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# Terms of Business

## 1 Introduction

- 1.1 We will carry out all work for you under these Terms of Business and in accordance with our Engagement Summary. We may also provide a letter setting out replacement or further terms agreed between us, and identifying them as such; in which case that letter takes priority over these Terms of Business. References to Terms of Business include reference to terms set out in any such letter. The Terms of Business set out a contract between us, and replace all previous representations and agreements. We accept instructions from you on the basis that you consent to all work being carried out in accordance with the Terms of Business.
- 1.2 These Terms of Business set out our responsibilities and yours, and include exclusions and limitations of our liability to you (including an overall liability cap – see paragraph 7.2 below).

## 2 Definitions

- 2.1 The firm: Abel & Imray (a Partnership).
- 2.2 Partner: a Partner of the firm at the relevant date.
- 2.3 Client: unless agreed otherwise, our client is the company or other legal entity from whom we receive instructions, or, in a case where there is no such legal entity, the private individual from whom we receive instructions. Our client is responsible for all payments to us.

## 3 Our conduct

- 3.1 We provide professional advice on matters relating to intellectual property, including patents, trade marks and designs. Our Partners and qualified professional staff are members of relevant professional bodies. We conduct our business in accordance with the Rules of Conduct of and are regulated by the Intellectual Property Regulation Board (IPReg). Further information about IPReg may be found on IPReg's website at [www.ipreg.org.uk](http://www.ipreg.org.uk), or from IPReg, 5th Floor, The Outer Temple, 222-225 Strand, London WC2R 1BA Tel: 020 7353 4373.
- 3.2 It is our responsibility to practise with due skill, care and diligence and with proper regard for the technical standards expected of us. We will only undertake work within our expertise or competence. The advice we provide is legal advice relating to intellectual property. We will endeavour to make our advice relevant to the commercial context. Ultimately, however, the decision how to proceed commercially in the light of the advice given must be yours. We shall at all times act with integrity, putting your interests foremost subject to the law and any overriding duty to any Court or Tribunal.
- 3.3 In the absence of explicit instructions that we are instructed only for a specific matter, you retain us to advise you on an ongoing basis regarding ongoing and any new matters that you entrust to us.
- 3.4 Your confidential information will be treated carefully and in accordance with the Rules of Conduct. You agree that it is not a breach of confidence for us to forward, to further your interests, technical information to relevant third parties (including to UK or overseas patent offices, professional searchers, translators, Counsel or overseas attorneys), and nor is it a breach of confidence for us to disclose information if compelled to do so by law.

## 4 Files

- 4.1 You agree that our files relating to matters which we handle for you are and remain our property at all times.
- 4.2 Files may be destroyed without notice after they cease to be current, in accordance with our File Retention Policy (a copy of which is available on our website or on request). You should tell us immediately if you require the return of papers or other material supplied to us.
- 4.3 We will agree to any reasonable request to transfer papers from our files to others, but we reserve the right to make a charge for the work involved in the transfer, at our standard rates. We reserve the right to retain all papers and other materials in our files until our charges and any other amounts payable to us have been paid in full.
- 4.4 We retain copyright in documents prepared by us. Your use is restricted to the purpose for which the document was prepared.

## 5 Conflicts of interest

- 5.1 From time to time, we may be asked to act for a client in a matter that conflicts with the interests of another client. Conflicts can sometimes arise later because, for example, our clients acquire new companies or diversify into new areas of business. Where possible, we will discuss apparent conflicts with both clients and attempt to agree an arrangement satisfactory for both. However, if a conflict arises, we may decline to act further for one of the clients in question (usually the client with whom we have had a shorter relationship), at least in relation to the

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matter giving rise to the conflict. When we advise a client that we can no longer act for them, confidentiality obligations may prevent us from identifying the other client, and sometimes the matter involved.

