

# TERMS OF BUSINESS

## HALLMARK IP LIMITED

### 1. INTRODUCTION

These Terms of Business apply to all the work which we, HallMark IP Limited, do for you unless we agree otherwise in our Engagement Letter and until we give you written notice of a change to them. If there is any inconsistency between these Terms of Business and the terms of our Engagement Letter or any Acknowledgement of Instructions, the Engagement Letter or Acknowledgement of Instructions will prevail.

You will be deemed to have accepted these Terms of Business and those in our Engagement Letter and Acknowledgement of Instructions if you send new or continuing instructions or receive advice or services from us after having received them.

### 2. OUR CLIENT

Our services are provided to you - the person or entity to which our Engagement Letter is addressed - and not for the benefit of third parties. Consequently, our duty of care is to you and does not extend to third parties. You will not disclose our advice to third parties, or quote or refer to us or our services or advice, in any public document without our prior consent in writing. No third party has the right to rely on our advice, and no third party (other than any of our directors, employees, consultants, contractors or agents) has the right to enforce the terms of our agreement under these Terms of Business, our Engagement Letter or Acknowledgement of Instructions.

### 3. CLIENT CARE

A Client Relationship Manager (CRM) will be appointed to each client and will ensure that the work is done at the appropriate level of skill and expertise. You will be advised of their name and contact details in our Engagement Letter. The CRM will have overall responsibility for all matters on which you instruct us and for ensuring the quality of our service.

Your CRM should be the first point of contact if you are dissatisfied with any aspect of our service.

If your CRM is unable to resolve the issue to your satisfaction or you are unwilling to contact them or feel the matter is sufficiently serious please write, with full details of your complaint, to our Finance Director. The complaint will be investigated and reviewed by an independent member of the Executive Management Group with a view to doing all that is reasonable to resolve any difficulty.

### 4. YOUR RESPONSIBILITIES

In order to represent you promptly, efficiently and properly, you must provide us with clear, accurate and complete information as quickly as possible. You must also keep us up to date with any changes to the information provided which may affect the work we are doing.

If you no longer wish to maintain a registration or proceed with an application we must receive your instructions in writing. In the absence of such instructions we will assume that the matter is still of interest and, at our discretion, will take steps to attempt to preserve your rights. You will be responsible for our fees and disbursements in so doing.

The process of obtaining and securing registered intellectual property rights is subject to strict deadlines. If we need your instructions by a particular deadline we will advise you of this in writing and will endeavour to send you reminders in good time.

If you miss a deadline or send us instructions which are not sufficiently clear, complete or timely to enable us to meet a deadline, or to submit a fully considered response, you agree that we will have no liability for any loss which may arise and that we are not under any obligation to take any steps to preserve or protect your rights further.

In these circumstances if, at our discretion, we take steps to attempt to preserve your rights, you agree that we will have no liability for any loss which may arise and that you will be responsible for our fees and disbursements in so doing.

You must advise us promptly of any changes in ownership, address, contact details or legal status of the person, firm or company giving us instructions.

### 5. COMMUNICATIONS

We may rely on instructions or requests made or notices given or information supplied, whether orally or in writing (including mail, fax or email), by any person whom we know or reasonably believe to be authorised to communicate with us for such purposes.

We accept instructions in writing by mail, fax or email. However, when correspondence is sent to us by fax or email it will only be deemed to have been received by us at the time of receipt if this is during our normal business hours (9:00 – 17:00 London time). If receipt of the transmission or email occurs outside these hours it will be deemed to have been received at 9:00 London time the next working day following the day of transmission. If a discrepancy arises between the time the materials are sent and the time they are received, the date and time of receipt recorded on our equipment will be deemed the time of receipt.

It is our practice to communicate, wherever possible, by email. Whilst this is a very efficient means of communication there are inherent risks involved (including issues of security, confidentiality, corruption of data and viruses). You agree that we will not be responsible or liable for any error, loss or claim arising as a result of the use of email correspondence. We may monitor

communications by email for the protection of our clients and business. If you do not wish us to communicate with you by email please let us know in writing as soon as possible.

