

BJT AirAg trading as Air Ag Terms & Conditions of Aerial Application

1. The aerial applicator warrants to use its best endeavours to undertake the application based upon the instructions contained in the spray request form. Unless the spray request form is fully completed and signed where indicated the aerial applicator is released and indemnified by the contracting grower/farmer from all actions, suits, claims, demands, costs, damages and expenses due to the application or any pre-application tasks howsoever arising. This clause is a fundamental term of this agreement.
2. If adverse environmental conditions, including adverse weather conditions, cause any delay in the application from that represented in the spray request form (which environmental conditions shall be within the sole discretion of the aerial applicator), the aerial applicator will not be liable for any costs, claims, suits, demands or any consequential damages or losses of the contracting grower/farmer due to the delayed application.
3. Any liability of the aerial applicator for breach of any provisions of or term implied by the *Competition and Consumer Act 2010* or equivalent state legislation shall not exceed the resupply of the application in question or payment of the cost of resupply.
4. In no event whether as a result of breach of contract, warranty, tort (including negligence) or otherwise shall the aerial applicator 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 as allowable under the law.
5. Payment to the aerial applicator shall be made within 14 days of receipt of invoice and must be received by the aerial applicator before any dispute or claim can be made in relation to the application.
6. In consideration of the aerial applicator undertaking the application, the contracting grower/farmer agrees to release and indemnify the aerial applicator, its officers, directors, agents, servants, employees and shareholders and suppliers of any aircraft from any and all liabilities, claims, demands or actions or causes of action whatsoever including any liability imposed by statute, arising out of any damage, loss or injury to the contracting grower/farmer or third parties due to the aerial application or pre-application tasks whether such loss, damage or injury results from negligence of the aerial applicator, its officers, directors, agents, servants, employees or shareholders or from some other cause.
7. The contracting grower/farmer or their agronomist or agent warrants that it will notify the aerial applicator of all relevant and accurate information necessary for the applicator to carry out all appropriate planning and hazard and risk assessments and management. Such information shall include but not be limited to hazards (including power lines and SWER lines in or near the application area) and obstructions; susceptible crops; dwellings; 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.
8. Any requirement for neighbour notification, either specified on the label or through State legislation, industry code of practice or other means shall be the responsibility of the grower/farmer.
9. The contracting grower/farmer acknowledges that if during the course of the application it is necessary to dump a load of chemical due to requirements of safety there will be no right of action on behalf of the contracting grower/farmer against the aerial applicator.
10. By entering the agreement the contracting grower/farmer warrants and acknowledges that any chemical required by them to be applied by the aerial applicator is a registered chemical for the application required and that the application conforms to the label of the pesticide and to any relevant State legislation.
11. The contracting grower/farmer 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 contracting grower/farmer agrees to indemnify the aerial applicator for any loss or damage including any loss of business of the aerial applicator.
12. Any use of odorous chemicals shall be at the sole risk of the contracting grower/farmer and the grower/farmer indemnifies the applicator from any actions arising out of the use of such chemicals.
13. The contracting grower/farmer or their agent accepts that it is at the sole discretion of the aerial applicator 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 waiting for better weather conditions.
14. The contracting grower/farmer 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 areas, and waterways. The grower/farmer indemnifies the applicator against any loss of yield or other issues arising from such.
15. The contracting grower/farmer agrees to ensure that all staff, contractors, visitors or others are not permitted to enter or be within the application site or immediate surrounds for the time commencing from 30 minutes before the commencement of application or until 30 minutes after the completion of the application or for the period prescribed for the re-entry into the application site on the chemical label, which-ever is the longer.
16. The contracting grower/farmer specifically acknowledges and accepts that damage may be caused to trees and other vegetation on his property during the application the contracting grower/farmer hereby acknowledges that Clause 6 of these terms and conditions applies to any such damage.
17. If payment for any application by the aerial applicator is outstanding by the contracting grower/farmer, according to the terms and conditions, the aerial applicator is entitled at its option not to undertake any further applications.
18. The contracting grower/farmer represents and warrants that he/she was not induced to enter into this agreement by and did not rely on any representations or warranties made by the aerial applicator or the aerial applicator's servants or agents about the subject matter of this agreement. The contracting grower/farmer further acknowledges and warrants that these conditions of spraying contract are the whole agreement between the parties and may not be varied except in writing.
19. The term "aerial applicator" in these conditions of spraying contract means the owner or the operator of any aircraft used in the application, the pilot of any aircraft used in the application, servants or agents of either the owner, operator or pilot, contractors or subcontractors of the owner, operator or pilot or any associated or subsidiary companies of the owner, operator or pilot.
20. The contracting grower/farmer hereby agrees and warrants that if he/she is approached by any government instrumentality including but not limited to the EPA, WorkCover or CASA or equivalent, the contracting grower/farmer will immediately notify the aerial applicator and provide whatever assistance the aerial applicator may require concerning the government instrumentality's enquiry including but not limited to all documents relating to the application.
21. Upon signing of these terms and conditions the person warrants that they have authority to bind the corporate entity (if applicable) and also acknowledges that if the corporate entity cannot pay the application costs they will be personally liable for the application costs.
22. The person signing these terms and conditions acknowledges that they have read and understood the same.