

M.F.H. Helicopters Ltd.
TERMS & CONDITIONS - BRACKEN CONTROL

1. The Company's Obligations

1.1 *Services to be provided by the Company:*

The Company will provide bracken control services as stated in the Agreement

1.2 *Secrecy*

1.2.1 Not at any time during or after the Term to divulge or allow to be divulged to any person any confidential information relating to the business or affairs of the Client other than to persons who have signed a secrecy undertaking in a form approved by the Client

1.2.2 Not to permit any person to assist in the provision of the Services unless such person has signed such an undertaking

1.3 *Delegation*

Not to delegate any duties or obligations arising under this Agreement otherwise than as may be expressly permitted under its terms

1.4 *Indemnity*

To indemnify and keep indemnified the Client from and against any and all loss damage or liability (whether criminal or civil) suffered by the Client resulting from a breach of this Agreement by the Company including:

1.4.1 any act neglect or default of the Company's employees or agents

1.4.2 breaches in respect of any matter arising from the supply of the Services resulting in any successful claim by any third party

1.5 *Notice*

To comply with the terms of any Notice specifying a breach of the provisions of this Agreement and requiring the breach to be remedied so far as it may be but nothing in this clause is intended to require the Client to serve notice of any breach before taking action in respect of it

1.6 In addition to the service set out in the Agreement the Company agrees as follows:-

1.6.1 to carry out the necessary statutory notifications which are its responsibility

1.6.2 to carry out the work as set out in the Agreement

1.6.3 to underwrite the accuracy of its aerial application pilots insofar as should clearly defined stripes be visible in the year following treatment by the Company within the bracken beds to which Asulox has been applied by the Company, then the Company will offer the Client in recompense (provided the Company is invited to return by the Client to carry out further works as part of the Client's ongoing Control Programme) one of the following two services for which the Client may elect at the Client's discretion:-

(i) to return in the second year following the original application to re-treat the above-mentioned stripes or

(ii) to estimate the Asulox required to be discharged in the treatment of the above-mentioned stripes and to treat other beds of the Client's choice elsewhere on the Client's property in any year following the original application with the use of such pre-determined Asulox allocation such that should the Client wish the Company to re-treat the stripes referred to above in future years, the Company would do so only on the basis of a new contract to be charged at the Company's then current price per Controlled Acre for Asulox and its aerial application.

This undertaking and guarantee solely covers stripes occasioned by the Company's pilots' errors and does not cover beds which have been missed since, in such instances, the Client's Asulox allocation will have been applied by the Company on to other beds on the Client's property.

1.6.4 to use best endeavours to treat the Client's designated bracken beds within the most efficacious time window and in the most suitable weather. The Company will use all due care in obtaining up to date meteorological forecasts but does not guarantee that it will not rain either during or after the application

2. The Client's Obligations

2.1 to make the Payments promptly without demand deduction or set off. All accounts are due on the date of the provision of the service unless credit arrangements have been made. A credit charge will be added to invoices and will be deducted for prompt payment. The Company shall be entitled to recover from the Client all costs, charges and expenses incurred by the Company in employing a Solicitor, debt collector or other third party to enforce or collect payment of any overdue account.

2.2 to carry out the necessary statutory notifications which are the Client's responsibility

2.3 to provide clear instructions to the Company as to the boundaries within which the Company is to work and the order in which the work is to be executed

2.4 to attend, or authorise another to attend on the work site at the time the contract is carried out to provide instructions where necessary as to any necessary variations to the agreed plan and to provide maps when required by the Company

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3. VAT

3.1 All sums payable under this Agreement unless otherwise stated are exclusive of VAT and other duties or taxes

3.2 Any VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums

4. No liability on part of the Company unless the Company is in default

The Company shall not be liable to the Client for the death of or injury to the Client or any of his/its employees or agents or loss or damage to the Client's property unless due to the negligence or other failure of the Company to perform its obligations under this Agreement or under the general law

5. Termination for breach

The following obligations are conditions of this Agreement and any breach of them shall be deemed a fundamental breach which shall determine this Agreement immediately and the rights and liabilities of the parties shall thereafter be determined in accordance with clause 7

5.1 Failure on the part of the Client to make punctual payments of all sums due to the Company under the terms of this Agreement

