

Policy Wording

Aircraft and Aerial Application



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Whereas Vero Liability Insurance Limited (herein after called the "Company"), agree with the Insured, named in the Schedule made a part hereof, in consideration of the payment of the Premium, and in reliance upon the statements in the Declarations and subject to the Limits of Liability, Exclusions, Conditions and Other Terms of this policy to indemnify the Insured in respect of all claims first made against the Insured and reported to the Company during the policy period.

Insuring Agreement

Coverage - Single Limit - Bodily Injury (Excluding Passengers, Pilots and Crew) And Property Damage Liability

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages, including damages for care and loss of services, because of Bodily injury, sustained by any person excluding any passenger, pilot or member of the crew of the Aircraft whilst acting in their capacity as such, and for damages because of injury to or destruction of property, including loss of use thereof, caused by an occurrence and arising out of the ownership, maintenance of use of the aircraft including Aerial Application.

The terms "Bodily injury" wherever used shall include death and sickness.

Endorsement

Notwithstanding anything contained herein to the contrary under the Insuring Agreement above, this Policy shall cover only the Insured's Legal Liability for Bodily injury and/or property damage caused by Aerial Application during the policy period of insurance caused by an occurrence by the Aircraft described in, and used for, the purpose stated in the Schedule.

Supplementary Payments 115

In respect of claims covered by the Policy the Company will:

- (a) Pay all Premiums on bonds to release attachments for an amount not in excess of the limit of liability of this Policy, all Premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish any such bonds.
- (b) Defend in the name of the Insured and on his behalf any suit against the Insured alleging such Bodily injury or injury to or destruction of property and seeking damages on account thereof even if such suit is groundless, false or fraudulent; but the Company shall be under no obligation to defray any law costs or to defend law suits against the Insured based on claims not covered under this Policy.
- (c) Pay expenses incurred by the Insured for such immediate medical and surgical relief to others as shall be imperative at the time of the accident.
- (d) Pay expenses incurred by the Company for investigation, adjustment and defence and reimburse the Insured for all reasonable expenses, other than loss of earnings, incurred at the Company's request.

Nothing contained in the above shall increase the Company's liability above the aggregate limit of liability stated in the Schedule.

Automatic Insurance of Newly Acquired Aircraft

- (a) If the Insured acquires ownership of another aircraft or similar type and so notifies the Company within 30 (thirty) days following the date of its delivery to him such insurance as is afforded by this Policy applies also to such aircraft as of such delivery date.
- (b) This Insuring Agreement does not apply to any claim against which the Insured has other valid and collectible insurance.

The Insured shall pay the prescribed Additional Premium required because of the application of the insurance to such other aircraft as stated in Condition 6 hereon.

Territory of Use

This Policy applies only whilst the aircraft is within New Zealand.

Exclusions

This policy does not apply:

- (a) To the use of the Aircraft for any purpose other than those uses described in the Schedule; or while the Aircraft is neither owned, operated nor in the care, custody or control of the Insured.
- (b) While the aircraft is being flown by any person who does not comply with all of the requirements of Item 7 of the Schedule.
- (c) To injury to, or destruction of any property owned or occupied by, or rented to the Insured or any property in the care, custody, or control of the Insured, or property as to which the Insured for any purpose is exercising physical control.
- (d) To injury to, or destruction of any crops, pastures, trees, or tangible property to which the Aerial Application is deliberately made whether in error or not.
- (e) To liability of others assumed by the Insured under any contract or agreement, oral or written, unless such liability would have attached to the Insured even in the absence of such agreement.
- (f) To any obligation for which the Insured, or his insurer, may be held liable under any workmen's compensation, unemployment compensation or disability benefits law or under any similar Law; or to Bodily injury of any employee of the Insured arising out of and in the course of his employment by the Insured or his sub-contractor.
- (g) To the application of any chemical within the area of any zoned residential area of any incorporated city or town unless specifically endorsed hereon.
- (h) To liability of the Farmer and/or Owner and/or Grower.
- (i) To Bodily injury or property damage caused by, or resulting from, the use of inorganic arsenical preparations or compounds such as sodium arsenate, sodium arsenite and the like and/or dust formulations of defoliant or desiccants.
- (j) To Bodily injury or property damage caused by or resulting from, non-compliance by the Insured with the manufacturers printed directions and/or the regulations under the Agricultural Compounds and Veterinary Medicines Act 1997 or those of any appropriate authority of the chemical or seed being applied.
- (k) To exemplary or punitive damage.
- (l) To war, hi-jacking and other perils as more fully set forth in the attached **War, Hi-Jacking and Other Perils Exclusion Clause** (AVN 48B).
- (m) To noise and other perils as more fully set forth in the attached **Noise and Pollution and Other Perils Exclusion Clause** (AVN 46B).
- (n) If the Insured does not comply with all air navigation and airworthiness orders and all other requirements and regulations issued by any competent authority and does not take all steps to ensure that such orders, requirements and regulations are strictly complied with by their agents and employees and that the aircraft shall be airworthy at the commencement of each flight.
- (o) To the liability of one Insured to another Insured.
- (p) To liability for Bodily injury which is covered by the Accident Insurance Act 1992.
- (q) To claims made against the Insured after the expiration of the policy period
- (r) To any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of, asbestos in whatever form or quantity.
- (s) To any death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by,

resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (i) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property under the order of any government or public or local authority; or
- (ii) any act of terrorism.

Definition: "act of terrorism" means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic, or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion also excludes death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (i) and/or (ii) above;

Radioactive Contamination Exclusion Clause This Policy Does Not Cover:

- (a) Loss, or destruction of, or damage to, any property, or any loss or expense resulting or arising therefrom.
- (b) Any legal liability of whatsoever nature, directly or indirectly caused or contributed to by or arising from ionising radiations or contamination by radioactivity from any source.

Deductible

It is understood and agreed that in the event of a claim arising in respect of property damage resulting from Aerial Application, the Insured shall bear the deductible stated in the Schedule for each and every occurrence including costs and expenses.

It is further understood and agreed that the Insured shall remit to the Companies, or their authorised representative, on demand, any portion of or whole amount of the Deductible pertaining to any claim, to be used by the Company or as representatives in settlement of claims covered under this Policy. Sums collected from the Insured under this Deductible provision shall be used solely for the purpose of extinguishing, in good faith, claims brought against the Insured, pursuant to authority to settle such claims afforded the Company. All sums collected from the Insured by the Companies pursuant to this Deductible obligation, which are not ultimately employed for settlement of outstanding claims shall be returned to the Insured by the Companies without interest or other charge.

Conditions

1. Notice of Occurrence

It is a mandatory condition of this Policy that **immediate notice** of any occurrence likely to give rise to a claim shall be given to the Companies or any of their representatives by, or on behalf of, the Insured as soon as the Insured or his responsible employees, agent or representative have knowledge thereof. The type of Bodily injury or property damage from operations by the Insured is such that a determination as to whether the claimed Bodily injury or property damage is embraced within the coverage of this Policy cannot be made until notice of the occurrence which may possibly give rise to claims is given to the Companies at the time of that occurrence. It is a specific

provision of this Policy that failure to comply with the provisions requiring **immediate notice** of the occurrence which may possibly give rise to claim shall be presumed to cause the Companies to suffer substantial prejudice, and such failure to give **immediate notice** shall automatically exclude coverage, and the Companies shall have no liability for such Bodily injury or property damage.

2. Notice of Claim or Suit

If a claim is made or suit is brought against the Insured, the Insured shall immediately forward to the Companies every demand notice, summons or other process received by him or his representatives.

3. Assistance and Co-Operation of the Insured

The Insured shall co-operate with the Companies and, upon the Companies request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The Insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense, other than such immediate medical and surgical relief to others as shall be imperative at the time of occurrence.

4. Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or stop the Companies from asserting any right under this Policy; nor shall any part of this Policy be waived or changed, except by endorsement signed by the Company and issued to form part of this Policy.

5. Assignment

This Policy shall not be assigned in whole or in part except with the consent of the Company verified by endorsement signed by the Company and issued to form part of this Policy. If, however, the Insured shall die or be adjudged bankrupt, or insolvent within the Policy period, this Policy, unless cancelled, shall, if written notice be given to the Company within 30 (thirty) days after the date of such death or adjudication, cover: (a) the Insured's legal representative as the Insured and (b) any person having proper temporary custody of the Aircraft, as an Insured, until the appointment and qualification of such legal representative but in no event for a period of more than 30 (thirty) days after the date of such death or adjudication.

6. Cancellation, Substitution, Addition, Deletion or Alteration

This Policy may be cancelled by the Insured by surrender thereof or by mailing to the Company written notice stating when thereafter such cancellation shall be effective. This Policy may be cancelled by the Company by mailing to the Insured, at the address shown in this Policy, written notice stating when, not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the Policy period. (Delivery of such written notice either by the Insured or by the Company shall be equivalent to mailing).

If the Company cancels, earned premiums shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or, if not then, as soon as practicable after cancellation becomes effective. The Company cheque or the cheque of their representative mailed or delivered as aforesaid shall be sufficient tender of any refund of Premium due to the Insured.

In the event of cancellation of this Insurance by the Insured or in the event of substitution, addition and deletion of aircraft and/or alteration of cover, the Premium in respect of each aircraft shall be calculated as set forth below, unless otherwise agreed by the Company.

No return of Premium will be made in respect of any aircraft which has been the subject of a claim hereunder.

Policy in force less than 31 days	33.33% 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

7. Limits of Liability

The limit of liability stated in the Schedule is the limit of the Company liability for all damages arising out of any one Occurrence and in the aggregate. Notwithstanding the inclusion herein of more than one Insured whether by endorsement or otherwise, the total liability of the Company in respect of any or all Insureds shall not exceed the limit(s) stated in the Schedule.

8. Other Insurance

This Insurance does not cover any liability which at the time of happening is insured by, or would but for the existence of this Policy, be insured by any other existing Policy or Policies except in respect of any excess beyond the amount which would have been payable under such other Policy or Policies if this insurance had not been effected.

9. Subrogation

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

10. Action Against the Company

No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all of the terms of this Policy, nor until the amount of the Insured's obligation to pay shall have been finally determined, either by judgement against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company.

11. Schedule of Statements

By acceptance of this Policy the Insured agrees that the statements in the Schedule are his agreements and representations, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between himself and the Company relating to this Insurance.

12. Misrepresentation and Fraud

This Policy shall be void if the Insured has concealed or misrepresented any material fact or circumstance, whether under the Declarations or not, concerning this Insurance, or the subject thereof, or in case of any fraud, attempted fraud or false swearing by the Insured touching any matter relating to this Insurance or the subject hereof, whether before or after a loss.

13. New Zealand Jurisdiction Clause

In relation to all claims arising under this Insurance the Company submits to the Jurisdiction of all New Zealand Courts. It agrees that service of legal process and of any notification required under this Policy upon the Company shall be good and sufficient service and shall be equivalent to personal service upon them and each of them. It further agrees that the Company will abide and be bound by the ultimate decision in any action against any of them in relation to such matters as aforesaid.

14. Arbitration Clause

Should any dispute occur between the Insured and the Company concerning this Policy or the subsistence or interpretation thereof or concerning any breach of any of the provisions thereof or arising in any way directly, or indirectly, out of, or connected with this Policy, such dispute shall be referred to arbitration in the manner provided by the Arbitration Act 1908 and its amendments.

The making of any award upon any such dispute shall be a condition precedent to any action upon or relation to such dispute, the Insured and the Company agreeing that no cause of action shall arise upon or relate to such dispute until the making of an award as aforesaid.

Definitions

1. Insured

The unqualified word "Insured" includes:

- (a) The Insured and any partner, executive officer, director or employees, if the Insured is a corporation, but only while acting within the scope of his duties as such.
- (b) 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.

2. Passenger

shall mean 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, alighting from the Aircraft following flight, or attempted flight, therein.

3. Occurrence

means either an accident happening during the Policy period which unexpectedly or unintentionally causes Bodily injury, or injury to or destruction of, property during the Policy period. All spraying or dropping of one type of Chemical or seed for one Farmer/Owner/Grower during one calendar day shall be considered as one occurrence.

4. Aerial Application

shall mean the spraying or dropping of Chemical or seed.

5. Chemical

means agricultural chemicals registered by the Director General of the Ministry of Agriculture and Forestry under the Agricultural Compounds and Veterinary Medicines Act 1997, but excluding all dust formulations.

6. War, Hi-Jacking and Other Perils Exclusion Clause (Aviation) AVN 48B

This Policy does not cover claims caused by:

- (a) War, invasion, acts of foreign enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power.
- (b) Any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- (c) Strikes, riots, civil commotions or labour disturbances.
- (d) Any act of one or more persons, whether or not agents of Sovereign Power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional.
- (e) Any malicious act or act of sabotage.
- (f) Confiscation, nationalisation seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any government (whether civil military or de facto) or public or local authority.

- (g) Hi-jacking or any unlawful seizure or wrongful exercise of control of the Aircraft or crew in flight (including any attempt at such seizure or control) made by any person or persons on board the Aircraft acting without the consent of the Insured.

Furthermore this policy does not cover any claims arising whilst the Aircraft is outside the control of the Insured by reason of any of the above perils.

The Aircraft shall be deemed to have been restored to the control of the Insured on the safe return of the Aircraft to the Insured at an airfield not excluded by the geographical limits of this Policy, and entirely suitable for the operation of the Aircraft (such safe return shall require that the Aircraft be parked with engines shut down and under no duress).

7. Noise and Pollution and Other Perils Exclusion Clause (AVN 46B)

1. This Policy does not cover claims directly or indirectly occasioned by, happening through or in consequence of:
 - (a) Noise (whether audible to the human ear or not), vibration, sonic boom and any phenomena associated therewith.
 - (b) pollution and contamination of any kind whatsoever.
 - (c) Electrical and electromagnetic interference.
 - (d) Interference with the use of property; unless caused by or resulting in a crash, fire, explosion, collision, or recorded in-flight emergency causing abnormal aircraft operation.
2. With respect to any provision in the Policy concerning any duty of Company to investigate or defend claims, such provision shall not apply and the Company shall not be required to defend:
 - (a) Claims excluded by Paragraph 1; or
 - (b) A claim or claims covered by the Policy when combined with any claims excluded by Paragraph 1 (referred to below as "Combined Claims").
3. In respect of any Combined Claims, the Company shall (subject to proof of loss and the limits of the Policy) reimburse the Insured for that portion of the following items which may be allocated to the claim(s) covered by the Policy:
 - (a) damages awarded against the Insured and
 - (b) defence fees and expenses incurred by the Insured.
4. Nothing herein shall override any radioactive contamination or other exclusion clause attached to or forming part of this Policy.

