

Sweetinburgh and Windsor Ltd - Terms and Conditions

1. The Company and Our Business Relationship with You

1.1 Sweetinburgh and Windsor Ltd is a limited company (Company Registration No 7794836. Registered in England and Wales and having its registered office at Buckingham House, Myrtle Lane, Billingshurst, West Sussex, RH14 9SG. VAT registration number 121 0183 77). Services are provided to you by Sweetinburgh and Windsor Ltd and the contract under which those services are provided is with Sweetinburgh and Windsor Ltd and not with any employee, or agent of Sweetinburgh and Windsor Ltd.

1.2 We will carry out all work for you under these terms of business. We might set out supplementary terms in a letter, in which case the letter will take priority over these terms.

2. Instructions

2.1 We will assume that any person within your organisation may instruct us on your behalf, unless they clearly do not have the appropriate authority. It is recommended that you nominate an individual within your organisation to act as a primary point of contact for us and keep us updated if this changes.

2.2 We rely on clients to give us timely, complete and accurate information and instructions. We prefer to have oral instructions confirmed in writing in order to avoid confusion. Patent Offices often impose time limits and failure to meet these time limits can be fatal to the rights concerned. We shall not be liable for any failure to secure rights which is due to your delay in providing information or instructions that have been requested by us or due to the provision of unclear instructions. We will keep you informed of time limits, actions or instructions that are required, but we do not undertake to send repeated reminders or incur costs on your behalf, or take action in the absence of explicit instructions from you. You should be aware that in the absence of instructions your rights may be lost irrevocably.

2.3 We will act for you to carry out specific instructions, with prior authorisation, or on a retained basis in which we report and advise on your rights on an on-going basis in respect of the on-going prosecution of your patent, trade mark or design rights. We will act on a retained basis unless you provide specific instructions to the contrary.

2.4 We also rely on you to inform us promptly of any changes in primary contact details; your name, address, telephone/fax numbers, email address, or; changes in the ownership of your rights. You should be aware that assignment of patent rights should be officially registered and failure to inform us of changes and seek registration may affect your ability to enforce your rights. Registration of patents, trade marks and design rights can take years and although there may be little activity for long periods, there may follow a

situation which requires immediate action. We cannot accept responsibility for any loss of rights as a consequence of your failure to inform us of such changes.

2.5 We welcome the opportunity to work with new clients. For all new clients, our policy is to seek adequate funds on account in advance of carrying out work. In addition, for newly formed limited companies, we expect the directors to be personally responsible for our reasonable charges and costs incurred by acting on instructions given on behalf of the company. We may ask the directors to sign an undertaking to this effect.

2.6 *E-mail Communications.* We will communicate with you by mail, fax and e-mail. We cannot accept responsibility for any corruption in the information communicated to you or its disclosure as a result of interception of such communication. We also cannot accept responsibility for non-receipt or late receipt by you of such communications. We shall carry out regular virus checks and advise you to carry out your own virus checks on any communications. We will observe reasonable precautions but regret that we cannot guarantee the security of our IT systems.

3. Instruction to Act on Your Behalf

3.1 You authorise us to complete and sign on your behalf such official forms that are necessary to carry out your instructions and you will take responsibility for all costs, claims and expenses that result from this authority.

3.2 Our assumption is that your overriding instructions to us are not to let your rights lapse without specific instructions so to do. However, we are not obliged to keep cases alive if you have not provided instructions or have not kept your account in good order. There may be occasions when a third party instructed by us to act on your behalf has to take urgent action in your best interests without recourse to our company or to you. Such action will be within the terms of the above overriding instructions.

3.3 These terms and conditions shall apply to you and your related and associated companies, which include all companies which you control or, if you are a company forming part of a group of companies, all in that group.

3.4 We may need to instruct third parties, such as foreign associates or search associates, to act on your behalf. These third parties are not part of Sweetinburgh and Windsor Ltd. We shall select third parties that we consider to offer high quality services, but we will not be liable for any default or negligence by such third parties. In the case of negligence or default, your cause of action will be directly against the third party.

3.5 Searches that you instruct us to carry out may be carried out by ourselves, by Patent Offices, or by an independent search associate. No search can be guaranteed for completeness or accuracy and we shall not be liable for any errors by searchers who we instruct on your behalf, or for the consequences.

3.6 Before we issue any warning to a third party in respect of potential infringement, you agree to indemnify us against the risk of our being sued for making an unjustified threat of infringement proceedings when

issuing a warning to a third party in respect of potential infringement. The aim of this is to maintain our objectivity in contentious matters, which would diminish if we were to become party to proceedings. We may refuse to act for clients who do not provide the requested indemnity.