## 6 Client care & complaints

- 6.1 We aim to provide a service of a consistently high standard. If at any point you become unhappy with the service we provide to you or you have concerns about your bill, please discuss the matter with your usual contact in the firm. If you continue to have concerns after those discussions, please see our website for details of our Complaints Procedure.
- 6.2 If the matter has not been resolved to your satisfaction within eight weeks of your making the complaint, you may have a right to have the complaint independently looked at by the Legal Ombudsman. The Legal Ombudsman can investigate complaints up to six years from the date of the problem happening or within three years of when you found out about the problem. If you wish to refer your complaint to the Legal Ombudsman this must be done within six months of our final response to your complaint. For information about whether you do have a right to take your complaint to the Legal Ombudsman and the procedure for doing so contact:

Legal Ombudsman, PO Box 6806, Wolverhampton, WV1 9WJ: Tel: 0300 555 0333 or +44 121 245 3050.

Web: <http://www.legalombudsman.org.uk>

E: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)

## 7 General exclusions and limitations of liability

- 7.1 We understand that you will rely on our advice. We will not act for you as a client unless we are confident that we are able to give you sound advice. The firm has professional indemnity insurance (PI insurance), to protect you in the unlikely event that something goes wrong.
- 7.2 Our total liability to you in respect of our services for any loss, liability or damage howsoever caused, whether direct, indirect or consequential, whether in contract (by way of indemnity or otherwise), tort (including negligence), misrepresentation, restitution or otherwise (in each case whether caused by negligence or not) and whether related to any act, omission, services provided to you or not provided to you or failure to act or delay in acting, is limited to £10 million for each claim or series of claims, including contractual and statutory interest and costs.
- 7.3 If you do not wish to agree to the exclusions and limitations to liability set out in this section and elsewhere in these Terms of Business then we are willing to discuss alternative arrangements with you (which may involve carrying out your instructions at rates higher than our standard rates).
- 7.4 You will not make a claim personally against any of our employees.
- 7.5 Our liability will be limited in proportion to our contribution to the overall fault, taking into account any contributory negligence by you, your other advisers, and any and all 3rd parties responsible or liable to you.
- 7.6 We are not liable to you in respect of our services for any failure, delay or consequences thereof due to any event beyond our reasonable control, including without limitation, acts of God, war, terrorism, and the malicious acts of 3<sup>rd</sup> parties.
- 7.7 We do not accept responsibility for non-receipt or late receipt by you of communications sent by us in good time.
- 7.8 Nothing in these Terms of Business affects liability for personal injury or death resulting from our negligence, any loss caused by our fraud, fraudulent misrepresentation, reckless disregard of our professional obligations, or any situation where the law prohibits us from excluding or limiting our liability to you.
- 7.9 The provisions of this section continue notwithstanding termination of our relationship with you.

## 8 Searches

- 8.1 The limitations inherent in searching for Intellectual Property Rights mean that there is no guarantee that the results of such searches are accurate or complete. We are therefore not liable for the consequences of limitations in a reasonably drawn search strategy, or for errors (including classification errors) outside our control.

## 9 Instructions

- 9.1 You should note deadlines carefully, as failure to meet them may result in irrevocable loss of rights. We rely on you to give us timely, complete and accurate information and instructions. We shall notify you of time limits, but not necessarily send you subsequent reminders of them. If you do not instruct us, after you have been notified of a time limit, we are not obliged to incur costs on your behalf nor to take any other action to meet the deadline, and your rights may be lost in consequence.
- 9.2 If we receive instructions very close to a deadline, we may not be able to implement them in time. In the event of late instructions or late payments to us, we may levy urgency charges.

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- 9.3 We do not accept any liability for loss of rights if we have not received from you clear and complete instructions early enough for us to act within the time limit set. You should not assume that we will meet a deadline unless we have acknowledged receipt of your instructions and indicated that we are in a position to meet the deadline.
- 9.4 Our normal office hours are 9:00 am to 5:30 pm, Monday to Friday, excluding UK public holidays. We may not be available to attend to communications received or attempted outside our normal office hours.
- 9.5 Where possible, you should confirm oral instructions in writing. We accept no liability for misunderstanding or misinterpretation of oral instructions.
- 9.6 You authorise us to complete and sign in your name official forms and other documents needed to further your rights, and you indemnify us against any resulting costs, claims, demands, or expenses.

