Aviation

Aircraft Aerial Application Liability Policy

QBE Aviation

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Preamble

Headings are inserted for the purpose of convenient reference only and are not to be deemed part of this Policy.

Certain words and phrases used in this Policy have special meanings which can be found in Section 4 Definitions.

SECTION 1

Agreement to Insure and Cover

1. QBE Insurance (Australia) Ltd ACN 78 003 191 035 ("the Company") in consideration of the payment of the premium and in reliance upon the information provided by the Insured including any proposal which is agreed to be the basis of and incorporated into this Policy, agrees to the extent and in the manner provided in this Policy to pay on behalf of the Insured all sums (up to the limit of liability specified in the Schedule) which the Insured shall become legally liable to pay as compensatory damages (including interest and costs awarded against the Insured) in respect of Bodily Injury or Property Damage arising out of an Occurrence during the period of insurance and caused directly by Aerial Application by an aircraft specified in the Schedule whilst operated by the Insured and flown by a pilot described in the Schedule.

Proportions

2. In the case of co-insurance, the additional insurer(s) will be shown on the Schedule to the Policy along with the proportions underwritten by each of the insurers and the expression "Company" shall refer to the insurers collectively. Should any amount become payable under this Policy, the insurers shall not be jointly liable but shall pay to or on behalf of the Insured their respective proportions of the amount payable and no more.

Supplementary Payments

3. In respect to claims covered by the Policy, the Company will:
   (a) defend in the name of the Insured and on his behalf any action for compensatory damages against the Insured alleging Bodily Injury or Property Damage but the Company shall be under no obligation to defray any defence costs or to defend any action against the Insured based on claims not covered by the Policy;
   (b) 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;
   (c) defray any defence costs incurred by the Company or with its written consent in defending any action which may be brought against the Insured in respect of any claim covered by the Policy. But should the amount paid or awarded for a claim (including interest and costs) exceed the limit of liability specified in the Schedule then the liability of the Company in respect of such defence costs shall be limited to that proportion of the defence costs which the limit of liability bears to the amount paid in compensatory damages (including interest and costs);
   (d) notwithstanding any of the above, the Company shall have the right to tender the applicable limit of liability stated in the Schedule in settlement of a claim if it considers it appropriate to do so. In this event the Company's obligations under this Policy will cease as regards that claim.

Automatic Insurance of Acquired Aircraft

4. If the Insured acquires ownership of another aircraft of similar type and notifies the Company within 30 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. However, this insuring agreement does not apply:
   (a) unless the Insured pays the additional premium in accordance with the notice or invoice issued on behalf of the Company and within the time specified;
   (b) to any claim against which the Insured has other valid and collectable insurance; or
   (c) except during the period of insurance but if such delivery date is prior to the effective date of this Policy, this insuring agreement shall apply from the date at which the Period of Insurance is shown to commence in the Schedule.

Territory of Use

5. This Policy applies only whilst an aircraft specified in the Schedule is within Australia or such other territory as specified in the Schedule.

Two or more Aircraft

6. When two or more aircraft are specified in the Schedule the terms of this Policy shall apply separately to each.

Deductible

7. 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 amount of the Deductible shown in the Schedule for each and every Occurrence.

   It is further understood and agreed that the Insured shall remit to the Company, or its authorised representative, on demand, any portion of or the whole amount of the Deductible pertaining to any claim to be used by the Company or its representatives in settlement of claims covered under the 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 and payment of legal and other costs, pursuant to an authority to settle such claims hereby conferred upon the Company. All sums collected from the Insured by the Company pursuant to this Deductible obligation, which are not ultimately employed for settlement of outstanding claims and costs shall be returned to the Insured by the Company without interest or other charges.

SECTION 2: EXCLUSIONS

This Policy does not apply to or cover:

Purpose of Use

1. The use of an aircraft for any purpose other than those uses described in the Schedule or while the aircraft is neither owned, operated nor in the physical or legal care, custody or control of the Insured.

