

HKIPA Limited
- TERMS OF BUSINESS -

1. General

These Terms of Business (“Terms”) apply to the services which Hong Kong Intellectual Property Agent Limited (refer to as HKIPA thereafter) supplies to its clients. In these Terms references to “HKIPA”, “we”, “us” or “our” are references to Hong Kong Intellectual Property Agent Limited and any successor or assignee.

The terms of any quotation, invoice, confirmation letter and these Terms will form the contract between us in relation to your instructions.

These terms supersede any earlier terms of business we may have provided to you.

Your contract is a contract with HKIPA which is solely responsible for the advice given to you and other work done for you (“Services”).

There is no contract between you and any member, director, employee or consultant (whether employed or self-employed) of HKIPA (each an “Authorised Agent”). Any Services provided by an Authorised Agent are provided on behalf of HKIPA and not in his or her individual capacity and no Authorised Agent assumes any personal responsibility, obligation or duty to you for such Services.

2. OUR CHARGES

Our charges include the fees incurred in the normal case, including our service fee, the government fees and miscellaneous charges. They do not include the fees for special procedures such as but not limited to answering office actions from the respective intellectual property offices of each jurisdiction. The fees for the special procedures are to be further negotiated when such procedures happen.

3. BILLING

Unless otherwise specified, full payment must be received before any application is filed.

4. CONFIDENTIALITY

We will keep confidential all information we receive regarding your business and affairs unless you instruct us to disclose that information or it is already in the public domain or if we, in good faith, consider disclosure to be required by any applicable law and regulations. Unless you instruct us otherwise at the time, you agree that HKIPA may refer publicly to our involvement on your behalf. We may also disclose information on a confidential basis to third party services providers including legal process outsourcers.

5. PROVISION OF INFORMATION

You agree to provide us with all information that is reasonably required for us to advise you and to ensure that such information is,

and remains, true and accurate in all material respects and is not misleading. Unless we agree otherwise, we will not check the accuracy or completeness of such information. You should not assume that information or documents which have previously been given to us or matters on which we have previously advised will be known to those instructed on a new matter.

You are responsible for ensuring that you have all necessary rights to supply us with the information you provide and that our use of that information will not infringe the rights of any third party or result in a breach of any law, rule or regulation.

6. ELECTRONIC COMMUNICATIONS

Unless agreed with you, we will not encrypt electronic communications. You acknowledge that the electronic transmission of information by email or otherwise (in particular when unencrypted) may be delayed, intercepted, corrupted or otherwise fail to be delivered. We shall use our reasonable endeavours to ensure that electronic communications that we send are free from viruses and any other material which may cause harm to any computer system. You undertake to act likewise with any electronic communications you send to us. We reserve the right to monitor all email communications through our network.

Neither you nor we shall have any liability to each other in respect of any claim or loss

arising in connection with an electronic communication other than where such claim or loss arises from bad faith or wilful default.

Save for documents in respect of which we have specific instructions from you, we will store documents relating to a completed matter for a minimum of 3 years.

Thereafter we may destroy them without further reference to you.

7. LIMITATION/ EXCLUSION OF LIABILITY

General: Our total aggregate liability to you for breach of contract, tort (including negligence, misrepresentation or otherwise), statutory duty or otherwise arising out of or in connection with our engagement and whether related to any act, omission, statement or delay in acting will be limited to the amount that could be met without recourse to the personal assets of any director, partner, staff or related person.

Nothing in this Term or the Engagement Letter shall exclude or limit our liability to you (i) for wilful default, fraud or fraudulent concealment for which HKIPA is responsible or (ii) to the extent that liability may not be excluded or limited by any relevant law or professional regulation.

Authorised Agents: If, notwithstanding Term 1 of these Terms, a court or tribunal of competent jurisdiction finds that a duty of care, or any other duty, liability or

obligation would otherwise be owed to you by any Authorised Agent, such duty and any liability arising from it is hereby excluded and you agree with us (for ourselves and as trustee on behalf of the Authorised Agents) that you will not bring any claim – whether on the basis of breach of contract, tort (including, without limitation, negligence), breach of statutory duty or otherwise howsoever – against any Authorised Agent in respect of any loss or damage that you or any person or company associated with you suffer or incur, directly or indirectly, in connection in any way with any Services provided by any Authorised Agent.

