

Aerial Application Terms and Conditions

All aerial application work provided by Kidman Aviation is upon the following terms and conditions as set out below.

1. Kidman Aviation Pty Ltd ("Kidman Aviation") warrants to use its best endeavours to undertake the application based upon the instructions contained in the Aerial Application Order Form they receive from the contracting client or the client's agent ("client") and whether it is fully completed and submitted as indicated or not, the client is agreeing to all terms and conditions contained in these Aerial Application Terms and Conditions. Specifically, Kidman Aviation is released and indemnified by the client from all actions, suits, claims, demands, costs, damages and expenses due to the application or any pre-application tasks how so ever arising. The client acknowledges that completing the Aerial Application Order Form and submitting it to Kidman Aviation does not make it binding upon Kidman Aviation to accept or to complete the application. This clause is a fundamental term of this agreement.
2. If adverse conditions, including adverse weather and/or environmental conditions, cause any cancellation or delay in the application from that represented in the Aerial Application Order Form (adverse conditions shall be within the sole discretion of Kidman Aviation), Kidman Aviation will not be liable for any costs, claims, suits, demands or any consequential damages or losses of the client due to the cancelled or delayed application.
3. Any liability of Kidman Aviation for breach of any provision of or term implied by Chapter 3, Part 3.2, Division 1 of the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth) 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 Kidman Aviation 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 Kidman Aviation shall be made within the payment terms specified on Kidman Aviation's invoice issued to the client, unless otherwise agreed to in writing by both Kidman Aviation and the client, and full payment must be received by Kidman Aviation before any dispute or claim can be made in relation to the application.
6. 1% interest per month will be charged on all overdue accounts. In the event a client's overdue account is referred to a collection agency and/or law firm, the client will be liable for all costs which would be incurred as if the debt is collected in full, including but not limited to all legal demand costs and any costs incurred by Kidman Aviation in recovering this overdue account.
7. If the contracting client has payments outstanding to Kidman Aviation then according to these terms and conditions, Kidman Aviation is entitled at its option not to undertake any further applications.
8. In consideration of Kidman Aviation undertaking the application, the client agrees to release and indemnify Kidman Aviation, its officers, directors, agents, contractors, 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 client or third parties due to the aerial application or pre-application tasks whether such loss, damage or injury results from negligence of Kidman Aviation, its officers, directors, agents, contractors, servants, employees or shareholders or from some other cause.
9. The client warrants that it will notify Kidman Aviation of all relevant and accurate information necessary for the applicator to carry out all appropriate planning and hazard and risk assessment 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 (including neighbours), 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.
10. Any requirement for neighbour notification either specified on label or through State legislation, industry code of practice or any other means shall be the full responsibility of the client.
11. The contracting client acknowledges that if during the course of the application it is necessary to dump a load of chemical or other product due to safety requirements there will be no right of action on behalf of the contracting client against Kidman Aviation.
12. By entering the agreement the client warrants and acknowledges that any chemical required by them to be applied by Kidman Aviation 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.
13. The contracting client 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 client agrees to indemnify Kidman Aviation for any loss or damage including any loss of business caused by invalid use.
14. Any use of odorous chemicals shall be at the sole risk of the client and the client indemnifies Kidman Aviation from any actions arising out of the use of such chemicals.
15. The client accepts that it is the sole discretion of Kidman Aviation as to 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 suspending application until adequate weather or environmental conditions prevail.
16. The client accepts that there may be some areas of the application site which may not be able to be treated optimally due to the presence of hazards to safe flying including but not limited to trees, terrain, power lines and associated infrastructure location, paddock shape, environmentally sensitive crops/areas, and waterways. The client indemnifies Kidman Aviation against any loss of yield or other issues arising from such.
17. The client 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 until 30 minutes after the completion of the application or for the period prescribed for re-entry into the application site on the chemical label; whichever is the longer.
18. The contracting client specifically acknowledges that damage may be caused to trees and other vegetation on his/her property during the application. The client hereby acknowledges that should any such damage occur then clause 8 of these terms and conditions applies.
19. The client represents and warrants that he/she was not induced to enter into an agreement by Kidman Aviation and did not rely on any representations or warranties made by Kidman Aviation or Kidman Aviation's servants or agents about the subject matter of any agreement. The client further acknowledges and warrants that these conditions of aerial application are the whole agreement between the parties and may not be varied except in writing.
20. The term Kidman Aviation in these terms and conditions 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.
21. The client hereby agrees and warrants that if he/she is approached by any government instrumentality including but not limited to the EPA, Work Cover or the Civil Aviation Safety Authority or equivalent, the client will immediately notify Kidman Aviation and provide whatever assistance Kidman Aviation may require concerning the government instrumentality's enquiry including but not limited to all documents relating to the application.
22. The client agrees that any last-minute cancellations or rescheduling of work orders which do not occur as a result of adverse conditions (refer clause 2) or changes made by the client's Agronomist may incur additional charges. These charges are based on those costs incurred by Kidman Aviation as a result of these changes, cancellations or rescheduling. Kidman Aviation may pass these costs on to the client in its sole discretion.
23. Upon submitting an Aerial Application Order Form and agreeing to these terms and conditions the person who submits the Aerial Application Order Form warrants that they have authority to bind the contracting client's corporate entity (if applicable) and also acknowledges, that if the corporate entity cannot pay the application costs they are acting as guarantor and they will be personally liable for all application costs.
24. The person submitting the Aerial Application Order form acknowledges that they have read and understood these terms and conditions.