

PATENTEUR PTY LTD TERMS OF ENGAGEMENT

1. OUR RELATIONSHIP AND HOW WE WORK

1.1 You would like to engage Patenteur Pty Ltd (ACN 159561761) ("Patenteur") to provide IP services in accordance with your instructions received from time to time.

1.2 The services will be provided by or under the direct supervision of a Director of Patenteur, although we may make use of external IP experts during the course of your engagement with us.

1.3 Our services are subject to the *Code of Conduct for Patent and Trade Marks Attorneys*, established by the Government's Trans-Tasman IP Attorneys Board. See <https://www.ttipattorney.gov.au/for-registered-attorneys/managing-your-registration#code-of-conduct-toc>

2. WHEN INSTRUCTING US

2.1 So that we can best help you, we will require you to send us full and detailed information, including information about any change in ownership of your relevant IP rights and information about all other relevant IP matters.

2.2 In most circumstances, we will not proceed until we receive your instructions. If, however, action is necessary to protect your rights or interests, we may need to act without referring to you or waiting for your instructions and will charge for our services and disbursements.

2.3 All communications will be sent to the address you nominate (including any email address). If we are unable to reach you because you have not properly informed us of any changed address or contact details, our obligation to act in the matter ceases. Emails and faxes may lack security and jeopardise confidentiality of information. We cannot accept liability for non-receipt or late receipt by you of such emails or faxes, or for corruption or unauthorised disclosure of information contained therein. Further, electronic communications may not reach the recipient due to various technical problems, even if they appear to be delivered. Should your electronic communication contain important instructions, in particular, time dependent instructions, we cannot accept any liability for any failure to act on those instructions, unless we have acknowledged their receipt.

2.4 While it may be useful to conduct a search for the purposes of, for example, assessing potential infringement or patentability, the prior rights of others or prior art, we will not do this unless you specifically instruct us to do so. In particular, we do not conduct a patent search before filing a patent application if you have not specifically instructed and paid us to do so – this is an optional step and due to the costs involved we will always provide you with a cost estimate before conducting a search. No search is exhaustive or fully conclusive. In all matters, our liability is limited to that covered by our insurers.

2.5 As part of our provision of services to you, we will send you written reports and related communications including (but not limited to) explanations of legal matters, explanations of requirements, options to proceed, consequences for such options, explanations of steps available, our recommendations, deadlines that have to be met, etc. We will require you to, and you acknowledge that you will, read and understand such communications and to contact us immediately should you have any questions. Failure to read and understand our communications may jeopardise the validity or existence of your intellectual property rights, for which we cannot accept liability. We expressly reserve the right to withdraw our representation (refer Section 11 below) should it become apparent that our communications go unread.

3. OUR FEES AND EXPENSES

We appreciate that you may want to discuss our professional fees with us. We are happy to answer any fee queries.

3.1 PROFESSIONAL FEES

(a) Our professional fees are charged in accordance with our:
(i) Scale of Charges for Specific Tasks - our scale of charges sets out our charges for specific tasks, such as filing applications. Our confidential scale of charges for specific charges is available on request; and

(ii) Hourly Rate Charges – for matters outside our 'Scale of Charges for Specific Tasks', we may charge on an hourly rate basis. Our hourly rate charges reflect the amount of professional time we spend on your matter(s).

Our indicative hourly rate charges are (GST-exclusive):

- (i) AU\$700 to AU\$1000 per hour for patent matters;
- (ii) AU\$500 to \$800 per hour for trade mark matters;
- (iii) AU\$300 per hour for paralegal matters; and
- (iv) \$500 per hour for travelling, excluding associated travel expenses.

(b) We will usually ask you for payment in advance on account of our anticipated fees and disbursements and third-party disbursements.

(c) Before starting any substantive work based on new instructions, we will endeavour to provide you with an estimate of our professional fees. Any estimate is given in good faith based on our knowledge at the time of the instructions. Accordingly, the estimate is subject to change. If we become aware of any circumstances that may substantially affect the estimate we will contact you promptly to discuss this with you and decide on a plan to take your matter further. An estimate is not binding nor is it a fixed quote or capped fee unless otherwise agreed in writing. In some cases, our professional fees may be adjusted to take account of the urgency of the matter and necessary travelling time – we charge a 50% surcharge for urgency.

