

TERMS OF ENGAGEMENT

BETWEEN HODGKINSON MCINNES PATENTS (ABN 65 867 508 314) AND

A. Retainer

1. This document together with any specific instructions for each individual matter ("Instructions") that are confirmed by us in writing ("Confirmation of Instructions") or deemed under clause 2(b) below, contain the terms of the agreement upon which you retain us to provide our professional services to you ("Agreement"). They are intended to provide a clear, common understanding of the basis of our relationship.

B. Instructions

1. Confirmation of Instructions may incorporate or acknowledge written Instructions from you. Where we have sent you a Confirmation of Instructions, the Instructions they contain will be taken as having been given by you unless and until you expressly in writing state otherwise. You should advise us who is authorised to give us Instructions, otherwise we may rely on Instructions from those with ostensible authority. We may rely on verbal Instructions in our discretion. Where there is an inconsistency between this document and Confirmation of Instructions, the terms of the Confirmation of Instructions will prevail to the extent of the inconsistency.
2. Intellectual property practice is subject to many strict deadlines both in Australia and overseas that apply often after long periods of inactivity. Instructions and changes in detail (such as your contact details or the identity of the owner of intellectual property) must therefore be given to us in a timely manner. Where this is not the case:-
 - (a) we are entitled to rely on information previously given to us as if that information was current and
 - (b) we have a discretion whether or not to perform the service or incur the expense relevant to the deadline on the basis of what we reasonably believe your instructions would have been, had you given them, and what we do or not do will be deemed to be in accordance with your Instructions.
3. In complying with your actual or deemed Instructions we are likely to need to complete documentation on your behalf. So that we may do this for you, you hereby grant to us your limited authority to complete all such documents in your name.

C. Charges – Costs and Disbursements

1. Depending on the nature of the service our fees ("Costs") will be calculated by reference to:-
 - (a) in respect of some common services, such as filing applications – our scale of charges relevant to your matter current at the time the service is performed, available on request at any time.
 - (b) where the service provided is not included in the scale of charges or where the time taken to provide the service that is the subject of a fixed charge is longer than is normal through no fault of ours, or where the scale of charges provides for a combination of fixed and time-based charges – the time taken to perform the service at the then current hourly rate for the person providing that service. The scale of applicable hourly rates is available on request at any time.
2. Fixed charges services typically include a letter as to the service provided but not an extensive advice, which will be charged separately if you have instructed us to provide it.
3. Fixed charges and the time taken for the service to be provided are the main determinants of our Costs but other factors may be taken into account as well, such as difficulty and/or complexity, the specific skills and/or knowledge required, urgency, and the degree of responsibility and/or the quantum of potential liability involved.
4. From time to time we will need to incur charges from third parties such as government agencies, overseas associates, search firms and law firms ("Disbursements"). Disbursements will be charged to you at the cost to us. However, where a Disbursement is billed to us in a foreign currency, we will determine the Australian Dollar value by reference to our nominated bank's current published foreign exchange rate. To cover the exchange risk to us of paying a foreign currency denominated Disbursement on your behalf and bank charges associated with such payment, we reserve the right to charge an additional amount which may be a percentage of the Disbursement.
5. We may, in each Confirmation of Instructions give you an estimate of the Costs and Disbursements likely to be incurred and charged in the matter at least initially. Where the work is of an indefinite or ongoing nature and you request it, we will give you an estimate of Costs and Disbursements in respect of work which is reasonably foreseeable. Estimates are not fixed price quotes. They are good faith estimations of likely Costs and Disbursements and we will endeavour to notify you as soon as it is apparent that an estimate previously given will be exceeded. All estimates are exclusive of GST unless otherwise stated.
6. We typically also include a charge in relation to minor sundry disbursements such as photocopying costs (up to 15 pages), facsimile costs, postage costs, local travel and the like ("Sundries"). This may be billed as a fixed cost or as a percentage of Costs.

D. Payment of Deposit on Account

1. Depending on a range of circumstances we may require you to deposit with us an upfront payment on account of Costs, Disbursements and Sundries (collectively "Charges") in respect of particular services we are to provide. This will be the case particularly where a lot of work is envisaged or a large amount in respect of Disbursements needs to be incurred.

E. Billing

1. In the normal course we will bill you under a tax invoice ("Invoice"). Our terms of payment are net fourteen (14) days from date of Invoice. We accept most forms of payment, including cash, cheque, major credit cards and direct debit. Invoices are denominated in Australian dollars unless specific alternate arrangements are made in advance.
2. If payment is not made within thirty (30) days after date of the Invoice and no agreement as to delayed payment has by then been made, or if a cheque in payment of the Invoice is not honoured on presentation, we are entitled to stop work immediately irrespective of the status of the matter even if by not doing the work you will lose valuable rights or incur significant liability. You may request us at any time to give you an Invoice for all services up to that time or a statement of what you owe us at such a date. You may request us to stop work at any time. If you do, you must pay us for all Charges incurred up to the date of your request, and thereafter in respect of services that are necessarily or reasonably provided by us or third parties,
3. If you have difficulty in paying any Invoice please contact us to discuss a payment plan.
4. If an Invoice is unpaid more than thirty (30) days after its date of issue and in the absence of any agreement to the contrary, interest will be charged on the amount outstanding from time to time at the rates for the periods specified in Schedule 5 of the Uniform Civil Procedure Rules 2005, NSW.
5. If an Invoice remains unpaid after sixty (60) days and in the absence of an agreement as to delayed payment, we will refer the matter for recovery and if necessary for the commencement of legal proceedings. If this happens you must pay the outstanding amount, all interest thereon and the reasonable legal and other costs and disbursements (on an indemnity basis) incurred by us in attempting to recover the total amount outstanding up to the date the total amount is paid in full.
6. We reserve the right to bank any part payment received from you. Such lodgement of a part payment shall not be deemed to discharge the debt in full. The part payment will be deducted from the invoice and you will be informed of the amount owing.

