

February 2017



RGC Jenkins & Co t/as Maucher Jenkins

Terms of Business

1 Interpretation

In this Agreement:-

1.1 "Agreement"

means these terms and conditions;

1.2 "we, us, our, the firm"

means RGC Jenkins & Co, a partnership trading as Maucher Jenkins, whose principal place of business is 26 Caxton Street, London SW1H 0RJ;

1.3 "you, your"

means the instructing party;

1.4 "Client"

means the person, firm, company or organisation to whom we have agreed to provide any Services;

1.5 "Files"

means our records in any paper or electronic form relating to Services, including email databases;

1.6 "Intellectual Property Rights"

means the portfolio of trade marks, patents, designs & domain names and similar rights and applications for any of the preceding, subject of the instructions;

1.7 "Services"

means the services to be performed by us in respect of the Intellectual Property Rights and may comprise preparing, filing, prosecuting, asserting, challenging or defending Intellectual Property Rights or advising on the same.

2 The Agreement

2.1 By requesting any Services from us, you/the Client will be deemed to have accepted the terms and conditions of this Agreement, which will govern the provision of our Services to the exclusion of any other terms and conditions.

3 Obligations of the Firm

- 3.1 It is the Firm's responsibility to: (a) practise with due skill, care, diligence, integrity, timeliness and objectivity, putting the interests of clients foremost and maintaining their confidentiality, while observing the law and the Firm's duty to any Court or Tribunal; and (b) avoid conflicts of interest.

4 Our Liability

- 4.1 In the unlikely event that something should go wrong, we protect the Client through professional indemnity insurance cover through PAMIA Ltd of 90 Fenchurch St, London, for activities worldwide, including the US. To the extent permitted by law, our liability for all claims directly or indirectly connected with any matter, whether in negligence or otherwise, to the Client is limited to £5,000,000. Furthermore, to the extent permitted by law, if we are liable to pay damages to the Client and if the Client or any other person (including advisors) has contributed to the loss the Client has suffered, the damages payable by us will be reduced proportionately.

5 Instructions

- 5.1 It is important that we are able to identify who is responsible for settlement of all our invoices and for reimbursement of all our costs and expenses. We shall be entitled to assume, unless otherwise instructed in writing, that this is the person (including an individual, firm or company) providing us with the instructions in relation to a matter. Thus if we accept instructions from professional representatives, such as lawyers, trade mark attorneys or patent attorneys (whether in the UK or abroad) they will be responsible for settlement of all our invoices and for reimbursement of all our costs and expenses incurred in carrying out their instructions. We shall also be entitled to assume that they are entitled to instruct us on behalf of the Client, and that they will communicate these Terms of Business to, or assist us to communicate directly with, the Client to meet our regulatory obligations.
- 5.2 If you wish us to render invoices to and accept payment from another entity (for example, another company in the same group) then we may be willing to do this; however, responsibility for making such payment remains with you.
- 5.3 We shall assume that our over-riding instructions are not to let the Client's rights lapse without specific instructions to do so. This clause 5.3 does not apply to renewals of any of the Client's Intellectual Property Rights - see clause 13. There may be occasions when a third party instructed by us on the Client's behalf has to take urgent action thought to be in the Client's best interests without recourse to our firm or to the Client. Such action, although rare, will be within the terms of the above over-riding instructions.
- 5.4 We welcome instructions from new clients and start up companies. Nevertheless, for all new clients we have a policy of seeking adequate funds on account in advance of carrying out any work. In addition, for newly formed limited companies, we expect the directors to be personally responsible for our reasonable charges and costs incurred in accordance with instructions made on behalf of the company. We may ask directors to sign an undertaking to this effect.
- 5.5 We reserve the right to request that individuals or corporate bodies based overseas direct their instructions to us through a professional representative such as, a registered patent or

trade mark attorney, based in their country.

