at all times use due diligence and do and concur in doing everything reasonably practicable to avoid accidents and to avoid or diminish any loss hereon.

Variation in Risk

10 Should there be any change in the circumstances or nature of the risks which are the basis of this contract the **insured** shall give immediate notice thereof to the **insurer** and no claim arising subsequent to such change shall be recoverable hereunder unless such change has been accepted by the **insurer**.

Goods and Services Tax

11 The premium charged for this policy will include an amount on account of Goods and Services Tax (GST), where applicable.

The **insured** must inform the **insurer** of the extent to which the **insured** is entitled to an input tax credit for the premium, in relation to the period during which the **insured** event happened, each time that a claim is made under this policy. No payment will be made to the **insured** for any GST liability that the **insured** may incur on the settlement of a claim if the **insured** has not informed the **insurer** of their entitlement or correct entitlement to an input tax credit.

Despite the other provisions of this insurance (including provisions in the wordings, any schedules and any endorsements), the **insurer's** liability will be calculated taking into account any input tax credit to which the **insured** is entitled for any acquisition relevant to a claim, or to which the **insured** would have been entitled were the **insured** to have made a relevant acquisition.

If the sum insured or policy limit is not sufficient to cover the **insured's** loss, the **insurer** will only pay GST (less any relevant input tax credit) that relates to the **insurer's** proportion of the **insured's** loss. The **insurer** will pay that GST amount in addition to the sum insured or policy limit.

'GST', 'input tax credit', 'acquisition' and have the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999*.

Insurance Contracts Act

12 Nothing in this contract of insurance will affect the rights of the **insured** or the **insurer** under the *Insurance Contracts Act 1984* as amended from time to time. Where such Act is applicable and in the event that there is a conflict between the provisions of this policy and the Act, then the provisions of this policy shall be amended as necessary in order to comply with the requirements of such Act.

Cancellation

13 Subject to the provisions of the *Insurance Contracts Act 1984*, this policy may be cancelled by either the **insurer** or the **insured** giving 10 days notice in writing of such cancellation. If cancelled by the **insurer**, it will return a pro rata portion of the premium in respect of the unexpired period of the policy. If cancelled by the **insured**, the premium shall be adjusted on the basis of the **insurer** receiving or retaining premium as follows:

Policy in force	Premium payable
less than 31 days	33% of annual premium
31 days or more and less than 61 days	60% of annual premium
61 days or more and less than 91 days	75% of annual premium
91 days or more and less than 120 days	85% of annual premium
120 days or more	100% of annual premium

The **insured** is not entitled to a return of premium if any claim or claims have been paid or are payable by the **insurer** under this policy.

Limit of liability

14 Notwithstanding the inclusion in this policy of more than one **insured** whether by endorsement or otherwise, the total liability of the **insurer** in respect of any or all **insureds** shall not exceed the limit(s) stated in the Schedule.

Other insurance

15 This policy does not cover claims which are payable under any other policy or policies of insurance except in respect of any excess beyond the amount which would have been payable under such other policy or policies had this policy not been effected.

Subrogation

16 In the event of any payment under this policy, the **insurer** shall be subrogated to all the **insured's** rights of recovery against any person or organisation and the **insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **insured** shall do nothing to prejudice such rights.

False and fraudulent claims

- 17 If the **insured** shall make any claim knowing the same to be false or fraudulent as regards amount or otherwise, the **insurer** shall be entitled to refuse the claim.

Claims procedure

- 18 Immediate notice of any **occurrence** likely to give rise to a claim under this policy shall be given to the **insurer**. In all cases the **insured** shall:
- 18.1 furnish full particulars in writing of such **occurrence** and forward immediately notice of any claim with any letters or documents;
 - 18.2 give notice of any impending prosecution relating to the **occurrence**;
 - 18.3 render such further information and assistance as the **insurer** may reasonably require;
 - 18.4 not act in any way to the detriment or prejudice of the interest of the **insurer**.
- The **insured** must not make any admission of liability or payment or offer or promise of payment without the written consent of the **insurer**.

Claims control

- 19 The **insurer** shall be entitled (if it so elects) at any time and for so long as it desires to take absolute control of all negotiations and proceedings and in the name of the **insured** to settle, defend or pursue any claim.

Mitigation of loss

- 20 The **insured** shall co-operate with the **insurer** and do all things necessary or required by the **insurer** to mitigate any loss to which this policy may respond.

Applicable law

- 21 This policy shall be construed in accordance with Australian law and any dispute or difference between the **insured** and the **insurer** shall be submitted to a court in **Australia** for determination.

Definitions

- 22 In this insurance:
- 22.1 '**aerial application**' means the spraying or dropping of chemical or seed from an aircraft'
 - 22.2 '**Australia**' means continental Australia but excluding its external Territories.
 - 22.3 '**bodily injury**' means physical injury, sickness or disease including resultant death at any time but not nervous shock, psychological injury, mental anguish or distress, unless directly resulting from a physical injury that is not otherwise excluded.
 - 22.4 '**insured**' includes the named insured stated in the Schedule and any partner, executive officer, director or employee if the named insured is a corporation but only while acting within the scope of his duties as such and any properly qualified and licensed pilot operating the Aircraft on behalf of and with the knowledge and consent of the insured and who complies with the requirements of item 7 of the Schedule.
 - 22.5 '**insurer**' means Vero Insurance Limited.
 - 22.6 '**occurrence**' means an accident, or a continued or repeated exposure to conditions occurring during the period of insurance, which results in **bodily injury** and/or **property damage**, provided the **bodily injury** and/or **property damage** is accidentally caused.

All **bodily injury** and/or **property damage** arising out of such exposure to substantially the same general conditions shall be treated as arising out of one occurrence.

Furthermore, all spraying or dropping of one type of chemical or seed for one farmer, grower, owner or occupier during one calendar day shall be considered as one occurrence.
 - 22.7 '**passenger**' means any person other than the pilot or member of the crew of the aircraft while in, on or boarding the aircraft for the purposes of riding or flying therein or alighting from the aircraft following flight or attempted flight therein.
 - 22.8 '**property damage**' means physical damage to or destruction of tangible property including the resultant loss of use of such property.

Schedule

Policy No.: _____

1. **Name of Insured:** _____

Address: _____

2. **Premium:**

\$ _____

3. **Policy period of insurance:**

From: _____ at: _____ am/pm

To: _____ at: _____ am/pm

4. **Limit of liability:**

Bodily injury and property damage liability \$ _____ each **occurrence**

5. **Description of aircraft:**

Make and model

Year of manufacture

Registration mark

6. **Uses:**

Aerial application only _____

7. **Pilot requirements:**

Named pilots: _____

Other pilots who have a current and valid certificate of competency and medical certificate and have a minimum:

7.1 Total Logged Fixed Wing Flying Hours of: _____

7.2 Total Logged Helicopter Flying Hours of: _____

7.3 Total Logged Fixed Wing Aerial Application Flying Hours of: _____

7.4 Total Logged Helicopter Aerial Application Flying Hours of: _____

8. **Deductible:**

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