F. Third Parties

1. Where we engage third parties to act in a matter on your behalf we do so as your authorised agent. We will disclose you to the third party as our principal unless we otherwise agree. Accordingly, you have a direct contractual relationship with each such third party and must pursue any rights you may have in respect of their acts and omissions with them directly.

G. Limitations and Exclusion of Liability

1. We are not liable for any loss, damage, cost or expense you suffer or incur arising from or in connection with any of the following:-
 - (a) Non-receipt or late receipt of clear and unambiguous Instructions or information from you or third parties concerning, or relevant to, any of your matters;
 - (b) Errors made by others even if we retained or recommended that you retain them to act on your behalf;
 - (c) Errors, inaccuracies, and the inherent limitations of classifications, indices, computer databases and official records the subject of searches by us, by governmental authorities or by specialist searching firms;
 - (d) Failure to renew a registration by a particular deadline (see H1 below);
 - (e) Refusal to register or the successful challenging of the registration of your patent, trade mark or design other than by reason of our negligence.
2. Our liability to you is limited to your direct loss or damage caused by our acts or omissions over which we had direct and reasonable control. Liability for any and all indirect, consequential or economic loss and/or damage and any and all loss of opportunity or loss of profit is hereby excluded.

H. Renewals

1. As previously mentioned, our area of practice almost always involves significant deadlines. We will advise you at the time we do the initial work about those relevant deadlines which are sometimes many months into the future. It is your responsibility to record these deadlines and to act upon them. While we may send you a reminder ahead of the deadline, we are not obliged to do so, and whether or not we do so, we are not liable for the deadline being missed unless you specifically instruct us in writing to provide the service relevant to the deadline sufficiently in advance of that deadline and we acknowledge receipt of those Instructions.
2. Should you wish to retain a professional service provider to be legally obliged to remind you ahead of these deadlines, you may instruct us to appoint a third party specialist on your behalf. Again, we will do so as your agent and your contractual relationship is with that third party direct.

I. Termination

1. Either party may terminate this Agreement by giving to the other party notice in writing. Where we wish to terminate for any reason and there has been no breach by you of this Agreement, we will not cease working in a manner that unduly prejudices your rights in the intellectual property in respect of which we are working, unless you instruct us in writing to do so.
2. Where this Agreement is terminated by you or us, you must pay us for all Charges in respect of services provided up to and including the date of termination, services provided by a third party up to the time such termination is communicated to them and any further services we or any third party reasonably provide after the date of termination in order for your rights and/or position to be secured or not unduly prejudiced, having regard to any applicable deadline.
3. We are entitled to retain possession of all your papers and other materials pending the billing and payment in full of all Charges on all your matters, and to retain a copy of such of these as we determine in our discretion after such payment. In this clause, 'your' includes related bodies corporate within the meaning of the Corporations Act, 2001.

J. Privacy

1. We will not disclose your personal information to any party without your express written consent except as reasonably required to give effect to your Instructions or to those legally entitled to that information.

K. Confidentiality and Privilege

1. We will treat communications with you as confidential. Correspondence and communications between you and us will generally be protected from having to be produced in court though this protection may be lost if you disclose such communications or the information they contain to others.

L. Conflict of Interest

1. It is inevitable that we will act for more than one party in the same industry. However, we will not act for either party where two parties for whom we act or have previously acted are in actual dispute with each other. It is up to you as the client to inform us of parties with whom you are potentially in dispute and the nature of those disputes, in order for us to avoid such a conflict of interest.

M. File Storage and Destruction

1. Where a matter is no longer current all files relating to it may be stored by us either off our premises or electronically. You authorise us to destroy such files six (6) years from the date the matter is completed. If you wish us to retain documents for longer than this period please request it in writing. Retrieval of papers from storage and/or electronic form and retention of files longer than six (6) years may incur further charges.

N. Transferring files

1. You may transfer your file to another attorney or lawyer at any time on giving us at least fourteen (14) days' notice in writing, provided all Charges outstanding in all your matters are first paid in full (unless we otherwise agree in writing). We reserve the right to make copies of all documents that are to be so transferred and to charge you a reasonable amount for making such copies.

O. Complaints

1. Should you ever have a complaint in respect of services provided to you or about the way you have been treated, you should in the first instance take it up with the attorney who acts for you on a day to day basis. If you do not wish to do that or having done it feel that you still have cause for complaint please contact the Practice Manager, who will work with you to satisfy your complaint or resolve any dispute.

P. Miscellaneous

1. If you continue to instruct us after receipt of this document and any Confirmation of Instructions you are deemed to have accepted the terms of this Agreement.
2. The terms of this Agreement may be varied by us by giving to you notice in writing of such variation.
3. The law of NSW applies to this Agreement. Headings do not affect construction.
4. All notices must be in writing and are deemed given in the case of (a) domestic mail - 4 business days after posting (b) international mail - 7 business days after posting, (c) courier - when signed for, (d) fax - on receipt of transmission confirmation (e) email - when subsequently shown as received provided independent proof of receipt becomes available. Delivery on a non-business day or after 5pm on a business day in the place of receipt is deemed to occur the next business day.