## 10 Authority

- 10.1 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. It is helpful if you nominate an individual within your organisation to act as a primary point of contact for us.
- 10.2 Where we are instructed jointly by more than one party, we may require written instructions from each party that one party represents all of them and is the person from whom we take instructions on behalf of all of them. We will look to that party in first instance for payment, but we may also look to any other party for payment of our charges in full and it would be up to the paying party to collect the other parties' share of those charges directly from them.

## 11 Contact details

- 11.1 Processes relating to IP rights often take several years, with long periods of inactivity followed by a need for immediate action. Please inform us promptly of any change of personnel, name, address, telephone, fax, or e-mail, or of ownership of the relevant IP rights (many such changes have to be officially registered).
- 11.2 We will address correspondence to the last-notified address, and that fulfils any duty to communicate. We do not accept responsibility for any loss of rights resulting from your failure to inform us of relevant changes.

## 12 Electronic communications

- 12.1 We may communicate with you by e-mail, unless you instruct us not to. You accept that we are not responsible for the risks arising from use of e-mail, including possible corruption in the information communicated, interception by other parties, or non-delivery.
- 12.2 We filter incoming e-mail in an attempt to control the problem of unwanted junk e-mail ("spam"). Identification of spam is carried out by a third-party, and, whilst we have chosen the third party as a reputable supplier of spam-filtering services, we do not accept any liability arising from the third-party erroneously labelling as spam an e-mail sent by you.
- 12.3 You should not assume that we have received an e-mail that you have sent unless we have acknowledged receipt.
- 12.4 We shall observe reasonable precautions to secure our IT systems; however, we cannot guarantee their security. We shall carry out regular virus checks, but we advise you to carry out your own virus checks on any electronic communication from us. To the extent that we have fulfilled our obligation above, we do not accept responsibility for any virus or other malware that may affect your system or data.

## 13 Indemnity for threat of infringement proceedings

- 13.1 If we advise you that a letter or other communication may be held to be an unjustified threat of infringement proceedings, but you nevertheless ask us to send the letter or make the communication, then you agree to indemnify us against any claim against us for making an unjustified threat and any costs we may incur in consequence.

## 14 3<sup>rd</sup> parties

- 14.1 Our advice is provided solely for your benefit as our client and solely for the purpose specified when you instruct us. It should not be otherwise used or relied upon without our written agreement. It is not intended that any terms of our relationship shall be enforceable by a 3<sup>rd</sup> party, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise, save that: (i) a 3<sup>rd</sup> party, whom we have agreed in writing may have the benefit of our advice under paragraph 14.3 below, may enforce these Terms of Business as if they were a party to them; and (ii) our employees may enforce paragraph 7.4 above.
- 14.2 If you are an attorney, agent or other representative of a 3<sup>rd</sup> party, you are our client, and these Terms of Business apply to you and to the 3<sup>rd</sup> party whom you represent.
- 14.3 We may agree with you to identify a 3<sup>rd</sup> party who is to benefit from our services, and who will be bound by these Terms of Business. Where

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our services benefit a 3<sup>rd</sup> party, you are responsible for paying our fees and for any act or omission of the 3<sup>rd</sup> party. If you are part of a group of companies, any work that we are asked to do either for you or for any other company within the group is deemed to fall within these Terms of Business.

14.4 It is often necessary to instruct patent or trade mark attorneys in other countries, in order to carry out your instructions. Similarly, we may instruct solicitors, barristers, searchers, translators, draughtsmen or other outside experts in order to carry out your instructions. Such outside service providers are not part of the firm, and we engage them as your agent. You may need to sign a power of attorney or similar appointment. You are responsible for paying the fees of such outside service providers, which will usually be billed through us.

14.5 We carefully choose outside service providers from our extensive network of independent contacts; however, where we instruct such an outside service provider in good faith, we are not liable for any failure on their part, and you should seek a remedy directly from the outside service providers.

## 15 Renewal fees

15.1 Renewal fees (also “maintenance fees” or “annuities”) are payable for many pending applications and almost all granted IP rights. You may pay renewals yourself or handle them through one of the specialist renewals providers who offer this service. As failure to pay a renewal fee in due time may result in irreversible loss of rights it is vital you make reliable arrangements for timely payment of fees. As a precaution, therefore, details of cases that become renewable will where appropriate be sent to a specialist renewals provider. Unless you instruct otherwise, the specialist renewals provider we will use for this purpose will be CPA Global. We may charge for transferring case information to a renewals provider. We will not charge for the transfer of case data to CPA Global but will receive a data management payment from them on renewal.