We check all of our communications for viruses but cannot guarantee that transmissions will be virus free. We also use a firewall and spam filter which may prevent some genuine email transmissions from reaching us in good time. You agree that we will not be responsible or liable for any error, loss or claim arising as a result of viruses or use of the firewall or spam filter.

You should also be aware that when your information is passed to an intellectual property registry or agency, the information may become a matter of public record.

## **6. OUR SERVICES**

We provide our services with a professional level of skill and care and in a timely manner. The scope of our services and responsibilities will be limited to those matters expressly set out in the relevant Acknowledgement of Instructions or Engagement Letter. We are not obliged to update any advice or information we give unless we agree in writing to do so.

In all cases, the advice given in relation to any matter is given solely in respect of that matter and cannot be relied on in any other matter.

## **7. ENGAGEMENT OF THIRD PARTIES**

In the course of performing our services we may appoint external specialist providers (including but not limited to foreign attorneys, search agencies, law firms, barristers, and designers) to assist in obtaining and/or enforcing your rights. Unless otherwise provided in our Engagement Letter or in any Acknowledgement of Instructions, we reserve the right to select and appoint external providers as appropriate, and we will advise you of any course of action which they may recommend. Whilst we will only appoint providers who we believe are qualified and competent to act in the specific circumstances these providers are independent from HallMark IP Limited and we are not liable to you for any service provided or advice given by them.

Furthermore, in engaging such providers it will be necessary to supply them with your details and information relating to the matter on which we are acting on your behalf. Whilst we will only appoint providers whom we believe will treat such details and information with care and responsibility we are not responsible for any action they may take which you may consider a misuse of your details.

Unless otherwise instructed by you, we will assume that we are authorised to transmit any necessary data and information to external specialist providers in relation to all assignments on which we are instructed by you.

## **8. REMOTE ACCESS DATABASE**

One of the services we provide is remote access to the records management database used by us. The service is provided under an additional set of Terms and Conditions.

Any client subscribing to the service does so on the understanding that the records do not necessarily reflect the state of the register in the particular country. We rely on the information we receive from third parties, including intellectual property registries and agencies (where we have direct representation) and overseas attorneys (where they have been appointed to file applications) in order to update the database.

We use our reasonable endeavours to enter the data in a timely fashion. However, access to the records using the service is for general, background information only. The user should not rely on the accuracy of any information obtained using the service. Therefore to the maximum extent permitted by law, we assume no responsibility and accept no liability for any reliance placed by you or any third party on the contents of the database.

## **9. WATCHING SERVICE**

Where we are providing you with a free watching service, you agree and accept that this is a complimentary promotion outside the terms of our engagement to you. We give no warranties and accept no responsibility or liability in connection with the provision of the service or any alleged failure to provide it. This paragraph does not apply where the watching service has been specifically requested and is being paid for as part of our engagement to you.

## **10. OUR FEES**

Unless otherwise stated in our Engagement Letter or Acknowledgement of Instructions, our fees will be calculated in accordance with our schedule of standard. Those standard charges consist of fixed fees – associated with the more administrative and procedural part of the service provided – and time based charges – associated with the advisory part of the service.

All actions taken by us on your behalf are chargeable including, without limitation, telephone calls, meetings, correspondence, analysis, research, drafting, advising, attending hearings, dealing with papers, audit enquiries, preparing reports, transferring files, travelling and waiting time.

A schedule of our fixed fees and hourly rates can be provided on request. Our fees and hourly rates are reviewed annually with any change taking effect on 1 January.

Where it is necessary to appoint external specialist providers, their fees will be in addition to our fees. Also, you agree that we may recharge any disbursements incurred on your behalf.

The nature of our work is such that a matter may take many months, or years, to complete. There will be periods of activity and inactivity on any particular matter. Once a matter is started we will assume that it is to be completed notwithstanding any period of time which may elapse, unless you advise us to the contrary in writing. You will remain responsible for our fees and costs throughout the life of the matter.

Where applicable, VAT and any overseas taxes which may be payable, will be added to our fees, disbursements and expenses at the appropriate rate.

