

## **STANDARD TERMS OF BUSINESS**

Thank you for instructing Lucas & Co. to act for you in Intellectual Property Matters. We will provide you with confidential professional advice on intellectual property and related matters.

We will carry out all work for you under these standard terms of business. We may also provide a letter setting out any further terms agreed between us, in which case that letter will take priority over these terms.

### **1 ABOUT THE FIRM**

Lucas & Co. is the trading name of a partnership whose partners and qualified staff are United Kingdom patent attorneys and/or European patent attorneys and/or trade mark attorneys.

Depending on their qualifications, partners and staff of Lucas & Co. may be on the Register of Patent Agents, the Register of Trade Mark Agents in the United Kingdom, the list of professional representatives before the European Patent Office and/or the list of professional representatives before the Office for Harmonization in the Internal Market (OHIM). They may be members of the Chartered Institute of Patent Attorneys (CIPA), the Institute of Trade Mark Attorneys and/or the Institute of Professional Representatives before the European Patent Office (EPI).

Occasionally we may retain a consultant to work with us and, for the purposes of these terms of business, such a consultant is to be treated as our employee.

### **2 OBLIGATIONS OF THE FIRM**

Our partners and qualified staff are regulated by the Intellectual Property Regulation Board (IPREG) in the United Kingdom and will comply with its Code of Conduct. Where they are members of the relevant professional association, our partners and qualified staff also adhere to the Rules of Professional Conduct of CIPA and/or the Code of Conduct of the EPI, as applicable.

It is our responsibility to carry out our professional work with due skill, care and diligence and with proper regard for the technical standards expected of us. Our partners and staff will only carry out work within their expertise or competence. We shall at all times act with integrity and will put the interests of our clients foremost while observing the law and our duty to any Court or Tribunal, and will avoid any conflict of interest.

We will perform the engagement with reasonable skill and care and acknowledge that we will be liable to you for losses, damages, costs or expenses caused by our negligence or wilful default. Further details about this are given in section 15 below.

### 3 INSTRUCTIONS

Unless otherwise agreed, we will assume that any person within your organisation may instruct us on your behalf, unless they clearly do not have the appropriate authority. Having said that, it is often helpful if you can nominate an individual within your organisation to act as a primary point of contact for us and keep us updated if this changes.

#### 3.1 *Timing and form of instructions*

We rely on our clients to give us timely, complete and accurate information and instructions. We prefer where possible to have oral instructions confirmed in writing in order to avoid any possible misunderstandings.

If it is unavoidable for you to provide us with oral rather than written instructions, we will confirm in writing the instructions we have received, as we understand them.

Patent Offices often impose time limits and failure to meet these limits can be fatal to the rights concerned. Whilst it is our responsibility to keep you informed of any relevant time limits, we cannot accept any responsibility if you fail to provide us with instructions that are clear, complete and early enough to allow us to act within such official time limits. We will endeavour to inform you of time limits and of actions or instructions that are required, but we do not undertake to give further reminders, incur costs on your behalf, or take other action in the absence of instructions to do so. In this situation, your rights may be lost irrevocably.

If we receive late instructions we may not be able to implement them in time, in which case your rights may again be lost irrevocably. In the event of late instructions or late payments to us, urgency charges may be incurred which we shall have to pass on to you.

#### 3.2 *Updating information*

It is important that you inform us promptly of any change in relation to: (a) any primary contact; (b) your name, address, telephone/fax numbers and e-mail address; or (c) any change of ownership of your patent or other relevant rights. Many such changes have to be officially registered. Please remember that registration of patents, trade marks and design rights can take years and that there may be little activity for long periods followed by 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.

### 3.3 *Electronic Communications*

We will normally communicate with you by mail or fax; however, we may communicate with you by e-mail either in response to electronic communication from you or with your prior agreement. Given that e-mails sent over the Internet may lack security and jeopardise confidentiality, we cannot accept responsibility for any corruption in the information communicated to you or its disclosure to other parties as a result of the interception of such communication. Due to the very nature of the Internet, we cannot accept responsibility for non-receipt or late receipt by you of such communications.

We shall be responsible for carrying out regular virus checks; however, we advise you to carry out your own virus checks on any communications (whether in the form of computer disc, e-mail, Internet or otherwise). To the extent that we have fulfilled our obligation above, we cannot accept responsibility (including in negligence) for any viruses that may enter your system or data by these or any other means. Furthermore, whilst we observe reasonable precautions, we regret that we cannot guarantee the security of our IT systems.

### 3.4 *Telephone Calls*

Some of our telephone calls with you will be recorded to ensure that we have an accurate record of your instructions to us. Whilst we endeavour to confirm all verbal instructions in writing this may not be possible in the circumstances, for example where very urgent action is needed to meet a deadline.

## 4 **INSTRUCTION OF THIRD PARTIES TO ACT ON YOUR BEHALF**

During our work for you we may need to instruct third parties (e.g. – foreign attorneys) to act on your behalf. We may instruct such third parties directly on your behalf, or alternatively you may need to sign a power of attorney or similar appointment to engage such third party.

Such third parties are not part of this Firm. Whilst we shall endeavour to select third parties we regard as being of good quality, we will not be liable for any default or negligence by such third parties. We shall, of course, monitor such third parties on an ongoing basis to ensure that the required service is provided and that our performance standards are maintained.

## 5 **PROFESSIONAL FEES**

### 5.1 *Our charges*

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. We may adjust our standard charges if highly specialized knowledge is required, or if the matter is complex and/or urgent. Fixed charges may apply in relation to specific tasks (e.g. the actual filing of a patent application).