## 16 Charge basis

16.1 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, including the size and complexity of the matter and any urgency. Fixed charges apply in relation to many procedural tasks, and in relation to certain office services such as fax, photocopying etc. Disbursements in currencies other than £ Sterling are charged at a rate that reflects our administrative costs related to conversion. Our hourly rates are primarily based on the seniority and experience of the professional staff involved. The rates are reviewed periodically. We may use higher than standard rates if highly specialised knowledge is required, or if the matter is complex or urgent.

16.2 Our relevant charging rates are available on request.

## 17 Estimates

17.1 Many costs are outside our control and may change without notice, or be significantly affected by exchange-rate fluctuations. Furthermore, the nature of our work is such that it is inherently difficult to forecast accurately the amount of work likely to be involved in carrying out instructions. Nevertheless, we will estimate likely future costs on request. Such estimates are given in good faith, based on existing knowledge; however, they are given as a guide only and, whether given as a single figure or as a range, are not a quote, or a fixed, capped or otherwise binding fee, unless otherwise agreed in writing.

17.2 You should assume that estimates do not include VAT, unless otherwise stated.

17.3 If during the course of carrying out your instructions 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 your instructions to us are late, inadequate or incomplete then it is more likely that our estimate will be exceeded. If you do not give us full and complete instructions a reasonable time before a deadline then in carrying out your instructions at short notice we may exceed our estimate without seeking your permission. 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.

## 18 Further charges

18.1 Ongoing charges will usually be incurred in reporting developments following an initial instruction. All actions and attention provided by us are chargeable, including telephone calls, reminders and reporting on communications that we may receive as your agent.

18.2 If you decide not to proceed with a matter, it is in your interest to provide prompt, clear written instructions to abandon the case, so that where possible (and appropriate) we can prevent further charges. You are responsible for all costs incurred prior to your abandonment instruction. We may make a charge relating to implementing an abandonment instruction when active steps are required, for example instructing foreign attorneys or attempting to recover official fees.

18.3 You will be responsible for any expenses we incur on your behalf, which may include Patent Office fees, Counsel’s fees, Court fees, the costs of any experts or other agents (including any professional searchers, translators or foreign lawyers). Expenses may also include such items as photocopying costs, couriers, travel and meeting expenses, telephone and fax charges. You authorise us to incur such expenses as we consider necessary to carry out instructions properly and/or to maintain your rights.

## **19 Unsuccessful applications**

19.1 If a patent, design, trade mark, or other IP application is rejected, withdrawn or is otherwise viewed as unsuccessful, we will not refund any fees paid to us by you relating to work already carried out. We will pass on any refund (less an administrative charge) of official fees made to us by a patent office or other official body (NB: patent offices make such refunds only in very limited and specific circumstances).

## **20 Billing**

20.1 We may submit invoices at regular intervals, or at stages in a matter that we consider to be appropriate.

20.2 We may require payment on account, especially on first instructions and large matters, e.g. charges and expenses to be incurred in foreign filings and actions. When 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, or your rights may be lost in consequence.

## **21 Payment terms and costs**

21.1 We reserve the right at all times to require payment on account before undertaking work. In the absence of payment on account, we require payment of our invoices in full within the period stated in our invoices to you.

21.2 We reserve the right, in the event of failure to pay our invoices in due time, to charge interest, at an annual rate of 3% over the Bank of England base rate.

21.3 If a requested payment on account is not made or if an invoice remains unpaid after the payment period on the invoice, we reserve the right to suspend all work on your behalf, without prejudice to our right to invoice for work undertaken before such suspension and our right to take legal action for the payment of our charges. You will be responsible for, and we will not be liable for, the consequences of the suspension of work, which may include an irrevocable loss of rights; however, we will give reasonable notice in writing before suspending work.

## **22 Holding clients' money**

22.1 If we receive and hold money belonging to you, we will hold it on trust for you in a bank account designated for clients' money ("client account") which is entirely separate from our professional business bank accounts and in accordance with the following terms.