#### **11. ESTIMATES AND FIXED FEES**

We may, from time to time or at your request, give you an indication of the anticipated future or overall charges in relation to a particular assignment. Any such estimate should not be regarded as binding, and our exact charges will depend on the work actually carried out. If the work turns out to be more extensive, complex or prolonged than we anticipated, we will endeavour to let you know as soon as possible.

Any fixed fee which is agreed with you is based on the assumption that the information required for our work is made available on a timely basis. If this or any other reasonable assumption which we have made is not correct or if the scope of our work changes, we will endeavour to let you know as soon as possible. Our fees for the additional work carried out will, unless otherwise specified in our Engagement Letter, be calculated in accordance with our schedule of standard charges as referred to above.

#### **12. PAYMENTS ON ACCOUNT**

We may at our discretion ask you to make payments from time to time in advance (i.e. before we incur the costs) to meet anticipated fees or disbursements. If there are any difficulties in meeting these requests promptly please let us know as soon as possible. In the event that any request for an advance payment is not met or any interim invoice is not paid, we reserve the right to stop working for you.

#### **13. TERMS OF PAYMENT**

Unless otherwise specified in our Engagement Letter or Acknowledgement of Instructions, we will issue interim invoices for our fees and costs monthly or at such other intervals as we consider to be appropriate.

Our invoices are payable immediately on presentation, without any deduction, set-off or counterclaim. If you wish to raise any query about an invoice please contact the person who sent it as soon as you receive it so that we may resolve any issues quickly and amicably.

In the event that a case involves proceedings before a tribunal, any costs awarded against you will usually be for you to settle directly. We will not be responsible for invoicing and meeting those costs on your behalf.

If an invoice is not paid in full within 30 days after presentation we reserve the right to cease doing any further work on your files and to charge interest at a rate of 3% per annum above the base rate for the time being of National Westminster Bank plc. (This interest will accrue both before and after any judgment.) In such circumstances we shall be under no obligation to preserve your rights on any matter and shall not be held responsible or liable for any resulting loss of rights. Further we will retain and exercise a lien over any and all documents, papers, materials and files in our possession, power or control until we have received payment of all amounts due to us, including any interest payable to us.

#### **14. CONFIDENTIALITY**

We acknowledge our duty of confidentiality to all our clients and will take all reasonable steps to protect confidential information from misuse. We assume that you would have no objection to our disclosing the existence of our client relationship with you unless you have notified us otherwise.

#### **15. CONFLICTS OF INTEREST**

It is possible that we act for other clients in your sector and, on occasion, a conflict of interest may arise on a matter we are handling for you. If a conflict of interest comes to our attention in the course of work we are doing for you, we will take such steps as we consider to be appropriate to resolve the conflict. If we are unable to put in place arrangements which we consider acceptable, we reserve the right to cease to act for you.

#### **16. LIMITATION OF LIABILITY**

The advice we provide will relate specifically to your instructions on the matter and its relevance may be affected by information of which we are unaware. It is, therefore, essential that all material information is given to us. We cannot be responsible for the use of our advice for different purposes or in a different context.

Unless otherwise expressly specified in our Engagement Letter, our aggregate liability to you:

- in contract or tort or under statute or otherwise
- for any loss or damage or cost or expense suffered by you (including, without limitation, loss of profits, indirect or consequential loss, economic loss and any failure to realise anticipated savings or benefits) arising out of or in connection with our engagement
- however the loss or damage is caused, including by our negligence (but not our fraud or willful default)

shall not exceed £5,000,000 (five million pounds Sterling) in respect of any one claim or series of related claims. These terms shall not operate to exclude any liability which by law may not be excluded.

Any claim made in connection with our engagement must be made against us, HallMark IP Limited, and not against any of our directors, employees, members, shareholders or any person or entity associated with us.

We accept the benefit of the above terms as agent and trustee for each person and entity referred to above.