Pilots

2. Liability incurred while an aircraft is being flown by any person other than as specified in the Schedule.

Property of Insured

3. Liability for damage to any property owned or occupied by or rented to the Insured or any property in the physical or legal care, control or custody of the Insured.

Deliberate spraying

4. Liability for damage to any crops, pastures, trees, vines or tangible property to which the aerial application is deliberately made whether in error or not.

Farmer/Owner's property

5. Liability for injury or damage to any person or anything in, on or pertaining to land or water, owned leased or occupied by the person for whom Aerial Application is being performed by the Insured.

Contract

6. Liability to others assumed by the Insured under any contract or agreement, oral or written, unless such liability would have attached to the Insured in the absence of such contract or agreement.

Employees

7. Liability for injury or loss sustained by 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.

Workers' Compensation

8. Any liability under or by reason of any workers' compensation, employees' compensation, accident compensation or similar law other than a subrogation claim brought by an insurer or an authority for recovery of an amount paid pursuant to such a law.

Crew

9. Liability for injury or loss sustained by any passenger or any pilot or any member of the crew whilst acting in their capacity as such or whilst engaged in the operation of the aircraft.

Professional Duty

10. Liability arising out of a breach of any professional duty owed by the Insured, his employees or agents.

Subcontractors

11. Liability arising from any work undertaken by the Insured's subcontractors.

Loss of Chemicals etc

12. Liability for any chemical, fertilizer, seed, or baits lost, damaged or destroyed as a result of the dumping of such product or arising out of any crash, fire, explosion or collision of an aircraft.

Residential area

13. The application of any chemical within any zoned residential area unless specifically endorsed hereon.

Liability of farmer/owner

14. Liability of the farmer, grower, occupier or owner unless specifically included in the Schedule or by endorsement as an additional insured and the appropriate additional premium paid.

Prohibited chemicals

15. Liability caused by or resulting from the use of:
    (a) inorganic arsenical preparations or compounds such as sodium arsenate, sodium arsenite and the like and/or dust formulations of defoliants or desiccants; or
    (b) endosulphin provided however, this exclusion shall not apply when spraying is being conducted on cotton crops, but shall apply if such cotton crops are used as animal feed.

Chemical manufacturer's recommendations

16. Liability caused by or resulting from the use of unregistered or prohibited chemical or by non-compliance by the Insured with any manufacturer's printed directions, any Federal or State laws, regulations or the requirements or directions of any appropriate authority in respect of the chemical or seed being applied.

Exemplary damages

17. Aggravated, exemplary or punitive damages.

Financial or economic loss

18. Any financial or economic loss which is not directly referable to the Aerial Application.

War, hijacking and other perils

19. Liability arising from:
    (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 a 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; or

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

Furthermore this Policy does not cover claims arising whilst an aircraft is outside the control of the Insured by reason of any of the above perils. An 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).

Environmental risks

20. 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) light or reflection from, or the presence or proximity of, an aircraft;

(c) electrical and electromagnetic interference, or

(d) interference with the use of property.

The Company shall not be required to investigate or defend any claim excluded by this exclusion or a claim or claims covered by the Policy when combined with any claims excluded (referred to below as Combined Claims).

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 claims covered by the Policy:

(i) damages awarded against the Insured, and

(ii) defence costs and expenses incurred by the Insured.

Nuclear Risks

21. Claims directly or indirectly occasioned by, happening through or in consequence of:

(a) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; or

(b) ionising radiations or contamination by radioactivity from, or the toxic, explosive or other hazardous properties of, any other radioactive source whatsoever.

Operation of aircraft

22. Liability arising out of the ownership, maintenance or operation by the Insured of an aircraft provided however, this exclusion shall not apply to Aerial Application from an aircraft whilst operated by the Insured and/or pilots authorised by the Insured and described in the Schedule, during the Period of Insurance.

