

HELIWORX WAIKATO LIMITED - TERMS OF TRADE

In the Terms of Trade on the following pages:

"we", "us", and "our" to refer to Heliworx Waikato Limited;

"you" to refer to you, our Customer.

"Services" means all Services, goods and services provided and undertaken by us to and for you at your request.

By ordering Services from us, you agree to these Terms of Trade to the exclusion of your terms (" any).

Client Name: _____

Farm Name: _____

Email address: _____

Signature: _____

Name of person signing: _____

Date: _____

Signed to show you have read and understood Heliworx Terms of Trade if not completing/signing this electronically.

1. ESTIMATES

- 1.1 Unless stated otherwise, any price we give you for Services is an estimate ("the Estimate") on a plus GST basis of the anticipated cost for us to complete that Services. The Estimate is subject to clause 4 below.
- 1.2 The Estimate is open for acceptance for 20 days after it is dated unless withdrawn by us prior to acceptance.
- 1.3 We are entitled to, but not obligated to, commence the Services until you have accepted the Estimate in writing and signed a copy of or otherwise acknowledged your acceptance of these Terms of Trade.

2. PRICE

- 2.1 Notwithstanding any Estimate given, unless we have agreed in writing to be bound by a set price for the Services, you shall pay to us our actual cost of completing the Services ("the Actual Cost") which will be calculated by totaling the following:
 - (a) the number of hours of service multiplied by the hourly rates for the people providing the Services and equipment involved on the date which the Services are undertaken or if the supply occurs over more than one day, the relevant hourly rates on the last day on which services are rendered;
 - (b) any disbursements (including, without limitation, delivery costs) incurred by us on your behalf;
 - (c) the cost of any goods supplied by us as part of the Services.
- 2.2 The Actual Cost and all prices are plus GST and other taxes which are payable in respect of the Services by you in New Zealand dollars.
- 2.3 Disbursements incurred by us on your behalf may include a reasonable margin markup by us.
- 2.4 In the event these Terms of Trade are terminated in accordance with clause 9.2(d) or by you under clause 19 prior to completion of the Services, you must immediately pay us the Actual Cost at the termination date plus 50% of the balance of the part of the Estimate that relates to the current stage of the Services as described in the agreed task description of the Services.

3. TERMS OF PAYMENT

- 3.1 We may require you to pay a deposit, being an advanced payment for the Services, before we commence the Services.
- 3.2 Payment for the Services (and any associated expenses and disbursements) is due on the 20th day of the month following the date of our invoice except where we have agreed in writing that other terms shall apply (the Due Date").
- 3.3 If you do not make payment on the Due Date, you are in default and must pay default interest at the rate of 18% per annum, which shall accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full.
- 3.4 Notwithstanding clause 3.3, if payment is outstanding for 7 days from the Due Date, we may suspend performing the Services until the date of payment in full (subject always to clause 3.5). You must pay in cleared funds for any Services done by us until payment is made in full (together with any accrued interest).
- 3.5 We may notify you at any time that we have ceased to carry out the Services. This cessation does not relieve you of payment of amounts owing up to the date on which the contract is terminated.
- 3.6 Payment of all money shall be without set-off or deduction of any kind.
- 3.7 We will apportion payments to outstanding accounts as we think fit.

4. PERFORMANCE OF SERVICES

- 4.1 We will:
 - (a) perform the Services with reasonable skill, care and diligence in a professional manner;
 - (b) endeavor to ensure that the Services are performed in accordance with any time frames agreed in writing with you;
 - (c) liaise with you during the course of performing the Services in accordance with your reasonable requirements.
- 4.2 You will give reasonable assistance to enable us to perform the Services by:
 - (a) giving clear instructions. All maps and instructions for treatment areas must clearly identify any sensitive areas, buffer zones, hazards, and areas to be avoided;
 - (b) promptly providing any information or content required from you for us to complete the Services;
 - (c) ensuring that the Services and products derived from the Services are fit for the purpose you intend to use them for and meet any appropriate statutory, regulatory, governmental and industry and environmental controls, standards or practices;
 - (d) adhering to our staff's instructions and any requirements we may have arising under our Operating and Safety Management Systems.
 - (e) Notifying all persons who could be affected by the aerial agrichemical application, including but not limited to all neighboring landowners.
 - (f) Ensuring signage is in place to advise that agrichemical application is being and/or has been carried out and will remain in place for the Re-Entry period for the agrichemical used.
- 4.3 If we have given you a time frame for completion of the Services, unless agreed in writing to the contrary such time frame is approximate only and is not deemed to be of the essence of the contract.

