

FRANKS & CO

Chartered Patent Attorneys, European Patent Attorneys, European Trade Mark Attorneys

TERMS OF ENGAGEMENT

These terms govern our contract with you.

1. Franks & Co

Our services are provided to you by Franks & Co, and the contract for those services is with Franks & Co and not with any individual member, employee, or agent of Franks & Co. Acceptance of our commencement of the provision of services to you should be deemed to be acceptance of these terms of engagement.

2. Supplementary Terms

We may set out supplementary terms to this contract in the covering letter or in subsequent letters. In the event of any conflict between the terms in this document and the terms in any such letter, the terms in the letter will prevail to the extent that there is conflict. Otherwise, the terms of this engagement will prevail.

3. Our Principal

At any one time we are retained by one principal who is our principal both financially and in the matter of instructions. We accept instructions from third parties only on the basis that our instructing principal accepts responsibility for our consequent invoices for work carried out on the instruction of the third party. Our principal is our client.

4. Authority to Instruct

If we are given clear verbal or written instructions to act by someone claiming to give those instructions on behalf of a third party (e.g. an employee on behalf of his employer, a partner on behalf of one or more of his co-partners, or a solicitor or accountant on behalf of his client) we assume in all such cases that the person giving those instructions has authority to give them. We will accept no claim for any consequential loss or damage if it subsequently turns out that we were misled. Where you seek our advice by telephone or meeting, which results in our giving of professional advice verbally, we will take that advice as having been instructed.

5. Default procedure and need to meet deadlines

When you instruct us to commence a procedure, we will act on the assumption that you wish to continue with that procedure until we receive a definite instruction from you to terminate the procedure. In the normal case, we will exercise our duty of care to maintain rights on your behalf. However, if we do not receive instructions in due time, if there are significant outstanding unpaid fees or disbursements, or if we have requested payment for a disbursement within a deadline, and that payment has not been received by us, then we reserve the right to take that as an implicit instruction not to act. Most intellectual property procedures are deadline driven, and failure to comply with official formalities, to respond to official communications, or to pay fees within officially set deadlines can lead to irrevocable loss of rights. Please note any deadlines indicated on our letters. It is important that your instructions, and any payment requested in advance to carry out those instructions are received in good time before a notified deadline. Failure to meet deadlines may result in loss of rights.

6. Who will act for you?

Wherever possible, we will ensure that one person has overall responsibility for carrying out your work, and at least one other person is available to provide cover for holidays/ absence of the primary person. We aim to ensure that, where appropriate, the collective expertise and experience of our whole firm is available for our clients and that continuity of service is maintained, and in certain cases it may be appropriate that other persons from our firm are involved in certain aspects of your work.

7. Authorisation to act on your behalf

You authorise us to complete and sign in your name and your behalf such official forms and documents as are necessary or useful to carry out your lawful instructions. By us accepting to act as your agents, you indemnify us in respect of all costs, claims and expenses which may result from exercise of the authority given by this paragraph, including liability for costs awarded in contentious procedures, for example opposition procedures or enforcement of intellectual property rights.

8. Costs

From the nature of intellectual property advice our costs relate to professional time spent working on files, including telephone advice and meetings, plus office services such as photocopies, emails, faxes, postage, fixed fee items for standard procedures, as well as disbursements. In most cases, disbursements will be itemised separately on our invoices to you. Disbursements will be marked up at a reasonable rate, which takes into account the cost of borrowing money and administering payment of disbursements. From time to time, we review our hourly rates in line with market conditions. We will not normally contact all clients whenever such a review takes place, however you may at any time contact us to check the hourly rates of persons carrying out your work.

9. Cost Estimates

Estimates of fees and costs will be provided on request. We are happy to discuss the basis of any estimate. We shall endeavour to keep to estimates wherever possible, but we reserve the right to charge for any work not originally accounted for. In most cases, the main element of any cost constitutes the time element. In particular, telephone advice and meetings can accumulate significant cost over and above costs originally estimated for, and give rise to time spent on making file records of the advice, and/or the need to prepare considered written confirmation of the advice given. In many cases it is not feasible to predict the amount of work that will be involved with sufficient accuracy. In such cases the time based charges and office services are likely to make up the bulk of the final cost of any procedure.

10. Cost limits

You may set a limit on the costs including fees and disbursements which we may incur on your behalf without further reference to you. If you wish to set a limit then please inform us in writing of any such limit.

11. Charges for incomplete work

Where, for any reason an item of work, or a procedure which you have instructed, is not pursued to completion, then a charge will be made only in respect of the work that has actually been done and/or any time and office services expended, plus in either case any disbursements incurred on your behalf.

12. Retainer

In common with many professionals we work on a retainer basis. When appointed, we have a legal duty to act in our clients interests and we must pass on any information received on their behalf in which our clients have significant interest. We shall not incur unnecessary costs, but we are entitled to charge for any time spent furthering a clients interests, including seeking instructions from you, and issuing reminders where we have requested instructions from you, but these have not been received. Our retainer may be terminated in writing and will operate from the date of receipt. A fee note will be rendered for any outstanding costs incurred up to and including the date of receipt.

13. Payment

Our fees and costs incurred are payable whatever the outcome of any work undertaken by us on our clients behalf.

1. Payment becomes due on the date of the invoice.
2. Strictly 30 days for settlement.
3. Interest will be charged on late payments at 2% per month or part thereof.
4. All bank charges must be borne by the payer.
5. A minimum charge of £15 will be rendered for re-presented cheques.
6. Any query must be submitted in writing within 7 days of the invoice date.

For some items such as significant disbursements, we require prepayment before incurring such disbursements.

