

**WITHERS & ROGERS LLP**  
**(Company Registration Number OC310992)**

**TERMS OF BUSINESS**

**1. Our relationship**

- 1.1 These are the general terms that will apply to the services provided by Withers & Rogers LLP ("we" or "us") to its clients ("you").
- 1.2 When you instruct us initially we shall send you a letter (an "Engagement Letter") confirming your instructions. If you subsequently instruct us on a further case or other matter we may if appropriate send you another Engagement Letter. The Engagement Letter and these Terms of Business (the "Terms") will together form the contract between us (the "Engagement Contract").
- 1.3 You will have been asked to sign, date and return one copy of the Engagement Letter accompanying these terms to accept these Terms of Business and any particular terms in that letter. In any event, by instructing us to act on your behalf, you will be deemed to have agreed to be bound by the Terms unless otherwise agreed, or varied, in writing by one of our partners.
- 1.4 Unless our Engagement Letter states otherwise, you, our client, may be:
  - (i) a limited company ("Company"), in which case the person who instructs us warrants that he or she is a director or officer authorised to enter into the Engagement Contract on behalf of the Company;
  - (ii) a limited liability partnership ("LLP"), in which case the person who instructs us warrants that he or she is a member authorised to enter into the Engagement Contract on behalf of that LLP;
  - (iii) a general law partnership, in which case the person who instructs us warrants that he or she is authorised to enter into the Engagement Contract on behalf of his or her partners; or
  - (iv) in all other cases, an individual with direct responsibility for instructing us.
- 1.5 Where you, acting as an agent:
  - (i) for any member of your subsidiaries or any subsidiary undertaking or any holding company you may have, and any subsidiary undertakings of such holding company; or
  - (ii) on behalf of another individual, partnership or entity

instruct us, the entities or persons in paragraphs (i) and (ii) are defined in these Terms as an "Associated Person". Where an Associated Person is a recipient of, or as a matter of law is entitled to rely upon, our services in relation to a case or matter, unless the Engagement Letter states otherwise, you agree to and accept the provisions of the Engagement Contract on your own behalf and on behalf of that Associated Person. You confirm that you have or will have authority to retain us on behalf of each Associated Person. You will procure that each Associated Person will act on the basis that they are a party to and are bound by the relevant Engagement Contract. (For the avoidance of doubt, any Associated Person will be jointly and severally liable with you for paying us.) All references in these Terms (other than in this paragraph) and in the Engagement Letter to "you" will mean you and each Associated Person.

**2. Our working practices**

- 2.1 We create a file for each job, which may be an electronic file, and this file remains our property.
- 2.2 We aim to maintain archived files for at least 15 years, although we cannot guarantee so to do.
- 2.3 If you require copies of any papers from our files, then we shall assist in supplying them subject to payment of our charges and provided your account with us is settled. However, until our charges are paid in full, we shall be entitled to a lien over all your documents including certificates of grant that remain in our possession.
- 2.4 You must inform us of any changes of ownership of any of your intellectual property rights because many such changes require official registration.
- 2.5 You must give us sufficient time to carry out your instructions. If we receive late instructions, we may not be able to implement them in time.

**3. Communications**

- 3.1 We shall normally communicate with you by letter, facsimile or email.
- 3.2 There are potential risks that email communications over the internet may jeopardise confidentiality. If you do not wish to communicate by email please notify us.
- 3.3 Whether sent by email or any means other than registered mail or tracked courier service you

should check that a message has been received if we have not acknowledged its receipt within a reasonable amount of time.

- 3.4 Please inform us promptly of any change of address, telephone number, facsimile number or email address.

#### **4. Reminders and renewals**

4.1 As part of our work we shall, where appropriate, advise and remind you of deadlines (other than renewal dates). It is your responsibility to give us instructions in sufficient time for us to meet those deadlines and to pay any applicable fees.

4.2 We operate in association with Withers & Rogers Renewals LLP ("Renewals LLP") a separate and independent English registered limited liability partnership. As an additional service to clients we may where appropriate, and unless instructed otherwise, engage Renewals LLP on your behalf so that it may remind you of renewal dates and give effect to instructions to renew registered rights. Renewals LLP shall be engaged on its own terms of business, a copy of which will be supplied to you upon the engagement or upon request. It will remain your responsibility to make sure that renewal dates and other deadlines are met and any renewal fees are paid.

4.3 We have contracted Renewals LLP to maintain and operate our computer records system and to carry out certain formal tasks on our behalf. This means that we will, in any event, inform Renewals LLP of the details and progress of any applications that we handle on your behalf.