- 4.4 Any advice, recommendation or information provided by us in respect to goods provided by third parties is provided on an "all care, no responsibility" basis and the Customer shall obtain advice on such third-party goods direct from the manufacturer of such goods.

5. ENVIRONMENTAL COMPLIANCE

- 5.1 In addition to the matters set out in Clauses 4.2 - 4.4 inclusive above, the following specific provisions apply to compliance with all environmental statutes, regulations, rules, standards and other legal requirements that apply to the Services we do for you ("Environmental Compliance"):
- (a) Although our staff are trained to be aware of environmental responsibilities, the Services and services we provide to you do not include ascertaining or advising on what is required to ensure environmental compliance;
 - (b) It is your responsibility before we commence any Services for or services for you to:
 - (i) Ascertain what environmental statutes, regulations, rules and other regulations that apply to the Services or ensure that you obtain the appropriate advice from a suitably qualified environmental consultant; and
 - (ii) If any of the above (Clause (b) (f)) apply you must provide us with written confirmation of the requirements that apply and what is required by us to ensure environmental compliance when undertaking that work and those services for you. That confirmation must include copies of all consents, permitted activity rules, applicable conditions, regulations or other requirements and any plans, maps or other information required to be able to understand what is necessary to ensure environmental compliance when undertaking those works and that Services, in such detail as is appropriate for the Services or services in question;
 - (c) Should you indicate to us in writing prior to commencement of any Services for you that you will not be in a position to provide the written confirmation referred to in Clause (b)(i) above, we will, at your cost, obtain that confirmation from a suitably qualified environmental consultant, before we commence any Services for you. That cost will be in addition to the price payable for our Services for you as set out in clause 2 above;
 - (d) It is also your responsibility to ensure that any of your staff or other contractors or agents involved with any Services or services we do for you have all the information, training and supervision needed to ensure their and your environmental compliance in connection with that Services or those services. We will not provide them with any advice, supervision or assistance in relation to ensuring their or your environmental compliance;
 - (e) Should there be any allegation of or investigation into any allegation of a breach of our environmental compliance requirements in connection with Services or services we perform for you, you must ensure that you, your employees and your other consultants or agents provide such cooperation and evidence as is necessary to establish that you were required by us and did provide, on the basis set out above, the information required by Clause (b)(ii) above.

6. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- 6.1 All terms in this clause 6 have the meaning given in the PPSA and section references shall be to sections of the PPSA.
- 6.2 Clause 1.1 creates a security interest in goods we supply to you as part of the Services.
- 6.3 You shall not grant any other security interest or any lien over goods that we have a security interest in.
- 6.4 At our request you shall promptly sign any documents and do anything else required by us to ensure that our security interest constitutes a first ranking perfected security interest in the goods.
- 6.5 We may at any time enter your premises and properties to uplift goods that we have a security interest in.
- 6.6 If goods that we have a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled goods, our security interest will continue in the whole in which they are included. You shall not grant any other security interest or any lien in either the goods or in the whole.
- 6.7 You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, and 134 of the PPSA.
- 6.8 You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA).
- 6.9 You will give us prior written notice of a proposed change of your name or address.

7. WARRANTIES

- 7.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. We exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 7.2 The parties acknowledge and agree that:
- (i) you are acquiring the goods and/or services covered by these Terms for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993;
 - (ii) the goods and/or services are both supplied and acquired in trade from the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9 (Misleading and deceptive conduct generally), 12A (Unsubstantiated representations), and 13 (False or misleading representations); and

- (iii) you agree that all warranties, conditions, and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, and 13 of the Fair Trading Act 1986 are excluded from these Terms to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.
- 7.3 In addition, you warrant that all information to be provided by you under Clause 5 above will be correct, complete and provided prior to commencement of any Services or services for you. You indemnify us against any loss, liability, costs and expenses arising for us from any failure by you comply with your obligations under Clause 5. This includes, but is not limited to any investigation, enforcement action, prosecution or other statutory or formal process arising from any alleged breach of environmental compliance requirements arising from such a failure.

8. LIMITATION OF LIABILITY

- 8.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded as you are acquiring the Services and/or goods from us for the purposes of a business in terms of sections 2 and 43 of that Act.
- 8.2 Except to the extent that the law prevents us from excluding liability, we shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from Services or goods provided by us to you.
- 8.3 You acknowledge that some goods and/or Services are of a hazardous nature and may result in damage or loss to property and/or serious injury to any person and/or animals, and/or crops. You agree to indemnify us against all claims and loss of any kind whatsoever however caused or arising which is brought by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with the Services or the goods.
- 8.4 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms of Trade or for any other reason, such liability is limited to the amount of the Actual Cost. If goods are returned by you, or if you make a claim in writing to us in relation to the goods or services provided under the Services, we may, in our discretion, repair or replace the goods or re-perform the services, or refund the amount of those goods or services to you, provided that:
- (a) the goods must be returned, or the claim must be made in writing to us within fourteen (14) days of the goods or services being provided; and
 - (b) you must supply the date and number of any invoice relating to the Services; and
 - (c) we must have a reasonable opportunity to inspect the Services.
- 8.5 Without limiting any other provisions in these Terms of Trade, where goods purchased by you (or supplied by you or any third party) are applied by us as recommended by the manufacturer, or the supplier or any other person, then any failure or part failure of those goods or products does not release you from your obligations of payment for the Services.

9. DEFAULT

- 9.1 The security interests created by these Terms of Trade become enforceable if any of the following events occur:
- (a) you fail to pay any money owing on the Due Date;
 - (b) you sell, part with possession or dispose of any goods or do anything inconsistent with our ownership of the goods prior to making payment in full to us;
 - (c) we believe you have committed or will commit an act of bankruptcy, have had or are about to have a receiver or liquidator appointed, or are declared insolvent;
 - (d) the goods are at risk, as that term is defined in the PPSA;
 - (e) you neglect or fail to carry on your business to our reasonable satisfaction, or if there is a significant deterioration in your trading or asset position;
 - (f) you are otherwise in breach of your obligations under these Terms of Trade.
- 9.2 If any of the events described in clause 9.1 occur, in addition to any remedies we may have at law, we may do one or more of the following:
- (a) suspend the Services in accordance with clause 3.4;
 - (b) charge default interest in accordance with clause 3.3;
 - (c) enter on to your premises and repossess any goods which have not been paid for in full;
 - (d) immediately terminate these Terms of Trade by notice in writing to you.

10. INTELLECTUAL PROPERTY

- 10.1 In respect of Intellectual Property used in or arising from the production of the goods or the performance of the Services:
- (a) all pre-existing Intellectual Property the subject of an Intellectual Property right resides with the owner as at the date of these Terms of Trade (whether you or us);
 - (b) any new Intellectual Property will be dealt with in accordance with clause 11.
- 10.2 If any Services are to be undertaken based on your designs, you warrant that the undertaking of the Services by us will not infringe any third party's Intellectual Property rights and you indemnify us against any loss, liability, costs

and expenses in the event of any claim being made that the Services infringe any patent, copyright or other rights of any other person.

11. INTELLECTUAL PROPERTY OWNERSHIP

- 11.1 Subject to clauses 10.1(a) and 11.4 we are and will remain the exclusive owner everywhere in the world of all Intellectual Property rights and interests (including copyright and all other statutory and common law rights and interests) in the works, and any other Services performed by us for you, as first owner of those Intellectual Property rights and interests.
- 11.2 We shall retain exclusive worldwide ownership at all times of our artistic styles, methods of working, techniques, ideas, skills and know-how.
- 11.3 You must not attribute the works to anyone other than us or remove any of our trade marks, signatures, logos or similar from our Services.
- 11.4 Upon payment of all amounts owing to us in accordance with these Terms of Trade, we assign to you the copyright in the final form of any Services which we have specifically created for you for the countries and for the purposes as specified in the description of the Services, or if not specified, for the countries and for the purposes which would be reasonably expected in light of the nature of your request for the Services.