- 5.6 We rely on you or the Client to give us timely written instructions. Patent and Trade Mark offices often impose time limits. We accept no liability if you or the Client do not provide clear and complete instructions early enough for us to act within those time limits. We will normally advise you or the Client of time limits, and of actions or instructions that are required, but we do not undertake to give reminders. If we receive late instructions, we may not be able to implement them in time. In the event of late instructions or late payment to us, urgency charges may be incurred which will be passed on to you.
- 5.7 All oral instructions must be confirmed in writing. We accept no liability for any misunderstandings or misinterpretation of oral instructions, or for the absence of written confirmation thereof, whether on our part or that of you or the Client, arising as a result of you or the Client's failure to comply with this Clause 5.7.
- 5.8 You or the Client undertake promptly to provide us with all information, assistance and materials that we may request from time to time to facilitate our proper and timely performance of the Services. You or the Client warrant that all information provided to us will be complete and accurate and that it is entitled to provide the same to us for use in providing the Services without recourse to any third party. You or the Client also authorise us to complete and sign in the name of the Client such documentation as is necessary or desirable to carry out your lawful instructions, and will on request, provide in a timely manner, any requisite signed form(s) of authorisation. Furthermore, you and the Client will indemnify us in respect of all costs, claims, demands and expenses that may result from exercise of the authority given by this clause.
- 5.9 It is important that you inform us promptly of any change of address, telephone and fax numbers and of any change in ownership of the patent or other relevant Intellectual Property Rights. Many such changes have to be officially registered. Please remember that the obtaining of patents, trade marks and design rights can take many years. No responsibility can be accepted for any loss of rights in any case where you have failed to inform us of such changes.
- 5.10 We will normally communicate with you or the Client by mail or fax; however, we may also communicate by e-mail either in response to electronic communication or with your or the Client's prior agreement. We are aware that e-mails sent over the Internet may lack security and jeopardise confidentiality. We can accept no liability for non-receipt or late receipt by you or the Client, of such communications, or for any corruption in the information communicated to you or the Client, or its disclosure to other parties, as a result of the interception of such communication.
- 5.11 Although we regularly carry out virus checks, we advise recipients of communications from us to carry out their own virus checks on any communications (whether in the form of computer disc, e-mail, Internet or otherwise). We accept no liability (including in negligence) for any viruses that may enter your or the Client's system or data by these or any other means.
- 5.12 Any searches that you or the Client 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.

6 Charges

- 6.1 It is not usually possible to quote with precision for our fees or disbursements in a matter in advance. To the extent possible, we shall endeavour on request to provide an estimate (at an appropriate level to your understanding) of our fees for any matter. The estimate is provided only as a guide and is not binding. Should the estimate involve a disproportionate amount of work, we reserve the right to charge for preparing it.
- 6.2 All actions and attention provided by us are chargeable, regardless of the outcome of the matter in question. These include (without limitation) telephone calls and correspondence from and to you or the Client, reminders, reporting on communications which we receive on your or the Client's behalf, whether or not we have requested the same, including but not limited to letters from patent offices and/or threats of opposition from third parties.
- 6.3 Our fees for the Services will be based not only on the time we spend working on the Services but also on service charges for standard tasks. A Fee schedule showing these service charges for standard tasks is available on request. The time element of our fees will be determined by all the circumstances of the case, including not merely time spent, but also the complexity, difficulty and urgency of the matter and the skill and responsibility involved. Our hourly rates are primarily based on the seniority and experience of the professional staff involved.
- 6.4 Whilst our service charges and hourly rates are predictable, you or the Client 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 fluctuations.
- 6.5 Expenses and disbursements such as postage and packaging, courier costs, telephone call charges, faxes, photocopying and the charges (if any) paid or to be paid by us to third parties on your or the Client's behalf (such as registration or renewal fees to be paid to the trade mark or patent offices, or the charges of overseas patent or trade mark attorneys) will be invoiced in addition to the fees and will be subject to a handling charge.
- 6.6 Except for minor items we shall normally discuss expenses and disbursements with you or the Client as they arise.
- 6.7 If for any reason we do not complete a matter, we will nonetheless charge you or the Client fees, expenses and disbursements in respect of the Services that have already been carried out.
- 6.8 If at any stage you or the Client is concerned about the level of our fees, speak to the partner who has overall supervision of the matter, without prejudice to you or the Client's rights to invoke our complaints procedure.
- 6.9 We reserve the right to increase our hourly rates and service charges at any time.
- 6.10 All sums referred to in this Agreement will be payable in full without deduction, withholding or set-off, unless specifically agreed in writing, and are exclusive of VAT and any other duty or tax, which will (if and to the extent applicable) be payable by you or the Client pursuant to

clause 5.1.

- 6.11 If you or the Client cancel or amend any instructions after we have started work you or the Client pursuant to clause 5.1 will reimburse us for all costs, expenses, charges and losses incurred by us as a result of such cancellation or amendment, including without limitation any costs, expenses or charges arising from the cancellation or amendment of any contracts we have entered into and/or instructions we have given to third parties for the purpose of performing our Services for you or the Client.
- 6.12 In the event that this relationship with you or the Client is terminated (whether by withdrawal of our Services or otherwise) we will forward correspondence for you or the Client only on the basis of an undertaking in respect of our fees for so doing.