3.7 We protect you through professional indemnity insurance, in the unlikely event that something should go wrong. To the extent permitted by law, our liability for all claims directly or indirectly connected with any matter, whether in negligence or otherwise is limited to £3,000,000.

4. Professional Fees

4.1 Our charges are principally based on the amount of our professional time spent on the matter, although other factors may also be taken into account. Such factors may include the size and complexity of the matter and the degree of urgency involved. Fixed charges may apply in relation to specific tasks, such as filing of an application.

4.2 Our hourly rates are primarily based on the experience of our professional staff and are reviewed periodically. Charges are calculated at the hourly rates which apply when the work is carried out. All actions and attention provided by us are chargeable. Please ask at any time if you would like further details of our charges.

4.3 In appointing us to act on your behalf, you are authorising us to incur such expenses as we consider necessary to carry out your instructions, and you are agreeing to reimburse us in respect of those expenses. Examples of such expenses are Patent Office fees, fees of solicitors, Counsel and other experts, such as translators, searchers, or foreign associates. Other expenses may include items such as photocopying costs, couriers, travel and meeting expenses, telephone and fax charges. Whilst our fixed charges and hourly rates are predictable and we will endeavour to estimate charges in advance, you should appreciate that many expenses are outside our control and might be changed without notice and (in the case of foreign matters) may vary with exchange rate fluctuations.

4.4 Where we incur charges in foreign currencies (i.e. not in pounds sterling) or where we agree to bill you in a foreign currency, we will apply an exchange conversion rate which is based on published exchange rates and also including a margin to cover our conversion costs and currency risk.

4.5 If requested, we will endeavour to provide estimates of future charges in good faith based on the information available to us at the time. However, charges may be affected by matters beyond our control and the amount of work involved cannot be predicted precisely, such that estimates will not be binding. Any estimate of costs is given as a guide to assist you in budgeting and should not be regarded as a firm quotation or a fixed or capped fee, unless this is expressly stated in writing. Any estimate of costs given will exclude VAT, which will be charged as applicable on our fees and those expenses that are liable for VAT.

4.6 We will submit invoices to you at regular intervals, either on completion of each stage of the matter or at monthly intervals. We shall be entitled to send you invoices for fees and disbursements whether incurred or to be incurred.

4.7 We are able to render invoices to accept payment from another party nominated by you (for example, another company in the same group). However, the ultimate responsibility for making payment will remain with the party instructing us to carry out work on their behalf.

4.8 During the lifetime of a pending case, we will inevitably receive correspondence on your behalf. For example, we may receive letters from Patent Offices, foreign associates, third parties, and so on. We are under a duty to report this correspondence to you and you agree that you will pay our charges in relation thereto.

5. Payment Terms

5.1 Payment of all invoices is due within 28 (twenty-eight) days of the date on which the invoice is raised. We may charge interest calculated at the rate of 8% (eight percent) per annum above the base lending rate of the Bank of England accruing on a daily basis from the due date for payment until payment is made in full.

5.2 We may require payment on account, particularly in respect of large items such as expenses incurred in foreign filings. Payment on account may be required in respect of payments to be made to third parties or our professional fees or both. When payment on account is treated as client money, this will be held in our client account. Any interest earned on money in our client account is not credited to our clients. This is due to the small amounts involved and the associated administrative burden. However, any interest which is earned is donated to charity each year. When we make a request for payment on account, we will not carry out any instructed work until the requested payment has cleared in our bank account, so good time should be allowed. We may suspend or refrain from taking action on your behalf without liability (even if this results in a loss of rights) if we have specified that we will not take action unless a payment on account is made. We may also suspend or refrain from taking action on your behalf without liability (even if this results in a loss of rights) if an invoice rendered to you has not been paid in full by the stated due date.

5.3 Any suspension of work or cancellation by you of prior instructions given to us shall not affect our right to invoice and be paid for any work undertaken and advice provided before the date of suspension or cancellation and is without prejudice to our right to take legal action for the payment of our costs. These costs will include all reasonable professional costs and other costs of issuing proceedings or otherwise pursuing a debt collection procedure. You will be responsible for the consequences of the suspension of work, which may include the irrevocable loss of, or failure to obtain rights.

6. Files

6.1 Our files remain our property at all times. If you would like to transfer your work to other professional advisors, we will copy such of the files relating to your work as you request (at your expense) and release the copy file(s) when all charges have been paid. Alternatively, we will give your new advisers access to the files to take copies as they require, when all of our charges have been paid.

6.2 Files which are no longer current, including those containing details of or otherwise relating to matters which may still be in force but for which we no longer have responsibility may at our discretion be retained by us or destroyed. Specific arrangements may be made with us for maintenance of files or records on a longer terms basis, but a charge will be made for this service.

