

MATHISEN & MACARA

STANDARD TERMS OF BUSINESS

Thank you for instructing Mathisen & Macara LLP to act for you. We will provide you with confidential professional advice and services relating to intellectual property and related matters.

We will carry out all work for you under these standard terms of business.

**1. OBLIGATIONS OF THE FIRM**

Our Members (Partners) and qualified staff are members of appropriate professional bodies, and will comply with their codes of conduct.

It is our responsibility to: (a) practise competently, conscientiously and objectively, putting the interests of our clients foremost while observing the law and our duty to any Court or Tribunal; and (b) avoid any conflict of interest.

We will perform the engagement with reasonable skill and care and acknowledge that we will be liable to you for losses, damages, costs or expenses caused by our negligence or wilful default.

**2. INSTRUCTIONS**

2.1 Unless otherwise agreed, we will assume that any person within your organisation may instruct us on your behalf, unless they clearly do not have the appropriate authority. Having said that, it is often helpful if you can nominate an individual within your organisation to act as a primary point of contact for us and keep us updated if this changes.

2.2 *Timing and form of instructions*

We rely on our clients to give us timely, complete and accurate information and instructions. We prefer where possible to have oral instructions confirmed in writing in order to avoid any possible misunderstandings. If it is unavoidable for you to provide us with oral rather than written

instructions, we will confirm in writing the instructions we have received, as we understand them.

Patent Offices often impose time limits and failure to meet these limits can be fatal to the rights concerned. Whilst it is our responsibility to keep you informed of any relevant time limits, we cannot accept any responsibility if you fail to provide us with instructions that are clear, complete and early enough to allow us to act within such official time limits. We will endeavour to inform you of time limits and of actions or instructions that are required, but we do not undertake to incur costs on your behalf, or take other action in the absence of instructions to do so. In this situation, your rights may be lost irrevocably.

If we receive late instructions we may not be able to implement them in time, in which case your rights may again be lost irrevocably.

### 2.3 *Updating information*

It is important that you inform us promptly of any change in relation to: (a) any primary contact; (b) your name, address, telephone/fax numbers and email address; or (c) any changes of ownership of your patent or other relevant rights. Many such changes have to be officially registered. Please remember that registration of patents, trade marks and design rights can take years and that there may be little activity for long periods followed by a situation which requires immediate action. We cannot accept responsibility for any loss of rights as a consequence of your failure to inform us of such changes.

### 2.4 *Electronic Communications*

We agree to communicate with you by email. Given that emails may lack security and jeopardise confidentiality, we cannot accept responsibility for any corruption in the information communicated to you or its disclosure to other parties as a result of the interception of such communication. Due to the very nature of email, we cannot accept responsibility for non-receipt or late receipt by you of such communications.

We shall be responsible for carrying out regular virus checks; however, we advise you to carry out your own virus checks on any communications

(whether in the form of computer disc, email, Internet or otherwise). To the extent that we have fulfilled our obligation above, we cannot accept responsibility (including in negligence) for any viruses that may enter your system or data by these or any other means. Furthermore, whilst we observe reasonable precautions, we regret that we cannot guarantee the security of our IT systems.

### 3. **INSTRUCTION OF THIRD PARTIES TO ACT ON YOUR BEHALF**

During our work for you we may need to instruct third parties (e.g. - foreign attorneys) to act on your behalf. We may instruct such third parties directly on your behalf, or alternatively you may need to sign a power of attorney or similar appointment to engage such third party.

Such third parties are not part of this Firm. Whilst we shall endeavour to select third parties we regard as being of good quality, we will not be liable for any default or negligence by such third parties. We shall, of course, monitor such third parties on an ongoing basis to ensure that the required service is provided and that our performance standards are maintained.

### **PROFESSIONAL FEES**

#### 3.1 *Our charges*

Our charges are principally based on the amount of our professional time spent on the matter, although other factors may also be taken into account. Such factors may include the size and complexity of the matter and the degree of urgency involved. We may adjust our standard charges if highly specialised knowledge is required, or if the matter is complex and/or urgent. Fixed charges may apply in relation to specific tasks (eg the actual filing of a patent application).

Our hourly rates are reviewed periodically. Our charges are calculated at the rates which are current when the work is carried out. Please ask us at any time if you would like to be sent details of those rates.

#### 3.2 *Payment of expenses*

You will be responsible for any expenses we incur on your behalf. These expenses may include Patent Office fees, Counsel's fees, Court fees, the costs of any experts or other agents (including any translators or foreign lawyers). They may also include such items as couriers, travel and meeting expenses.

Whilst our charges are predictable, you should appreciate that local representatives' charges and official fees are outside our control since they may be changed without notice and (in the case of foreign matters) vary with exchange rate fluctuations.

### 3.3 *Payment on account*

We may require payment on account, particularly in respect of large items and/or for new clients. If we make such a request, we will usually not carry out any instructed work until the requested payment has cleared into our bank account, so good time should be allowed.

Payments made on account will be held in a "client account" bank account. This is a bank account that is used exclusively to hold money paid in by clients in respect of work that has not been performed. Once, the agreed work has been performed, we will then transfer the payment to our business bank account, at which stage the money will belong to our firm.

No interest will be paid to clients in respect of money held in our client account.