#### **5. Our charges**

5.1 You are responsible, in the first instance, for paying our charges and disbursements.

5.2 Our work for you is charged by a combination of time and standard charges for particular actions. It is a feature of the work that the time taken for some tasks cannot always be predicted accurately at the outset. If requested, we shall give an estimate before commencing a particular stage of work. We cannot always give estimates where we ask other professionals (for example patent or trade mark attorneys abroad) to act on your behalf, or when time spent is dependent on matters outside our control. We usually charge for reminder letters. We usually charge a handling fee where we invoice work done on your behalf by a third party.

5.3 We shall invoice as appropriate during or on completion of our work for you; payment is required within 15 days of the date of invoice. We may ask for a payment on account to cover anticipated costs, in which case we may require payment before we start work on your behalf.

5.4 Invoice queries must be received in writing or by email within 7 days of receipt of the invoice. Non-notification is deemed as implicit acceptance of each invoice.

5.5 In the event of late instructions or late payments to us, urgency charges may be incurred which we shall have to pass on to you.

5.6 In the event that you fail to pay an invoice in full within 15 days of the date of invoice, we reserve the right to:

- (i) charge interest on any amount not settled within this time in accordance with the then current rate of interest under the Late Payment of Commercial Debts (Interest) Act 1998 as amended or superseded;
- (ii) recover on an indemnity basis all costs and fees (including legal fees) incurred in the pursuance of amounts due to us; and
- (iii) suspend operations on your work, or not to take any action in relation to your affairs (without prejudice to our right to invoice for work undertaken before the suspension).

5.7 Unless otherwise stated our charges, disbursements and expenses are stated exclusive of VAT, while our charges are stated exclusive of disbursements or expenses.

#### **6. Our exclusions and limitations of liability**

6.1 There is a risk that we will be prejudiced by any limitation or exclusion of liability which you agree with any third party (for example, another adviser) in connection with a matter with which we are assisting you. This is because such a limitation or exclusion of liability might also operate to limit the amount that we could recover from the third party by way of contribution, if we were required to pay you more than our proper share of the liability. Accordingly, in order that our position is not adversely affected by any limitation or exclusion of a third party's liability, you agree that we will not be liable to you for any amount which we would have been able to recover from that third party by way of indemnity, contribution or otherwise, but are unable to recover because you agreed, or are treated as having agreed, with them any limitation of exclusion on your liability.

6.2 If you start proceedings against us for loss or damage and there is a third party (for example, another adviser) who is liable (or potentially liable) to you in respect of the same loss or damage, then you will (if we so request) join them into the proceedings. This is subject to any legal prohibition against your joining them in that way.

#### **6.3 Our aggregate liability for all demands, claims, actions, proceedings, damages,**

payments losses, costs, expenses and other liabilities ("Losses") arising directly or indirectly from or in connection with our services to you, and including any joint claim against ourselves and Renewals LLP, shall be limited to the lesser of either:

- (i) the direct loss suffered by you in consequence of our breach of the Terms or in consequence of our acting negligently or providing negligent advice; or
- (ii) £25 million.

**6.4 We shall not be liable to you for:**

- (i) the negligent acts or advice or breach of contract of or by third party advisers or other third parties who may be instructed in relation to our work for you, including Renewals LLP;
- (ii) any indirect or consequential loss or damage, or loss of profits, revenue, goodwill or anticipated savings or other benefits;
- (iii) any misunderstanding, transmission error or delay if we do not receive clear, timely, instructions from you;
- (iv) the disclosure of confidential information arising from the interception of communications sent by email, facsimile or other means;
- (v) any loss arising from a failure to keep us informed – including a failure to inform us of changes of ownership; or
- (vi) any loss consequent upon us not commencing work for you under paragraph 5.3 or suspending working for you under paragraph 5.5.

**6.5 You accept that we have an interest in limiting the personal liability and exposure of employees, consultants and partners. Having regard to that interest you accept that we are a limited liability entity and agree that you will not bring any claim personally against any individual employees, consultants or partners in respect of Losses which you suffer or incur, directly or indirectly, in connection with our services. The provisions of this paragraph 6.5 are intended for the benefit of our employees, consultants and partners provided that this Engagement Contract may be varied from time to time or terminated without the consent of all or any of those persons.**

6.6 Notwithstanding paragraphs 6.1 to 6.5, nothing in an Engagement Contract shall operate to exclude or limit any liability for fraud or liabilities that cannot lawfully be limited or excluded.

**7. Data protection, confidence, and publicity**

7.1 By agreeing to be bound by these Terms you authorise us (and warrant you have obtained such necessary authorisations from all or any parties on whose behalf you have instructed us) to process your personal data, including transferring the data within and outside the European Economic Area (EEA), where such data have been supplied by you and such transfer is advisable or necessary in the course of conducting professional business on your behalf.