7 Invoicing and Payment

- 7.1 We reserve the right to request a reasonable sum by way of payment on account before we commence our Services, or at any time during the provision of the Services. When we make such a request, in general we will not carry out any instructed work until the requested payment has cleared into our bank account. Interest will not be payable on any monies held on account.
- 7.2 All sums payable hereunder will be invoiced and paid in pounds sterling unless alternative arrangements have been agreed. Invoices levied in any other currency will be converted at a premium to the prevailing exchange rate. All invoices shall be paid on receipt.
- 7.3 If you or the Client pursuant to clause 5.1 is overdue with any payment hereunder, then without prejudice to our other rights or remedies:
- 7.3.1 you or the Client will be liable to pay interest on the overdue amount in accordance with the terms of the prevailing UK Legislation (currently The Late Payment of Commercial Debts (Interest) Act 1998). Where this Act does not apply, interest will be calculated at 8% above the Bank of England Base Rate. This charge will not be incurred if the invoice is settled in full, within 30 days of the invoice date (or 60 days in the case of you or the Client based outside the European Economic Area); and
- 7.3.2 we reserve the right to recover costs and fees (including legal fees on an indemnity basis) incurred through seeking to recover the same; and
- 7.3.3 we reserve the right to suspend or refrain from taking action on behalf of you or the Client, without incurring any liability to the Client, or any other party, even if this causes the Client, or any other party, to lose, or fail to obtain, any rights which would have been theirs had we acted.
- 7.4 Any suspension of the Services by us pursuant to Clause 7.3.3, or any cancellation or amendment by you or the Client of instructions previously given, does not prejudice our right to invoice, and be paid, for Services we have performed and expenses and disbursements we have incurred (or to which we have become committed) prior to the date of suspension, cancellation or amendment.

8 Files

- 8.1 When files are transferred to us from other firms or organisations, they are usually accompanied by records of key data. We recommend that we check such information against the contents of the files and/or from public records. We will levy a reasonable charge for such checking. If you or the Client do not wish to instruct us to carry out such checks, we can accept no liability for any errors contained in the files as they were received.
- 8.2 Our files and all papers relating to the Services we perform for you shall be, and will remain, both during and after the term of this Agreement, our property in accordance with the recommended practice of The Chartered Institute of Patent Agents. If you or the Client wishes any third party to have access to such Files at any time, we will provide such access subject to a fee for the work involved. We retain the right to exercise a lien over the contents of our files to the extent that the same is permitted by law.
- 8.3 If you send us papers, samples or other materials, please tell us at the same time if you require them to be returned. Otherwise, we will incorporate them into our files.
- 8.4 We have a written File Retention Policy which is available on request. In summary, we will retain our Files (in paper or microfiche or electronic format) for such period as we consider appropriate and archive or destroy them thereafter.

9 Indemnity for threat of infringement proceedings

- 9.1 Before we send any warning on behalf of a client to a third party, we ask the Client 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 clients who do not provide the requested indemnity.

10 Termination

- 10.1 Either party may terminate this Agreement immediately upon written notice to the other in the event of:
- 10.1.1 any material breach of this Agreement by the other party, which breach is not remedied (if remediable) within 30 days after the receipt by the party in default of a written notice specifying the nature of the breach and requiring the same to be remedied;
- 10.1.2 the other party becoming insolvent, entering into liquidation, whether voluntary or compulsory, passing a resolution for its winding up, having a receiver or administrator appointed over the whole or any part of its assets, making any composition or arrangement with its creditors or taking or suffering any similar action in consequence of debt.
- 10.2 The termination of this Agreement will be without prejudice to the rights of either party in respect of any antecedent breach and in particular you or the Client pursuant to clause 5.1 will remain liable to us for all fees, expenses and disbursements due in respect of Services performed up to the effective date of termination.

11 Force Majeure

- 11.1 We will not be liable for any delay in performing or failure to perform our Services to the extent that such delay or failure results from any cause or circumstance beyond our reasonable control (an “event of force majeure”). If any event of force majeure occurs, the date(s) for performance of our Services will be postponed for as long as is made necessary by the event of force majeure. If any event of force majeure continues for a period of or exceeding 60 days either party may cancel the affected Services immediately on written notice to the other party.