5.2 Failure on the part of the Company to observe any obligations under this Agreement not requiring Notice to be served and in the case of obligations requiring Notice to be served failure to comply with the terms of any Notice

5.3 The levying of any distress or execution against the Client or the making by them of any composition or arrangement with creditors or being a company the Client's liquidation (other than a members' voluntary liquidation)

6. Termination consequences

In the event of this Agreement being determined whether by effluxion of time Notice breach or otherwise:

6.1 the Client shall immediately pay to the Company

6.1.1 all arrears of Payments and any other sums due under the terms of this Agreement

6.1.2 all further sums which would but for the determination of this Agreement have fallen due at the end of the Term less a discount for any accelerated payment at the rate of 2% per year

6.2 Either party shall be entitled to exercise any one or more of the rights and remedies given to it under the terms of this Agreement and the determination of this Agreement shall not affect or prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under this Agreement notwithstanding that the other may have exercised one or more of the rights and remedies against it

6.3 Any right or remedy to which either party is or may become entitled under this Agreement or in consequence of the other's conduct may be enforced from time to time separately or concurrently with any right or remedy given by this Agreement or now or afterwards provided for and arising by operation of law so that such rights and remedies are not exclusive of the other or others but are cumulative

6.4 In circumstances where the Client has instructed the Company to provide bracken control services at the Client's property as set out in this Agreement the full Contract price is payable immediately to the Company on demand. If the Client subsequently seeks to unilaterally escape or avoid the Agreement by notifying the Company not to proceed with the Control Services or by any other means

7. Miscellaneous

Warranty

Each of the parties warrants its power to enter into this Agreement and has obtained all necessary approvals to do so

Interest

All sums due from either of the parties to the other which are not paid on the due date (without prejudice to the rights of the Company under this Agreement) shall bear interest from day to day at the annual rate of 4% over the base lending rate of the Royal Bank of Scotland

Force majeure

Both parties shall be released from their respective obligations in the event of national emergency war prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties or either of them renders the performance of this Agreement impossible whereupon all money due under this Agreement shall be paid immediately and in particular:

7.3.1 the Client shall immediately pay to the Company all arrears of Payments

7.3.2 each party shall be liable to pay to the other damages for any breach of this Agreement and all expenses and costs incurred by that party in enforcing its rights under this Agreement

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7.4 *Severance*

If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of the Company it may be severed from this Agreement

7.5 *Whole Agreement*

Each party acknowledges that this Agreement and the Conditions contain the whole Agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it subject to any relevant agreed variation made between the parties subsequent to the execution of this Agreement

7.6 *Proper law and jurisdiction*

7.6.1 This Agreement shall be governed by English Law in every particular including formation and interpretation and shall be deemed to have been made in England

7.6.2 This submission by the parties to such jurisdiction shall not limit the right of the Company to commence any proceedings arising out of this Agreement in any other jurisdiction it may consider appropriate

7.6.3 *Costs*

Each of the parties shall pay any costs and expenses incurred by it in connection with this Agreement

7.6.4 *Consumer Contracts*

It is understood and agreed between the parties that this agreement is not a consumer contract within the meaning of the Civil Jurisdiction & Judgments Act 1982.

8. No assignment or sub-contracting

The Company shall not assign or sub-contract any of its rights or duties under this Agreement without the consent in writing of the Client

9. Arbitration

All disputes or differences which shall at any time arise between the parties whether during the Control Period or afterwards touching or concerning this Agreement or its construction or effect or the rights duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected with or arising out of the subject matter of this Agreement shall be referred to the Chairman of the Bracken Advisory Commission to arbitrate.

10. Definitions

The following terms shall have the following meanings:-

10.1 "Conditions": the provisions set out herein which shall be incorporated into this Agreement in their entirety

10.2 "Currency": Pounds Sterling

10.3 "Services": As set out in Agreement

10.4 "Payments" As specified in Schedule

10.5 "A Controlled Acre" is represented by the quantity of Asulox applied at the manufacturers recommended rate of 11 litres per hectare (4.453 litres per acre) by the Company from its calibrated aircraft tanks as filled by flow meter from its refuelling tanks. The application of 11 litres to each hectare is obtained by calculations, at the time of calibration, allowing for mean aircraft speed, boom width and output. Slope factors, corrugations, obstacles and non uniform bracken beds amongst other factors, will affect the precise area controlled.

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