### 3.4 *Estimates*

If requested, we will try to give estimates of future charges in good faith based on our knowledge at the time. However, as charges may be affected by matters beyond our control and the amount of work involved often cannot be accurately forecast, such estimates will not be binding.

If during the course of carrying out the work it becomes apparent to us that our actual charges are likely significantly to exceed our estimate, we will try to obtain your permission before exceeding our estimate.

If you would like to set an upper limit on the charges which may be incurred without prior reference to you then please let us know.

### 3.5 *Invoicing*

We would be happy to render invoices to and accept payment from another person nominated by you (for example, another company in the same group). However, please note that ultimate responsibility for making such payment will remain with you. Our payment terms are 30 days from the invoice date.

### 3.6 *Late Payments*

If a requested payment on account is not made or if an invoice remains unpaid for after 30 days from the date of the invoice, we reserve the right to suspend all work on your behalf. This is without prejudice to our right to invoice for work undertaken before such suspension and to take legal action for the payment of our costs. You will be responsible for the consequences of the suspension of work, which may include the irrevocable loss of, or failure to obtain, rights.

## 4. **FILING**

### 4.1 *Ownership of files*

Our files remain our property at all times. If you would like to transfer your work to other professional advisors, we will copy such of the files relating to your work as you request (at your expense) and release the copy file(s) when all our charges have been paid.

### 4.2 *Destruction of files*

It is our normal practice to destroy our correspondence files, draft documents and other papers when the file is closed, that is more than six years old. Unless you tell us otherwise, we will assume that you are content with this arrangement.

## 5. **CONFIDENTIAL INFORMATION**

While acting for you, we are likely to receive information which relates to you as our client. We will keep such information confidential, except where disclosure is required by law or regulation, or in other exceptional circumstances.

In general, we recommend that you restrict the release of, and maintain strict control over, any information not already in the public domain connected with instructions we receive. We would be happy to advise on the desirability of releasing confidential information to the public in specific cases.

## 6. **DATA PROTECTION**

This firm has notified under the Data Protection Act 1998 and will comply with all relevant data protection legislation. By instructing us you are consenting to our use of relevant personal data as appropriate in the course of our professional services, including any transfers of such data outside the European Economic Area and sending you information which we think might be of interest.

## 7. **SEARCHES**

Any searches you request may be carried out by ourselves, by Patent Offices or by an independent specialist searching firm. Due to the limitations and occasional errors in classifications, indices, computer databases and official records, no search can be guaranteed for comprehensiveness or accuracy. We will endeavour to point out any particular limitations when reporting search results and may recommend extending the search.

## 8. **INDEMNITY FOR THREAT OF INFRINGEMENT PROCEEDINGS**

Before we send any warning on your behalf to a third party, we will ask you to indemnify us against the risks of our being sued for making an unjustified threat of infringement proceedings. The aim of this request is to maintain our objectivity in contentious matters, which would diminish if we were to become a party to any proceedings. We may refuse to act for you if you are not able to provide the requested indemnity.

9. **CLIENT'S PRIVILEGE**

In general, communications between a UK Patent Attorney and his client are privileged under Section 280 of the Copyright, Designs and Patents Act 1988. This means that other people, including the courts, are not entitled to discover the content of such communications where they concern professional advice. However, you should note that there are circumstances in which the privileged status of a letter or other document can be lost. Please let us know if you would like us to give you further information on this area.

10. **CONFLICTS OF INTEREST**

We cannot act simultaneously for two clients whose interests in the matter on which we are advising conflict, unless (exceptionally) both clients consent to such an arrangement. When potentially taking on a new client, we try to identify conflicts of interest that may preclude us from acting. It is helpful if potential new clients identify to us any firms or companies for whom they believe we will be unable to act without a conflict of interest arising.

Sometimes, conflicts arise later because, for example, our clients acquire new companies or diversify into new areas of business. In such circumstances, we reserve the right to decline to act further, at least in relation to the area of conflict, for either one of the clients in question. Because of obligations of confidentiality it is often not possible for us to identify the other client or the subject matter involved when we advise a client that we can no longer act for them.

11. **CLIENT CARE AND COMPLAINTS**

We value our good relationships with our clients. However, we accept that from time to time, difficulties and misunderstandings may arise. If you have any problems, we urge you to discuss your concerns with the member of our professional staff dealing with your work to see whether the problem can be resolved. We have a written complaints procedure and will provide you with a copy of this on request.

Complaints of professional misconduct can be directed to The Intellectual Property Regulation Board.

12. **TERMINATION OF RELATIONSHIP**

You may terminate our relationship at any time by writing to us. If there is a good reason which prevents us from continuing to act for you, we may terminate the relationship ourselves by giving you reasonable notice. In either case, if the relationship is terminated we will require you to pay our charges and expenses up to and including the date of such termination.

13. **THIRD PARTY RIGHTS**

It is not intended that any terms of our relationship shall be enforceable by a third party, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

14. **GOVERNING LAW AND JURISDICTION**

English law shall apply to the construction and interpretation of our relationship and the English courts shall have non-exclusive jurisdiction to resolve any disputes arising in relation to it.

The above terms will apply until varied or replaced with alternative terms agreed with you in writing. Please note that no change to the terms of our agreement will be valid unless agreed in writing by a Partner of this Firm.

Signed..... (print name) .....

Date.....

On behalf of .....