Third party advice and sub-contractor: We shall not have any liability for any services, information or advice given by any other member of HKIPA or any other third party including, without limitation, legal and other professional advisers, government agencies and registers.

We shall not be liable for any liability which are caused in whole or in part by any action or omission, negligent or otherwise, of the sub-contractor, its employees, agents or volunteers

If, notwithstanding the preceding sentences, a court or tribunal of competent jurisdiction finds that a duty of care or any other duty, liability or obligation would otherwise be owed to you by us or any Authorised Agent in respect of the fee paid of, or otherwise in relation to you by another member of HKIPA or any other

third party, such duty and any liability arising from it is hereby excluded and you agree with us (for ourselves and as trustee on behalf of the Authorised Agents) that you will not bring any claim – whether on the basis of breach of contract, tort (including, without limitation, negligence), breach of statutory duty or otherwise howsoever – against us or any Authorised Agent in respect of any loss or damage that your or any person or company associated with you suffer or incur, directly or indirectly, in connection in any way with the fee paid of, or any information or advice given to you or us or other work done for you by, the other member of HKIPA or other third party.

Indirect or consequential loss: We shall not be liable for any indirect or consequential loss.

Liability to third parties: We shall have no liability to any third party for any Services that we provide to you unless we have agreed in writing that the third party can rely on such Services in accordance with the terms of such agreement.

Appointment of liability: In addition to the other limitations in this Term 7, where we and/ or third parties are responsible for any loss suffered by you, our liability for that loss will also be limited to a just and equitable proportion of your total loss calculated by reference to the extent of our responsibility. If you have engaged other professional advisers to represent or advise

you on a matter in which we are involved and you agree with any of them that their liability to you will be limited, our liability to you will not exceed the amount which would have applied in the absence of that limitation.

8. FORCE MAJEURE AND DISRUPTION TO SERVICES

Except for obligations to pay any amount due, neither we nor you shall be liable in any way for failure to perform our respective obligations under these Terms if the failure is due to causes outside the reasonable control of the party which has failed to perform.

In providing services to you we rely on the availability of a wide range of resources including utilities and electronic and communication systems. You acknowledge that we cannot guarantee the availability or proper functioning of these resources and that (except to the extent required by law) we have no liability to you for any delay, disruption or failure to provide services, due to the unavailability or malfunctioning of these resources for any reason.

9. SEVERABILITY

If any provision in these Terms is or become invalid, illegal or unenforceable then it shall, to the extent required, be severed and shall be ineffective and the validity of the remaining provisions shall not be affected in any way.

10. DISPUTE RESOLUTION AND

GOVERNING LAW

Unless we agree otherwise with you, (i) these Terms, any confirmation Letter, the provision by us of Services to you and any dispute between us arising out of or in connection with any of them shall be governed by Hong Kong law; (ii) you and we will attempt to settle any dispute, by mediation at HONG Kong International Arbitration Centre (“HKIAC”) in accordance with its Mediation Rules; and (iii) if the dispute is not settled by mediation within a reasonable period, then it shall be referred to, and finally resolved by, arbitration: in Hong Kong; by a single arbitrator (agreed between us or, in default of agreement, appointed on the application of either of us, by the President of HKIAC); in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (“UNCITRAL”), which shall be deemed to be incorporated into this Term, and such arbitration shall be administered by HKIAC in accordance with HKIAC Procedures for Arbitration in force as at the date of the Confirmation Letter or, if there is no Confirmation Letter, the date on which these Terms are provided to you, including such additions to the UNCITRAL Arbitration Rules as are therein contained.

Nothing in this Term shall prevent us from applying to a court of competent jurisdiction or other competent authority for the recovery of fees and expenses, including those of any third party, incurred on your behalf, nor from taking any steps we consider necessary if proceedings are

issued against us by a third party (such as joining you as a party to such proceedings).