#### **17. OTHER ADVISERS**

In the event that you are advised by one or more other professional advisers in relation to a matter on which we are engaged and a limitation of liability has been agreed in relation to one or more of them, our liability to you in connection with our engagement will not be increased because of the limitation of liability agreed with such other advisers. Our liability to you under or in connection with the engagement shall be limited to that proportion of the total losses suffered or incurred by you (after taking into account your contributory negligence, if any) determined to be fair having regard to the extent of our responsibility for the losses in question.

#### **18. FORCE MAJEURE**

We shall not be liable to you for any failure or delay in our performance if this is the result of a cause beyond our reasonable control and we will endeavour to notify you of any such circumstances as soon as we can.

#### **19. INTELLECTUAL PROPERTY RIGHTS**

We will retain ownership of all intellectual property rights created in the performance of our services, and ownership of our working papers and reference materials.

#### **20. RETENTION OF FILES**

We can arrange to keep for a reasonable period of time, files relating to your work but, after such period, these may be disposed of without consultation unless we have agreed, in writing, some alternative arrangement with you. We reserve the right to pass on to you any charges relating to the storage or retrieval of files at your request. Documents are stored at your risk and you may wish to make any necessary insurance arrangements to cover the value of those documents.

#### **21. MONEY LAUNDERING**

Under the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003, it is our duty, as we understand them, to conduct certain checks in order to verify the identity of our clients and the source of funds used in relation to matters on which we advise. Any delay in providing the information needed to complete these checks may adversely impact on our ability to act on your behalf.

#### **22. TERMINATION**

In the event that you wish to terminate our engagement you must do so by giving us notice in writing. You agree that until you have done so, and responsibility for all matters has been accepted by you or a third party and the files have been physically transferred, you remain responsible for our fees and disbursements incurred up to and including the date of the transfer.

We reserve the right to terminate our engagement immediately if any request for an advance payment is not met or any interim invoice is not paid in full by the due date for payment, or if we decide to do so for any other reason. In that case, we will write to you to inform you of our decision and the reason for it. Until any files have been transferred, we may at our sole discretion, continue to maintain any deadline dates and send you reminders. If we take action to prevent your rights being put at risk these actions will be chargeable.

On termination for whatever reason, any fees and disbursed costs already incurred, including any charges for work involved in the termination and handover of matters, will become payable immediately on invoice and we will be entitled to keep all your papers and files while there are sums outstanding.

#### **23. DATA PROTECTION & PRIVACY**

We aim to act in accordance with current legislation and to meet current best practice with regard to the processing of personal data. We are registered as a data controller in the United Kingdom under the Data Protection Act 1998.

We collect and keep records of contact details and other details, which may include personal data, for you or individuals working on your behalf who we may contact in order to perform our services to you.

We will only use personal data so collected in accordance with our privacy policy as published from time to time and to help us provide our services to you, and to allow us and any successor in title to our business, to bring you details of products, publications and events and general information which we feel will be of interest to you.

You may ask us to discontinue any of the services detailed in the preceding paragraph at any time by contacting us at the address given in our Engagement Letter.

We will retain the data we hold concerning you or individuals working on your behalf for as long as it is current, unless you inform us that you no longer wish us to retain this data. You or any individual working on your behalf may at any time request a copy of the

details we hold relating to them or request that their details be amended, by writing to us at the address given in our Engagement Letter.

**24. ASSIGNMENT**

You may not assign your rights against or obligations to us without our express prior written consent. We reserve the right to assign our agreement with you and any rights or obligations under it to any third party.

**25. GENERAL**

If any of the provisions of these Terms of Business, our Engagement Letter or any Acknowledgement of Instructions is, or becomes invalid, illegal or otherwise unenforceable the remaining provisions shall in no way be affected and shall remain enforceable. These Terms of Business together with our Engagement Letter and Acknowledgement of Instructions form the entire agreement and understanding between us with respect to our services to you and replace any previous agreements and understandings which hereby cease to have any force or effect.

**26. GOVERNING LAW AND JURISDICTION**

Our agreement is governed by and construed in accordance with English Law. Any claims or disputes in relation to our agreement must be brought in the Courts of England and Wales, irrespective of the subject of the dispute or where the work is carried out.

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