Liability to another insured

23. The liability of one Insured to another Insured.

Other insurance

24. Any claim under this Policy, which is also covered in whole or in part by another policy or would but for the existence of this Policy be covered by another policy, except to the extent that the amount of any liabilty exceeds the amount payable under such other policy or policies, provided always that the insurers shall not be liable to pay any amount in excess of any relevent amount specified in the Schedule.

SECTION 3: CONDITIONS

Notice of occurrence

1. 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 Company by or on behalf of the Insured as soon as the Insured or his employee, agent or representative has knowledge thereof. Immediate notice of any potential claim (and particularly the effect of exposure of plants and animals to chemicals) is acknowledged to be essential for the effective investigation of any claim. 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 a claim shall be presumed to cause the Company to suffer substantial prejudice and such failure to give IMMEDIATE NOTICE shall automatically exclude coverage, and the Company shall have no liability for such Bodily Injury or Property Damage.

Notice of claim or suit

2. If a claim is made or suit is brought against the Insured, the Insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representatives. Until indemnity is given or a payment made under the Policy, all steps by or on behalf of the Company with respect to a claim shall be on a reservation of rights basis.

Assistance and co-operation of the insured

3. (a) No liability shall be admitted and no admission, arrangement, offer, promise or payment shall be made by the the Insured without the written consent of the Company other than such immediate medical or surgical relief to others as shall be imperative at the time of Occurrence. The Company shall be entitled to take over and conduct in the name of the Insured the defence of any claim or to prosecute in the name of the Insured for its own benefit any claim for indemnity, contribution, damages or otherwise against any other party, and shall have full discretion in the conduct of any negotiations or proceedings or the settlement of any claim and the Insured hereby appoints and authorises the Company and its attorneys to compromise any proceeding or threatened proceeding and to execute terms of settlement in the name of the Insured.

   (b) The Insured shall give all information, do all things, provide signed statements, provide all documents, records and things, and assist the Company and its agents in any other way in the Company's investigations and in connection with any proceeding or inquiry as the Company or its agents or representatives may require.

   (c) The Insured shall be available and attend conferences and give evidence and/or instructions when required by the Company or its agents, shall ensure that any employees required by the Company are available to do likewise and shall take all reasonable steps to ensure that any other person connected with the Insured is available and will assist and give evidence if so required by the Company or its agents.

Compliance

4. The Insured shall comply with all statutory requirements and all regulations, orders, directions, notices and approvals which affect Aerial Application, safety or the maintenance or operation of the aircraft and shall ensure:

   (i) the aircraft is airworthy at the commencement of each flight;

   (ii) all log books, maintenance releases, and other records associated with the aircraft which are required from time to time shall be kept up to date and shall be produced to the Company or its agents on request; and

   (iii) the employees and agents of the Insured, aircraft operators, aircraft hirers, and the pilot in command likewise comply.

Where practicable, the Insured will endeavour in the course of his business to use and obtain from any contracting farmer, grower, occupier or owner a duly completed Aerial Application Spray Request form for Aerial Application work to be performed by the Insured for such farmer, grower, occupier or owner.

Changes

5. 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 Company 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.

Assignment

6. This Policy shall not be assigned in whole or in part except with the consent of the Company verified by Endorsement signed on behalf of 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, the Policy, unless cancelled, shall, if written notice be given to the Company within 30 days after the date of such death or adjudication, cover:
   (a) the Insured's legal representative; 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 days after the date of such death or adjudication.

Cancellation

7. (a) This policy may be cancelled by the Insured by giving notice in writing to the Company indicating the date when such cancellation shall be effective in which event the premium shall be adjusted on the basis of the following Short Term Premium Scale. There will be no return of premium in respect of any aircraft on which a claim is paid or payable under this Policy.
   (b) This Policy may be cancelled by the Company in circumstances or upon the grounds permitted by the proper law of the Policy by giving notice in writing to the Insured, either personally or by post, at the last address known to the Company. Such notice shall have effect to cancel the Policy at 4.00 p.m. on the third business day after the day on which notice was given or at any later time specified in the notice.