(d) Our hourly rate charges may vary according to the expertise of the professionals involved, as well as the nature of the work performed. Our hourly rates charges are reviewed periodically. If you have any queries in this regard, please contact us. Our professional fees and disbursements will apply in respect of work reasonably undertaken in accordance with your instructions from time to time. Those fees and disbursements will also apply with respect to other associated matters including, by way of example, answering subpoenas addressed to our firm in connection with work (and associated matters and files) undertaken on your behalf. We will, however, fully consult you in respect of the answering of any such subpoenas (including as to any applicable privilege which may apply).

3.2 DISBURSEMENTS

(a) All disbursements incurred by us in acting for you will be passed onto you.

(b) We will also charge all third-party disbursements we incur on your behalf, such as official patent, trade marks or designs office fees, GST (where applicable), charges and disbursements of overseas associates, experts, solicitors or barristers, and reasonable travelling and accommodation expenses where required.

(c) Where we need to use the services of overseas associates, we do so as your agents. We will convert the associate's charges to Australian dollars, and may include an amount to cover exchange rate fluctuations on the payment of the associate, banking charges, and a charge for dealing with the associate in the foreign currency.

3.3 INVOICES AND PAYMENTS

(a) We will issue invoices or debit notes in Australian dollars for our services and disbursements, and third-party disbursements. Our account operates as a tax invoice for the amount of GST (if applicable). The tax invoice will contain particulars as are required by law in order for you to obtain an input tax credit for the amount of GST paid by you if you are registered, and are otherwise entitled to claim input tax credits.

(b) Our accounts are payable on the date of the invoice or debit note, unless agreed to otherwise in writing.

(c) If you fail to pay an account, we reserve the right to:

(i) not carry out further work for you until our accounts are paid in full;

(ii) retain custody of all materials in our possession (including, without limitation, all work product, physical samples, specimens, documents and our files) until all of our accounts are paid in full; (iii) if our costs are not paid within 30 days of receipt of our bill of costs, charge you interest on overdue amounts at the Cash Rate Target set by the Reserve Bank of Australia increased by three percentage points, which is subject to change. We reserve the right to vary that rate from time to time upon notification to you; (iv) subject to clause 12, report you to a credit reporting agency for any account which is overdue by more than 60 days from the date of our invoice, and we have sought payment of that overdue amount from you; and/or (v) record an interest against any IP applications/registrations which we manage for you in the on the Personal Properties Securities Register (PPSR) and/or relevant IP Registers.

4. PRIVILEGE AND CONFIDENTIALITY

Generally speaking our communications with you, provided they are kept confidential by you, will be protected in Australia and most countries abroad by attorney-client privilege.

5. ONGOING COSTS

Obtaining and maintaining intellectual property rights involves ongoing costs over a long period. You should seek our advice on these costs so as to be fully aware of the anticipated costs and to budget for them. In particular, the filing and prosecution of PCT and national phase patent applications can carry a heavy cost burden, so it is best to speak to us in good time when preparing your IP budget.

6. MANAGING YOUR CASES

When we prepare documents in respect of a matter and submit them to you, you will check that they are accurate, and if not, contact us promptly to correct or clarify anything or raise any queries.

7. PROGRESS OF MATTERS

We will keep you informed of the progress of a matter. You will, at our request, promptly provide us with any information or assistance we need to progress the matter. Failure to do so may jeopardise the validity or existence of your intellectual property rights, for which we cannot accept liability.

8. ABANDONMENT OF MATTERS

8.1 Your instructions for maintaining or abandoning a matter must be complete and clear. Any work carried out on a matter before your instructions to abandon a matter can be implemented will be considered unbilled work. Please note that when you decide to abandon IP matters, there may still be outstanding bills from overseas associates or government organisations that you will still need to pay.

8.2 If we do not receive your instructions or a requested payment in time in relation to any matter for which action needs to be taken, we may conclude that you wish to abandon the matter and act accordingly.

9. RENEWALS

Almost all intellectual property rights to be handled on your behalf will require renewal (or annuity) fees to be paid to the relevant government authority on a periodic basis. We may manage such renewals ourselves or reserve the right to refer our clients to third-party IP renewal providers.

10. CLIENT SERVICE CONCERNS

10.1 If, at any time, you have any concerns regarding the conduct of a matter, please contact the Principal responsible for the matter. 10.2 If you are not satisfied with the way we handle any query or dispute, you may make a written complaint to:

- (a) The Institute of Patent and Trade Mark Attorneys of Australia at Level 2, 302 Burwood Road, Hawthorn VIC 3122; and/or
- (b) Trans-Tasman IP Attorneys Board at <https://www.ttipattorney.gov.au/contact-us>. If you require further information in this regard, contact us.