These terms of engagement constitute an agreement with our principal that the principal will pay in full any costs and expenses including the cost of expenditure of time at our normal commercial rates incurred in recovery of payment of our invoices after 30 days from their date of issue.

14. Money laundering regulations

We may ask you for evidence of your identity and address. These requirements can be satisfied by production of your passport and two utility bills of less than three months old. Additionally, if the work which you instruct us to do includes a transaction to which you will be introducing money (for example an assignment of rights) we may enquire of you at the outset as to the source of those funds.

15. Telephone Advice and meetings

Any advice given or view expressed by telephone or at a face to face meeting should only be regarded as a preliminary opinion, and not as our fully considered advice. Any action which you take should be taken after obtaining our written opinion given after a full consideration of the facts. Clients must supply any information in their possession or knowledge which may have a bearing on our subsequent opinion. We reserve the right make file notes of any telephone advice given and any verbal advice given at meetings. Such file notes are the property of Franks & Co and are used for our internal management only and do not form legal advice provided to you.

16. Dealings with Official intellectual Property Offices

In general, grant or registration of many intellectual property rights is dependent upon the allowability or registrability of those rights before the governmental offices of many territories. Whilst we will endeavour to advise on the registrability and allowability of rights throughout procedures for obtaining rights, registration or grant of any intellectual property rights is not guaranteed.

17. Confidentiality

Any advice given by us to you as our client is confidential, and attracts legal privilege in accordance with the Copyright, Designs & Patents Acts 1988 as amended. Any advice given is for your purposes and in connection with your specific matter only as our client. No other person may rely on our advice, and we accept no liability to persons other than our client to whom the advice is addressed.

18. Security of Documents

Any information which might reasonably be expected to be of a confidential nature will be treated as such. Information and materials supplied to us will be kept under conditions of normal office security. It shall not be regarded as a breach of confidence to forward technical information to any Patent Office or to our employees or agents for the purpose of furthering the clients interests. The duty of confidentiality shall not extend to information which is freely available from other sources (e.g. a published patent specification).

19. Communications

Our policy is to make use of efficient communications media such as e-mail, fax and we will consider that any email addresses, fax numbers or communication addresses given to us for communication by you are secure and confidential communications channels unless you specify otherwise.

20. Copyright

We expressly reserve the copyright in all letters, patent specifications, legal opinions and other documents issued by us. Your use of such documentation is restricted to the purpose for which it was created. We permit clients to copy such documents for their own use, but only after all due costs have been paid in full.

21. Database right

We expressly reserve any database right in the content of our databases, including lists of our foreign associates.

22. Return of Samples and Documents

The return of any samples, prototypes, models or documents must be requested to us in writing. Materials not so requested will be retained by us for as long as we require them and then disposed of at our discretion.

23. Files

The contents of our files will remain our property at all times.

24. Destruction of File Contents

We reserve the right to destroy files which are no longer current, including files relating to rights of our client which are no longer in force, e.g. non-renewed patents, at any time from the date the file ceases to be current. We neither undertake to destroy such files at that time nor do we undertake not to destroy any given file, unless specifically instructed by our client.

25. Termination of Instructions

You may terminate your instructions to us by giving reasonable written notice. We reserve the right to cease acting for you for good reason, such as where a conflict of interest arises, if you fail to give us adequate instructions, if one of our invoices is not paid within the settlement term, or if a request for payment on account for significant disbursements is not met. If either party terminates instructions, you must pay all costs incurred before termination of instructions, and as a consequence of instructions which we have already acted on. In particular the responsibility for payment of costs from foreign associates resulting from work already carried out by or instructed to foreign associates before the date of termination must be met by you. There are time lags in intellectual property procedures, particularly where foreign rights are concerned. Upon receipt of terminating instructions the responsibility for complying with any ongoing procedures and deadlines in connection with any matter resides with you.

26. Transfer of Agency

When instructed to transfer work to another agent we are normally willing to make such copies of our files available for that agent, to the extent that enables that agent to perform your work, subject to our invoices having been paid in full and subject to the protection of our own property rights including intellectual property rights from our competitors. We reserve the right to withhold any documents which we regard as for our internal use. In particular, we regard as being our own property, copies of letters written to the client, filenotes of telephone calls and attendances at our office, tape recordings of conversations and proofs of evidence as an aide memoir, internal office memoranda, entries in our diary systems, timesheets, any of our computerised records, office journals and books of account, and details of our suppliers and foreign associates. We will charge a minimum disclosure fee of £50 plus VAT per file, plus photocopy costs, which we would normally require to be paid in advance.

27. Conflicts of Interest

We occasionally turn away work which may result in a conflict of interest. We regard the conflict of interest as being an acceptance of any instruction from a client which may prejudice our ability to act in the full interests of any other of our clients. If during the course of acting for a client on a matter it becomes clear to us that a conflict exists, we reserve the right to cease acting for one or more of our clients in relation to that matter. We recommend that clients identify to us any firms, companies or individuals for whom they believe we would be unable to act for without a conflict of interest arising.

28. Complaints

It is important for us to maintain our quality of service to our clients. If you have any significant complaint concerning our service, then please set this out in writing, and forward it to "The Quality Control Manager", who will address your complaint according to our internal complaints procedures.

29. Insurance & liability

Franks & Co carries professional indemnity insurance in accordance with the guidelines of the Chartered Institute of Patent Agents and the Institute of Trade Mark Attorneys. To the extent permissible by law, the limit of our liability to you for any claim in connection with this engagement is £5m for all claims arising outside the US, and £1m for all claims arising from or originating in the US.

30. Code of Practice

Franks & Co are members of the Chartered Institute of Patent Agents, the Institute of Trade Mark Attorneys, and the Institute of Professional Representatives before the European Patent Office. Franks & Co are regulated according to the codes of practice of these governing bodies.

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