12 Assignment and Sub-Contracting

- 12.1 The Client may not assign, sub-license or sub-contract this Agreement or any of its rights or obligations hereunder without our prior written consent.
- 12.2 We may appoint third parties (such as foreign trade mark or patent attorneys, where appropriate) to perform any part(s) of the Services. Our contracts with those third parties may be made on the third party’s standard terms of business and, in such cases, we can offer you or the Client no better terms in relation to Services provided by such third parties than those offered to us by the relevant third parties.
- 12.3 Such third parties are not part of this firm, but we may have an interest in some third parties we instruct. Whilst we shall endeavour to select third parties whose performance and expertise we regard as being of good quality, we will not be liable for any losses, liabilities, costs or expenses arising out of any default or negligence on the part of any such third parties.

13 Renewals

- 13.1 Unless otherwise specifically agreed by us, the Services will not extend to issuing reminders for and processing renewals of any of your registered rights. Accordingly, unless specifically agreed by us, we shall assume that you have made other arrangements for reminders and for processing renewals of any of your registered rights, or that the registered rights are to lapse. Our standard practice is to pass details of all cases we handle requiring such renewals to specialist renewal agents, namely CPA Global Limited, of which we are CPA Strategic Partner. CPA will endeavour to remind the registered proprietors concerned of due dates for payment of renewal fees and they will also invoice such proprietors for their services under their current terms of business.
- 13.2 If we have agreed to process renewals of any of your registered rights then, subject to any specific Renewals Service Agreement, in addition to the conditions of at least clauses 5.6, 5.7 and 5.9, we require prior written instructions, and we reserve the right to require payment in advance. Regarding any specific renewal of any specific registered right, and the related relevant due date, in the absence of written instructions at least one month prior to the relevant due date, and cleared payment received at least one month prior to the relevant due date, we shall assume that the rights are to lapse, unless we have agreed otherwise in writing.

14 Privilege

- 14.1 In general, communications between a UK or European Patent or Trade Mark Attorney and his client are privileged under English law. This means that others, including the courts, are not entitled in the UK to discover the content of such communications where they concern professional advice. Privilege laws vary from one country to another and as English law does not have effect abroad, Clients should ask in advance about the situation abroad if this is of concern to them. Please note that the privileged status of a letter or other document can be lost if it, or its contents, are disseminated to persons other than the addressee of the document. In rare circumstances the courts may rule that such privilege is lost or does not apply. In that event we accept no liability in respect of any loss whatsoever incurred by you or any other party as a direct or indirect consequence of the loss or absence of privilege.

15 Notices

- 15.1 All notices and other communications required or permitted to be served or given hereunder shall be in writing and delivered by hand or sent by first class registered post or courier to the intended recipient's address.

16 General

- 16.1 The invalidity or unenforceability of any term or right arising pursuant to this Agreement will not adversely affect the validity or enforceability of the remaining terms and rights.
- 16.2 This Agreement constitutes the entire agreement and understanding between the parties with respect to its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing, with respect to the same. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in communications between the parties prior to the date of this Agreement except as set out in this Agreement. Neither party will have any remedy in respect of any untrue statement made to it upon which it has relied in entering into this Agreement (unless such untrue statement was made fraudulently) and that party's only remedies will be for breach of contract as provided in this Agreement.
- 16.3 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 16.4 If a conflict of interest exists between your or the Client's instructions and those of any other client for whom we are acting, or arises during the term of this Agreement, we reserve the right to ask the Client to seek advice elsewhere. Assistance in finding a suitable alternative representative is available on request.
- 16.5 The failure of either party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it.

17 Alterations

- 17.1 No amendment or variation to this Agreement will be valid unless agreed in writing by one of our partners.

18 Complaints

- 18.1 We value our good relationships with our clients. However, we accept that from time to time, difficulties and misunderstandings do arise. If there are any problems, please feel free to discuss concerns with the member of our professional staff responsible for handling the work. If, after such discussions, you or the Client feel that the matter has not been adequately dealt with, or any invoice is unreasonably high for the work involved, we have a formal complaints procedure which is available on request from the Partnership Secretary, RGC Jenkins & Co, 26 Caxton St, London SW1H 0RJ. If we cannot resolve the situation, the matter may be referred to the Legal Ombudsman (full details below at 20.2).

19 Proper Law and Jurisdiction

- 19.1 The construction, validity and performance of this Agreement will be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales to resolve any dispute arising between them.

20 Contact and Partnership Information

- 20.1 Maucher Jenkins is a firm of UK, German and European Patent and Trade Mark Attorneys, Attorneys-at-Law and IP Litigators. Maucher Jenkins is the joint trading name of RGC Jenkins & Co in the UK (regulated by IPReg) and Maucher Jenkins Patentanwälte & Rechtsanwälte in Germany.

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- 20.2 Legal Ombudsman
PO Box 6806, Wolverhampton WV1 9WJ, United Kingdom
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The information given herein is correct at the time of publication.