10.3 If any dispute other than a dispute regarding payment occurs, you agree that the dispute must be submitted to mediation by the Australian Commercial Disputes Centre Limited, and that each party bears its own costs in relation to the mediation.

11. WITHDRAWING REPRESENTATION

11.1 TERMINATION BY YOU You may terminate your engagement of us at any time in writing. If you do so, you will be required to pay our outstanding costs and disbursements as at the date of termination.

11.2 TERMINATION BY US We reserve the right to cease acting in a matter, or to withdraw from representing you and terminate your engagement of us at any time at our discretion. We may for example terminate your engagement if:

- (a) you do not comply with a request for funds in advance within a nominated period;
- (b) we are unable to obtain adequate instructions;
- (c) our accounts have not been paid as provided in these terms;
- (d) there is failure on your part to read our reports and communications;
- (e) we cannot continue to represent you for reasons of conflict of interest, whether ethical, commercial or otherwise, at our discretion.

12. PRIVACY

12.1 Personal information provided to us will only be used in accordance with your instructions and to enable us to carry out our professional activities in that connection. That information may therefore be disclosed by us to, e.g., IP Australia and to foreign associates. On request, we will provide to you details of your personal information and will update that information as required from time to time. That information may otherwise be used by us to contact you via newsletters (and other correspondence) concerning developments in the field of intellectual property but will not be used for the purpose of any third party direct marketing.

12.2 If you do not want us to contact you via our newsletters (and other mailouts), please contact us immediately. If we do not hear from you we will assume that you are happy for us to contact you.

12.3 If you are an individual, by signing these terms of engagement, you agree that we may also give information about you to a credit reporting agency for the purpose of allowing the credit reporting agency to create or maintain a credit information file containing information about you. This information is limited to the matters set out in section 18E of the *Privacy Act, 1988* and may include identity particulars (such as your name and address), payments which we have notified you are overdue by more than 60 days and which we have taken steps to recover from you, and cheques drawn by you for \$100 or more which have been dishonoured more than once. This information may be given before, during or after the provision of professional services to you.

12.4 If you are an individual, by signing these terms of engagement, you agree that we may obtain a consumer credit report containing information about you from a credit reporting agency for the purposes either of assessing your creditworthiness prior to providing you with professional services, or collecting overdue payments owed by you relating to professional services provided by us. This clause is not effective unless these terms of engagement are signed by you, as required by section 18K(1)(b) or (h), as the case may be, of the *Privacy Act, 1988*.

13. FILE CONTENTS

13.1 We maintain an entirely paperless office, where all our records are securely and confidentially held in our cloud storage service. This service uses encryption via SSL, requires two-step verification for access, includes physical security measures to guard against unauthorized access to systems, and subject all their personnel to strict contractual confidentiality obligations to ensure confidentiality. As such, you consent that all hard-copy documentation, where relevant according to our discretion, will be converted to electronic format for storage.

13.2 We reserve the right to destroy files (both hard-copy and soft-copy) and any prototype materials that are no longer current and after any ongoing work is finalised on a particular matter, at our discretion. Subject to these terms, if you wish us to return hard-copy documents from our file to you after the completion of a matter please let us know immediately, otherwise we will assume that you consent to the destruction of the file and/or prototype materials at our discretion. **If you have any reason to believe that any of the documents may be relevant to any future litigation, please contact us immediately.** We are prepared to retain hard-copy documents on our file, upon request, however we reserve the right to charge storage fees for such documents. Physical samples or specimens will only be retained for a short time and, unless you instruct us to the contrary, will then be destroyed. Files maintained by overseas associates on your behalf will be governed by their own file destruction policies and applicable laws. If you would like a copy of those associates' policies please let us know. If the files maintained by those overseas associates (to which you may be entitled) are to be returned to you upon the completion of the work

please instruct us accordingly, otherwise we will assume your consent to the above.

13.3 When instructed to transfer work to another representative, our services involved in the transfer of files, including time spent to transfer work, briefing other representatives, etc., may be charged. We may not transfer files and/or work product (and physical samples or specimens) over which we exercise a lien because of unpaid accounts.

14. ACCEPTANCE OF TERMS

If you begin or continue to instruct us, and do not advise us to the contrary within 7 days, we will consider (subject to 12.3 and 12.4 above) that you have accepted these terms and agree to be bound by them. If you have any questions, please contact us as soon as possible.

These terms are also available at
<http://www.patenteur.com/terms.pdf>