SHORT TERM PREMIUM SCALE

Period Policy in Force	Minimum Premium Payable
less than 31 days	33 1/3% 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

Limit of liability

8. The Company's liability under this Policy in respect of any Occurrence shall not exceed the relevant limit of liability specified in the Schedule less the Deductible.

   Notwithstanding the inclusion of more than one Insured whether by Endorsement or otherwise, the total liability of the Company in respect of any or all Insured shall not exceed the limit(s) stated in the Schedule.

Subrogation

9. Upon an indemnity being given or a payment being made by the Company under this Policy:
   (a) the Company shall be subrogated to the rights and remedies of the Insured who shall co-operate and do all things necessary to assist the Company and its agents to exercise such rights and remedies;

   (b) the Company, if it elects to exercise its rights of subrogation, shall have the exclusive right to conduct proceedings, shall have full discretion in the conduct of any negotiations or proceedings or the settlement of any claim and the Insured hereby appoints and authorises the Company and its attorneys to compromise any proceeding or threatened proceeding and to execute any terms of settlement in the name of the Insured; and

   (c) the Insured shall in any proceeding brought by the Insured do all things necessary to recover and hold on trust for the Company any amount which the Company would have been entitled to recover in a subrogated action.

Action against the Company

10. 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 judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company.

Misrepresentation and fraud

11. If the Insured shall make any claim knowing the same to be false or fraudulent as regards amount or otherwise the Company shall be entitled to refuse the claim.

Flight Manual

12. The Insured shall ensure that an aircraft used in the course of Aerial Application does not exceed the maximum take-off weight specified in or calculated in accordance with the provisions of the approved flight manual for the aircraft and does not take off or land on a landing area that does not comply with the requirements of the approved flight manual.

Governing law

13. The governing law of this Policy shall be the laws of Australia.

SECTION 4: DEFINITIONS

In this Policy and, unless expressly stated to the contrary, in the Schedule and any endorsements:

1. **"Aerial Application"** means the intentional spraying, spreading or dropping of any chemical, fertilizer, seed or baits from an aircraft in flight.

2. **"Aircraft"** means an aircraft specified in the Schedule or any additional aircraft added to the Policy.

3. **"Australia"** means continental Australia and extending 50 miles into territorial waters, external territories (excluding Australian Antarctica, Macquarie Island, Heard Island and McDonald Island) and passage between continental Australia and the external territories (other than the excluded territories).

4. **"Bodily Injury"** includes death but excludes nervous shock or psychological injury unaccompanied by, or not caused by, physical injury.

5. The unqualified word **"Insured"** includes the Insured as named in the Schedule and any partner, executive officer, director or employee if the named Insured is a corporation but only whilst acting in the scope of their duties as such and any properly qualified and licensed pilot operating an aircraft specified in the Schedule on behalf of and with the knowledge and consent of the Insured and who complies with any special requirements shown on the Schedule.

6. **"Occurrence"** means either an accident or continuous or repeated exposure to conditions which unexpectedly and unintentionally cause Bodily Injury or Property Damage during the period of Insurance. All damages arising out of such exposure to substantially the same general conditions shall be considered as arising out of one Occurrence. Furthermore, all spraying or spreading of one type of agricultural chemical for one farmer/grower/occupier/owner during one calendar day shall be deemed as one Occurrence.

7. **"Period of Insurance"** means the period specified in the Schedule.

8. **"Property Damage"** means physical damage to or destruction of tangible property including loss of use thereof at any time resulting therefrom.

9. In this Policy:
   (i) singular shall include the plural;
   (ii) masculine shall include the feminine and corporate entities; and
   (iii) headings shall not be used in the construction of this Policy.

10. For the purposes of this Policy, where an Insured is a corporation, the Insured shall be affixed with the knowledge and consent and bound by the acts of the directors, chief executive officer, managing director or other person responsible for the management of the corporation.

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