12. PRIVACY OF INFORMATION

- 12.1 You authorise us:
 - (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
 - (b) to disclose information about you:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
 - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms of Trade.

13. NOTICES

- 13.1 Any notice may be given by phone, in person, posted, or sent by fax or email to you (or where you are a company, to any of your directors).

14. VARIATION

- 14.1 We shall be entitled at any time by notice in writing to you to vary any provision of these Terms of Trade and you shall be bound by such variation.
- 14.2 Any such changes will be made available on our website www.southerwidehelicopters.com.

15. CONFIDENTIALITY

- 15.1 You shall at all times treat as confidential all non-public information and material received from us and shall not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.

16. COSTS

- 16.1 you must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights and powers under these Terms of Trade.

17. CREDIT INFORMATION

- 17.1 You consent to us and any financier or credit-rating agency making enquiries of and obtaining any information about your financial standing and creditworthiness.

18. TERMINATION

- 18.1 Either party may terminate these Terms of Trade by giving one month's written notice to the other party.

19. JURISDICTION

- 19.1 These Terms of Trade are governed by and construed in accordance with the current laws of New Zealand and the parties agree subject to clause 21 to submit to the non-exclusive jurisdiction of the Courts of New Zealand for any disputes or proceedings arising out of or in connection with these Terms of Trade.

20. ASSIGNMENT

20.1 You must not subcontract or assign any of your rights, powers or obligations under these Terms of Trade.

21. DISPUTES

21.1 Any claim or dispute arising under these Terms of Trade shall be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute between themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.

22. FORCE MAJEURE

22.1 We shall not be liable for delay or failure to perform the Services if the cause of delay or failure is beyond our control.

23. SURVIVAL

23.1 The provisions of clauses 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16, 19, 21, and 24 of these Terms of Trade and any other provision which by its nature is intended to survive the termination or expiration of these Terms of Trade will survive the termination or expiration of these Terms of Trade or completion of the Services.

24. DEFINITIONS

24.1 In these Terms of Trade:

"Goods" shall have the meaning given to it in the Personal Property Securities Act 1999.
"Intellectual Property" includes all intellectual property rights (including without limitation copyright, patent and design rights, drawings, documents, data, ideas, procedures and calculations).
"Services" means our performance of services for you, and the production or supply of any Goods by us as part of or related to such services, as described on the front page of these Terms of Trade.

24.2 The rule of construction known as the contra proferentem rule does not apply to these Terms of Trade.

24.3 Words importing the singular include the plural and vice versa.

24.4 Headings are for convenience only and do not form part of, or affect the interpretation of, these Terms of Trade.

24.5 References to a party include that party's successors, personal representatives, executors, administrators and permitted assigns.

24.6 References to a statute include references to:

- (a) regulations, orders, rules or notices made pursuant to that statute;
- (b) all amendments to that statute and those regulations, orders, rules or notices, whether by subsequent statute or otherwise; and
- (c) any statute passed in substitution of that statute.

24.7 References to "us" include our employees, contractors and agents

24.8 "Environmental Compliance" means compliance with all statutes relating to the protection or sustainable management of natural and physical resources and any subsidiary regulations or instruments under those statutes, which include, but are not limited to:

- (a) The Resource Management Act 1991;
- (b) The Local Government Act 2002 and 1978
- (c) The Biosecurity Act 1993;
- (d) The Conservation Act 1987;
- (e) The Hazardous Substances and New Organisms Act 1996.

The above instruments and regulations include, but are not limited to: National Environmental Standards, Regulations, Regional and District Plans, Resource Consents, Bylaws, Permits, Concessions and Licences.