7.2 You agree that we may, where appropriate, pass information to Renewals LLP and to Withers & Rogers Group LLP. Withers & Rogers Group LLP acts as the holding LLP for us and for Renewals LLP and is not responsible for offering professional services to clients.

7.3 We shall not reveal confidential information about you, your intellectual property or your affairs to other people without your consent, unless we are legally required so to do.

7.4 We may however disclose that you are a client. We may also disclose that we are acting for you or have acted for you on a matter, if information about that matter or our involvement in it is in the public domain or if you specifically consent to that disclosure.

**8. Money Laundering & Statutory Requirements**

8.1 In compliance with anti-money laundering legislation, other legal rules and commercial considerations, we may have to ask you to provide evidence of identification, and in the event that that does prove necessary we would expect your full cooperation and understanding.

8.2 We may be required by applicable statutory and other legal requirements to disclose information to governmental or other regulatory authorities. In particular you should be aware that under UK anti-money laundering legislation we may be obliged to notify the National Criminal Intelligence Service if we know or suspect or have reasonable grounds to suspect that you, or another person, is using, or a transaction on which we are advising involves, the proceeds of crime. You should also be aware that in those circumstances we may be precluded from seeking your consent or informing you that we have made a notification or disclosure.

**9. Termination of our services**

9.1 You may terminate an Engagement Contract to us by notice in writing at any time; we may terminate an Engagement Contract in our absolute discretion on reasonable notice in writing.

9.2 If an Engagement Contract is terminated, you will remain liable to pay our charges and expenses incurred or committed on your behalf as at the date of termination.

## 10. Complaints and disputes

- 10.1 Our partners and qualified staff who practise as patent or trade mark attorneys are regulated by the Intellectual Property Regulation Board (IPREG) and are bound by IPREG's code of professional conduct.
- 10.2 Our partners and qualified staff who practise as European patent attorneys are members of the Institute of Professional Representatives before the European Patent Office and are bound by their code of professional conduct.
- 10.3 If at any time you perceive a problem with our service, please contact your case attorney in the first instance.
- 10.4 If you are still dissatisfied with the service you have received from us, we shall seek to settle the issue with you through our formal internal complaints procedure, details of which will be sent to you upon request. Please put your complaint in writing to The Practice Director, Withers & Rogers LLP, 4 More London Riverside, London, SE1 2AU.
- 10.5 If, following investigation and written response from us, you are still dissatisfied with the outcome you may (within 6 months) refer the matter to The Legal Ombudsman, PO Box 15870, Birmingham, B30 9EB.

## 11. General terms

- 11.1 Except pursuant to paragraph 6.5, none of the Terms shall be enforceable by any third party unless expressly agreed otherwise in writing by one of our partners.
- 11.2 English Law shall apply to the construction and interpretation of the Terms and any other contractual arrangements between us.
- 11.3 We are an English limited liability partnership ("LLP"). An LLP has "members" and not "partners". However it is more usual for the principals of professional firms to refer to themselves as "partners" and our members have decided to retain this traditional usage. Accordingly, in the Engagement Letter and in these Terms, we have referred to our members as "partners", and we will continue to do so in our dealings with you.
- 11.4 If all or any part of an Engagement Contract becomes illegal, invalid or unenforceable in any respect, then the remainder of the contract shall remain valid and enforceable.
- 11.5 We shall not be liable to you if we are unable to perform our services as a result of any cause beyond our reasonable control. In the event of any such occurrence we shall notify you as soon as reasonably practicable.
- 11.6 We may assign the benefit of an Engagement Contract to any partnership or corporate entity that carries on our business in succession to us. You will accept the performance of any such assignee in substitution for our performance. Reference in any relevant Engagement Letter and in these Terms (other than in this paragraph) to "us" includes any such assignee.
- 11.7 Subject to the right to assign in paragraph 11.6, neither you nor we shall have the right to assign or transfer the benefit or burden of an Engagement Contract without the written consent of the other.
- 11.8 In the event of any inconsistency between these Terms and an Engagement Letter, the latter shall prevail (save that any reference in an Engagement Letter to Withers & Rogers shall be deemed to be a reference to Withers & Rogers LLP).
- 11.9 These Terms supersede any earlier terms of business we have agreed with you and, in the absence of any express agreement to the contrary, will apply to the services referred to in any Engagement Letter accompanying these Terms and all services we subsequently provide to you.
- 11.10 From time to time it may be necessary to amend or supersede these Terms with new terms. Where this is the case we will notify you of the changes and, unless we hear from you to the contrary within 14 days after such notification, the amendments or new terms will come into effect from the end of that period.

Withers & Rogers LLP

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