6.3 It is our normal practice to destroy our correspondence files, draft documents and other papers when the file is closed and is more than six years old. When a file has been closed, it is our usual practice to make an electronic copy of the file and to then destroy all paper correspondence, draft documents and other papers. Whilst we will maintain electronic copies of closed files for at least six years, we may choose to destroy such electronic copies after this time. Unless you tell us otherwise, we will assume that you are content with this arrangement. Renewals are separate.

6.4 If you provide us with original papers, samples or other materials, please inform us at the same time if you require them to be returned. Otherwise they will be incorporated into our files and may be destroyed once the file has been closed in accordance with 6.3.

7. Office Hours

7.1 We do not guarantee to attend to mail, faxes and email received outside our normal office hours of week days between 09.00 and 17.00 hours. For urgent instructions, we do not guarantee to be able to take action if instructions are received after 16:00 hours on the day that action is to be taken.

7.2 *Force Majeure.* 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"). The date for performance of our services will be postponed for as long as is made necessary by the event of force majeure.

8. Confidential Information and Conflicts of Interest

8.1 While acting for you, we are likely to receive information which relates to you, our client, and we will keep such information confidential, except when disclosure is required by law or regulation, or in other exceptional circumstances.

8.2 We cannot act simultaneously for two clients whose interests in the matter on which we are advising conflict. An actual or potential conflict between your interest and the interests of another of our clients

might arise during the course of our engagement. If this situation arises then we will discuss the position with you and determine the appropriate course of action. In such circumstances we reserve the right to decline to act further or at least in respect of the conflict, for one of the clients in questions. We are not required, because of obligations of confidentiality, to identify the other client or the subject matter involved.

8.3 When potentially taking on a new client we will try to identify such conflicts of interest and recommend potential clients notify us of any parties for whom they believe we will be unable to act without a conflict arising.

9. Data Protection

9.1 Sweetinburgh and Windsor Ltd will comply with the Data Protection Act 1998. By instructing us you are consenting to our use of relevant personal data as appropriate in the course of our professional services, including updating our client records, credit checking, and analysis for management purposes.

9.2 By instructing us you consent to us obtaining, processing and using personal data concerning you and further consent to our disclosing information about you to third parties. You also have a right of access to personal data that we hold about you.

10. Privilege

10.1 In general, communications between a UK Patent Attorney and his client are privileged under Section 280 of the Copyright, Designs and Patent Act 1988; and communications between a UK Trade Mark Attorney and his client are privileged under Section 87 of the Trade Marks Act 1994. This means that others, including the courts, are not entitled to discover the content of such communications where they concern professional advice. Please note that the privileged status of a letter or other such document can be lost if it, or its contents, are disseminated to persons other than the addressee of the document.

10.2 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.

11. Client Care and Complaints

11.1 We value our good relationship with our clients and are committed to high quality service and client care. However, we accept that from time to time, difficulties and misunderstandings may arise. If you have any problems, you should feel free to discuss your concerns with the member of our professional staff dealing with your work. If, after such discussions, you feel that the matter has not been adequately dealt with, please ask to be referred to the senior employee/director of Sweetinburgh and Windsor Ltd appointed to handle client's complaints. A copy of our complaints procedure is available on request.

11.2 We endeavour to look into any suggestions or comments you have about the service you have received. If we cannot resolve your complaint you can ask one of the regulatory bodies which govern our business, the Legal Ombudsman (for service quality) or the Intellectual Property Regulation Board (IPREG) (for professional misconduct) to consider your complaint.

12. Termination of Relationship

12.1 You may terminate our relationship at any time by writing to us. If there is a good reason which prevents us from continuing to act for you, we may terminate the relationship ourselves by giving you reasonable notice in writing. In either case, if the relationship is terminated we will require you to pay our charges and expenses up to and including the date of such termination.

12.2 We may also terminate this agreement in the event of you becoming insolvent, entering into liquidation, whether voluntary or compulsory, passing a resolution for your winding up, having a receiver or an administrator appointed over the whole or any part of your assets, making any composition or arrangement with your creditors or suffering any similar action in consequence of debts.

13. Governing Law and Jurisdiction

13.1 English law shall apply to the construction and interpretation of our relationship. The English Courts shall have exclusive jurisdiction to resolve any disputes arising in relation to it.

The above terms and conditions will apply until varied or replaced with alternative terms agreed with you in writing. By instructing us and requesting our services you will be deemed to have accepted these terms and conditions.

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Signed By.....

Date.....

On Behalf of.....

Please sign and return one copy of these terms and conditions to us.