22.2 This will include money you have paid to us on account of our charges and/or disbursements and for which we have not yet sent you an invoice or other written notification, money that we have received from third parties on your behalf and any refunds we receive in respect of disbursements that you have already paid for.

22.3 The purposes for which we may withdraw your money from our client account shall include: using the money for the purpose for which it was originally paid to us, using it for any other purpose requested or authorised by you, using it in or towards payment of our charges once we have sent you an invoice or other written notification of our charges and/or in reimbursement of disbursements incurred by us and to return money to you. This list is not intended to be exhaustive and we may withdraw your money from our client account for any other purpose that we consider to be appropriate in the context of acting professionally for you. A disbursement shall be treated as having been incurred by us when we have ourselves made the payment or have incurred liability to make the payment.

22.4 If we receive money from you or from a third party on your behalf at a time when there are outstanding charges due from you to us and/or outstanding disbursements incurred by us, we may use such money in or towards payment of our charges and/or such disbursements without first paying such money into our client account.

22.5 We will promptly notify you if we use any money held or received by us in or towards payment of our charges and/or disbursements in accordance with the above terms. However, we normally expect you to pay our invoices promptly and in full unless we have previously agreed with you that we should use any such money for this purpose.

22.6 Any interest received by us on your money held in our client account will belong to Abel & Imray, unless the amount exceeds £50 in any financial year (1 April to 31 March), in which case we will credit to your funds on our client account an equivalent amount in lieu of interest.

22.7 Our bankers are National Westminster Bank. We will not be liable for any loss you may suffer of money held in our client account due to failure of the bank.

## **23 Use of Your Name**

23.1 We are proud to have you as a client. For marketing and publicity purposes we would like to be able to disclose that we have worked for you. We would also like to use your name and logo in some internal and external presentations. If we do this we will identify you by name, but we will disclose only the general nature of the work we have done for you and any details which have properly entered the public domain. We will not disclose any other details about you or the work without speaking to you and getting further consent. If you do not wish to consent to this section, please let us know. Your consent can be withdrawn at any time by writing to us.

## 24 Data Protection Act

- 24.1 By instructing us you consent to our use of relevant personal data. To enable us to carry out our obligations to you as appropriate in the course of our professional services and for other related purposes including updating and enhancing client records, credit checking, analysis for management purposes, crime prevention, and legal and regulatory compliance, we may obtain, use, process and disclose personal data about you, and we may transfer such data outside the European Economic Area.
- 24.2 This will comply with all relevant data-protection legislation. You have a right of access under data-protection legislation to the personal data that we hold about you.

## 25 Termination

- 25.1 You may terminate our relationship or withdraw instructions at any time by writing to us. You remain liable to pay for any work done up to the date of termination.
- 25.2 We may terminate our relationship by giving you reasonable notice. You remain liable to pay for any work done up to the date of termination.

## 26 Governing law and jurisdiction; severance

- 26.1 These Terms of Business and any matters arising from our relationship, including our provision of services, are governed by the laws of England & Wales.
- 26.2 The courts of England & Wales have exclusive jurisdiction to settle any dispute, including claims for set-off and counterclaims. You agree irrevocably to submit to the jurisdiction of the courts of England and Wales and irrevocably waive any objection to any action or proceedings being brought in those courts and any claim that any such action or proceeding should have been brought elsewhere. You agree that any final judgement or order of said courts shall be conclusive, binding, and may be enforced in the courts of any other jurisdiction.
- 26.3 If any court or competent authority finds that any provision of these Terms of Business (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of these Terms of Business shall not be affected.
- 26.4 If any invalid, unenforceable or illegal provision of these Terms of Business would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## 27 Acceptance & variation

- 27.1 Acceptance of the commencement of our provision of services to you is deemed to be acceptance of these Terms of Business.
- 27.2 All professional work carried out by us will be in accordance with these Terms of Business, until varied or replaced with alternative terms agreed with you, unless otherwise agreed in writing by a Partner of this firm.
- 27.3 In the event of you providing standard terms of business or the like that conflict with these Terms of Business, these Terms of Business take precedence over yours, unless agreed otherwise with you in writing.

### London

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