Our hourly rates are primarily based on the seniority and experience of the professional staff involved. Details of our current hourly rates are set out at the end of this document. These rates are reviewed periodically. Our charges are calculated at the rates which are current when the work is carried out. Please ask us at any time if you would like to be sent details of our current rates.

Unless you advise us otherwise in writing it is agreed that you will be our principal and, as such, will be responsible for the payment of our invoices irrespective of whether or not you are able to obtain funding from any third party.

#### *Payment of expenses*

You will be responsible for any expenses we incur on your behalf. These expenses may include Patent Office fees, Counsel's fees, Court fees, the costs of any experts or other agents (including any translators or foreign lawyers). They may also include such items as photocopying costs, couriers, travel and meeting expenses, telephone and fax charges.

Whilst our fixed charges and hourly rates are predictable, you 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 rate fluctuations.

### 5.2 *Payment on account*

We may require payment on account, particularly in respect of large items such as charges and expenses to be incurred in foreign filings and actions. When we make such a request, we will usually not carry out any instructed work until the requested payment has cleared into our bank account, so good time should be allowed.

### *Estimates*

If requested, we will try to give estimates of future charges in good faith based on our knowledge at the time. However, as charges may be affected by matters beyond our control and the amount of work involved often cannot be accurately forecast, such estimates will not be binding unless we expressly agree otherwise. Only some classes of work are suited to a firm advance quotation.

If during the course of carrying out the work it becomes apparent to us that our actual charges are likely significantly to exceed our estimate, we will try to obtain your permission before exceeding our estimate.

If you would like to set an upper limit on the charges which may be incurred without prior reference to you then please let us know in writing.

### 5.3 *Invoicing*

We would be happy to render invoices to and accept payment from another person nominated by you (for example, another company in the same group). However, please note that ultimate responsibility for making such payment will remain with you.

### 5.4 *Late Payments*

If a requested payment on account is not made or if an invoice remains unpaid after the payment period on the invoice, we reserve the right to suspend all work on your behalf. This is without prejudice to our right to invoice for work undertaken before such suspension and to take legal action for the payment of our costs. You will be responsible for the consequences of the suspension of work, which may include the irrevocable loss of, or failure to obtain, rights.

We also reserve the right to charge interest on unpaid invoices at the rate of 1.5% above the Bank of England base rate per calendar month.

## 6 **FILING**

### 6.1 *Ownership of files*

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 our charges have been paid.

### *Destruction of files*

It is our normal practice to destroy our correspondence files, draft documents and other papers when the file is closed, that is more than six years old. Unless you tell us otherwise, we will assume that you are content with this arrangement. Renewals are separate.

## 7 **CONFIDENTIAL INFORMATION**

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

In general, we recommend that you restrict the release of, and maintain strict control over, any information not already in the public domain connected with instructions we receive. We would be happy to advise on the desirability of releasing confidential information to the public in specific cases.

## 8 **SEARCHES**

Any searches you 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.

## 9 **INDEMNITY FOR THREAT OF INFRINGEMENT PROCEEDINGS**

Before we send any warning on your behalf to a third party, we will ask you 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 you if you are not able to provide the requested indemnity.

## 10 **CLIENT'S PRIVILEGE**

In general, communications between a UK Patent Attorney and his client are privileged under Section 280 of the Copyright, Designs and Patents Act 1988. This means that other people, including the courts, are not entitled to discover the content of such communications where they concern professional advice. However, you should note that there are circumstances in which the privileged status of a letter or other document can be lost. Please let us know if you would like us to give you further information on this area.

## 11 **CONFLICTS OF INTEREST**

We cannot act simultaneously for two clients whose interests in the matter on which we are advising conflict, unless (exceptionally) both clients consent to such an arrangement. When potentially taking on a new client, we try to identify conflicts of interest that may preclude us from acting. It is helpful if potential new clients identify to us any firms or companies for whom they believe we will be unable to act without a conflict of interest arising.

Sometimes, conflicts arise later because, for example, our clients acquire new companies or diversify into new areas of business. In such circumstances, we reserve the right to decline to act further, at least in relation to the area of conflict, for one of the clients in question, generally the client with the shorter relationship with us. Because of obligations of confidentiality it is often not possible for us to identify the other client or the subject matter involved when we advise a client that we can no longer act for them.

## 12 **CLIENT CARE AND COMPLAINTS**

We value our good relationships with our clients. 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 write to the Managing or Senior Partner to implement our internal complaints procedure. During this procedure the Managing Partner or Senior Partner (or another partner if either of them is involved in the matter) will review our file and the details of the complaint, and will provide a response to you in writing. A copy of the firm's internal complaints procedure is available on request.

If we cannot resolve the matter, you should contact the Intellectual Property Regulation Board and/or The Legal Ombudsman for further assistance. In certain circumstances one or both of these organisations will consider your complaint and seek to resolve the issue.

## 13 **TERMINATION OF RELATIONSHIP**

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 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.

14           **THIRD PARTY RIGHTS**

It is not intended that any terms of our relationship shall be enforceable by a third party, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise

15           **LIMIT OF LIABILITY**

It is hereby agreed that in the absence of any written agreement to the contrary the liability of the firm in respect of any claim shall not exceed £5,000,000.00.

16           **GOVERNING LAW AND JURISDICTION**

English law shall apply to the construction and interpretation of our relationship and the English courts shall have non-exclusive jurisdiction to resolve any disputes arising in relation to it.

The above terms will apply until varied or replaced with alternative terms agreed with you in writing. Please note that no change to the terms of our agreement will be valid unless agreed in writing by a Partner of this Firm.

Signed:

Name and position:

Company name (if applicable):

Date: