



### Our Terms of Business with You

#### Background

Marks & Clerk Intellectual Property Agency (Beijing) Limited, known as Marks & Clerk China or M&C, is a wholly foreign owned enterprise and is registered in the People's Republic of China (China) under Business Registration number 110000450122513. M&C is a firm of patent and trade mark attorneys. The following are our standard terms of business upon which we will carry out all professional work on your behalf. These provisions are designed to assist us in providing you with an efficient and effective service and will form the basis of our ongoing relationship.

#### 1. The Basis of Our Business Relationship with You

- 1.1 These Terms shall apply to all matters in respect of which we accept instructions from you to perform professional services ("the Services"). By sending us instructions and/or by sending us further instructions and/or by allowing us to start performing the Services you shall be deemed to request that we perform Services for you on the basis of these Terms. If we agree to perform any such Services then there shall be a contract between us, and the contract will be governed by these Terms. We shall not, however, be obliged to accept any such instructions. Each matter in respect of which we perform the Services may at our option be treated as a separate contract between you and us.
- 1.2 Any change to these Terms which may be agreed between you and us must be confirmed in writing by us to you in order to be effective. Any decision by us not to enforce any of these Terms shall not prejudice our rights under these Terms at any time. Subject to these Terms we will always proceed on the basis that our overriding duty to you is to do whatever we consider is necessary to properly protect and preserve your rights.
- 1.3 Subject to any variation in accordance with these Terms, every contract between us will be subject to these Terms to the exclusion of all other terms and conditions (including any terms or conditions which you purport to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).
- 1.4 In these Terms, the "Firm", "we" and "us" means M&C or any other business which is owned in whole or in part by us and controlled by us, such business being identified in correspondence between the parties. "You" are our client, being the person, firm, body or company who instructs us and purchases Services from us.

#### 2. Our Obligations

- 2.1 All qualified staff of M&C are members of and must comply with the respective codes of professional conduct issued by those professional bodies of which they are members.
- 2.2 We endeavour to practise competently, conscientiously and objectively, to put your interests foremost while observing the law and our duty to any court or tribunal and to avoid conflicts of interest. However, you should note that, due to the size and breadth of our practice, we do act for competitors.

#### 3. Instructions

- 3.1 Identity of the client
  - (a) It is important that we are able to identify who is formally our client. We shall be entitled to assume, unless we agree otherwise in writing, that the person (including an individual, firm or company) providing us with the initial instructions in relation to a matter is our client (e.g. if we accept instructions from lawyers, patent attorneys or agents (whether in China or abroad) they, and not the persons for whom they act, will be our client and responsible for settlement of all our invoices and for reimbursement of all our costs and expenses incurred in carrying out their instructions).
  - (b) If the client wishes us to render invoices to and accept payment from another entity (for example, another company in the same group) then we shall be pleased to do this; however, responsibility for making such payment remains with our client.
  - (c) In the case of joint applicants or proprietors we will (in the absence of specific written instructions to the contrary) report to and accept instructions from the first named applicant or proprietor only. Nevertheless, all applicants/proprietors have joint and several responsibilities for payment of our charges and costs.
- 3.2
  - (a) New clients and start-up companies  
We welcome the opportunity to work with new clients and start-up companies. For all new clients, our policy is to seek adequate funds on account in advance of carrying out any work. In addition, for newly formed limited companies, we expect the directors to be personally responsible for our reasonable charges and costs incurred in accordance with instructions made on behalf of the company. We may ask the directors to sign an undertaking to this effect.
  - (b) Money Laundering  
In order to comply with Anti Money Laundering Regulations and parallel legislations in many other countries, it is necessary for us to undertake certain investigations into new clients and to report to the relevant authorities any activities deemed suspicious. By instructing us, you agree that we are bound by this legislation and that you will make no claim against us and will hold us harmless for any loss or damage which results from our compliance with those regulations or any actions resulting therefrom.
- 3.3 Timing and form of instructions
  - (a) We rely on clients to give us timely, complete and accurate information and instructions. Misunderstandings can occur with oral instructions; although we will normally act on oral instructions in an emergency, we do require all oral instructions to be confirmed in writing.
  - (b) Competent authorities (including without limitation to State Intellectual Property Office of the PRC, Trademark Office of the SAIC and Copyright Protection Centre of PRC) often impose time limits and failure to meet these limits can be fatal to the rights concerned. We accept no liability if you do not provide instructions that are clear, complete and early enough to allow us to act within 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 reminders.
  - (c) If we receive late instructions from you, we may not be able to implement your instructions in time and we shall have no liability for any loss which may then arise. In the event of late instructions or late payments to us, urgency charges may be incurred by us that we shall pass on to you.
  - (d) You agree that if we act on the instructions of your authorised agent, solicitor or other adviser, then we are entitled to rely upon all the information and instructions given to us by that person until we receive your written signed instructions to the contrary.
- 3.4 Overriding instructions not to let rights lapse  
We shall assume that our overriding instructions are not to let your rights lapse without specific instructions so to do. There may be occasions when a third party instructed by us on your behalf has to take urgent action thought to be in your best interests without recourse to our Firm or to you. Such action will be within the terms of the above overriding instructions.
- 3.5 Updating information  
It is important that you inform us promptly of any change of address, telephone and fax numbers and of any change of ownership of your patent or other relevant Intellectual Property rights. Many such changes have to be officially registered. Please remember that the obtaining of patents, trade marks and design rights can take many years. No responsibility can be accepted for any loss of rights in any case where you have failed to inform us of such changes.

## 3.6 Electronic Communications

- (a) We will normally communicate with you by email, fax or post. Given that e-mails sent over the Internet may lack security and jeopardise confidentiality, we can accept no liability for non-receipt or late receipt by you of such communications or for any corruption in the information communicated to you or its disclosure to other parties as a result of the interception of such communication.
- (b) Although we regularly carry out virus checks, 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). We accept no liability (including negligence) for any viruses that may enter your system or data by these or any other means.

## 4. Instruction of Third Parties to Act on Your Behalf

- 4.1 As part of carrying out your instructions, it may be necessary for us to instruct third parties (e.g. foreign lawyers or patent agents) to act on your behalf. We may either instruct such third parties directly on your behalf, or require you to sign a power of attorney or similar appointment to engage such third party directly.
- 4.2 Such third parties are not part of this Firm. Whilst we shall endeavour to select third parties whose performance and expertise we regard as being of good quality, we will not be liable for any losses, liabilities, costs or expenses arising as a result of any default or negligence on the part of any such third parties.

## 5. Authority

For such period as you instruct us to carry out work on your behalf, you hereby agree to give us express authority to complete and sign in your name such forms or other documents as are necessary or desirable to carry out your instructions. You agree to indemnify us in respect of all costs, claims, demands and expenses that may result from the exercise of that authority.

## 6. Professional Fees

### 6.1 Our Charges

- (a) Our charges are principally based on specific tasks with fixed charges (e.g. filing a patent application) in combination with the amount of our professional time spent on the matter, although other factors may also be taken into account. Such factors may include (but are not limited to) the size and complexity of the matter and the degree of urgency involved. We reserve the right to adjust our standard charges if highly specialised knowledge is required, or if the matter is complex and/or urgent.
- (b) All actions and attention by us in providing the Services are chargeable, including (for example) both incoming and outgoing telephone calls, travelling, the sending of reminders and reporting to you on communications which we may receive from our partners and other specialist providers, as well as in acting for you generally.
- (c) Our hourly rates are primarily based on the seniority and experience of the professional staff involved. These rates are reviewed periodically. Our charges are calculated at the rates which are current when the work is carried out. Details of those rates are available on request.

### 6.2 Payment of Expenses

- (a) You will be responsible for any expenses incurred by us on your behalf. These expenses may include (but are not limited by) the fees requested by relevant authorities, Counsel's fees, Court/Arbitration fees, the costs of any experts or other agents (including without limitation to any foreign lawyers), photocopying costs, courier, travel and meeting expenses and certain telephone and fax charges.
- (b) 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.
- (c) If we instruct specialist providers on your behalf in connection with the Services, you agree we shall be entitled to make an additional charge to cover our related administration costs and any ancillary professional input by us. Details of such charges will be provided upon request.
- (d) Where we incur charges in foreign currencies (i.e. not RMB) or where we agree to bill you in a foreign currency, we will apply an exchange conversion rate which is based on the spot rate at the time of billing but which includes a margin to cover our conversion costs and currency risk.

### 6.3 Estimates

- (a) If requested, where possible we will give estimates of future charges. They will be given in good faith based on knowledge existing at the time, but they are not binding unless we expressly agree otherwise, as charges may be affected by matters beyond our control and the amount of work involved often cannot be accurately forecast.
- (b) If during the course of carrying out the work it becomes apparent to us that our actual charges are likely to significantly exceed our estimate, we will endeavour to seek your permission before exceeding our estimated charges.

## 7. Payment

- 7.1 We are not obliged to grant you any credit and we may require you to make regular payments in advance and on account of our fees and anticipated disbursements for the provision of the Services. If we do grant you credit facilities then you agree that we shall be entitled to do so upon such reasonable terms as we deem appropriate, and we reserve the right to terminate with immediate effect any credit facilities at any time and without prior notice.
- 7.2 We are entitled to send you invoices for fees and disbursements (whether incurred or to be incurred) and for any value added tax or other tax payable thereon at regular and appropriate intervals as we deem fit and on an interim basis. You agree to pay such invoices by no later than **thirty days after** they are issued ("the due date") and free from any deductions, set-offs, withholding, discount, or abatement. Time for payment of our invoices is of the essence.
- 7.3 If any sum due from you to us is not paid on or before the due date for payment then all sums then owing by you to us shall become due and payable immediately and, without prejudice to any other right or remedy available to us, we shall be entitled to:
  - (a) cancel or suspend our performance of the Services until arrangements as to payment or credit have been established which are satisfactory to us;
  - (b) charge you:
    - (i) interest calculated on a daily basis on all overdue amounts (both before and after judgment) until actual payment at the HKD prime lending rate of HSBC in Hong Kong prevailing from time to time until payment is made in full; and
    - (ii) the cost of obtaining judgment or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.
  - (c) in respect of all invoiced fees and disbursements which remain unpaid as well as work done and disbursements incurred but not yet invoiced, have a first and paramount lien on all materials, inventions and documents in our possession, power or custody relating to any matter touching or concerning the contract for the Services.

## 8. Filing

### 8.1 Checking Files Transferred to us

When files are transferred to us from other firms or organisations, they are usually accompanied by records of key data. We recommend that we check such information against the contents of the files and/or from public records. We will levy a reasonable charge for such checking. If you do not wish to instruct us to carry out such checks, we will have no liability for any errors contained in the files as they were received or for any losses incurred as a result of the errors contained in the files.

### 8.2 Ownership of Files

Our files remain our property at all times, in accordance with recommended practice. However, if you want to transfer your work to other professional advisers, we will usually release the files once all outstanding charges have been paid and on receiving an undertaking that is satisfactory to us that we will be given free access to the files, if required. If no such undertaking is received, we will copy the file at your expense and release the copy file when all our charges have been paid.

### 8.3 Original Papers and Other Materials

If you send us papers, samples or other materials, please tell us at the same time if you require them to be returned. Otherwise, we will incorporate them into our files.

#### 8.4 Destruction of Files

We may destroy our correspondence files, draft documents and other papers which are more than 6 years old. In the absence of contrary instructions, we will assume that you are content with this arrangement.

#### 9. Confidential Information

9.1 While acting for you, we shall gather information and documents which relate to you. We shall keep such information and documentation confidential, except where disclosure is required by law or regulation, or in other exceptional circumstances.

9.2 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.

#### 10. Data Protection

10.1 We are required to comply with the relevant Data Protection Laws wherever we obtain or use any personal data from clients (including names, addresses and any personal details). We will use your personal data to provide the Services to you. We may also use your personal data to send you information about our products and services or those of our associated legal practice, which may include sending updates and seminar invitations and to contact you from time to time with newsletters and other information about intellectual property matters and we will share this data with Associated Firms (that is, those firms which trade under the Marks & Clerk name in the UK and in the other countries identified on our note paper). If you do not wish us to use your personal data in this way, please notify us in writing. We may pass your personal data, including details of your registered rights to CPA Global and attorneys acting on their behalf for the issue of renewal reminders unless explicitly instructed not to do so. In the course of instructing foreign attorneys it will be necessary to pass details of you to enable them to prosecute applications, and take other actions on your behalf.

10.2 We will not use your personal data for any purpose other than that set out in this condition 10 without your consent unless we are entitled or required to do so by law or under a court or regulatory authority order.

#### 11. Searches

Any searches you request may be carried out by us, by competent authorities 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.

#### 12. Indemnity for Threat of Infringement Proceedings

Before we send any warning on behalf of a client to a third party, we ask the client 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 clients who do not provide the requested indemnity.

#### 13. Notices and Forms of Written Communication Between You and Us

All notices and forms of written communication between you and us during the subsistence of the contract for the Services shall either be on paper delivered by post or sent by electronic means of message transmission. If such notices and communications are sent by electronic means, then they shall be deemed to have been received at the time of transmission by us. In the event of a difference between the time of receipt and the time of transmission recorded on our equipment, the time specified by our equipment will be deemed the time of transmission.

#### 14. Privilege

14.1 In general, communications between an attorney and his client are privileged under the applicable jurisdictions. 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 document can be lost if it, or its contents, are disseminated to persons other than the addressee of the document.

14.2 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.

#### 15. Conflicts of Interest

15.1 Because of the nature of our profession and our professional business, it is not uncommon for patent and trade mark attorneys to be acting at any one time for two or more clients who are commercial competitors. We will not knowingly act for or against another client in a matter involving an active dispute with you without your written approval and the written approval of the other client, but you agree that we will not be prevented from acting for any of your competitors merely because they are competitors.

15.2 Appropriate procedures and arrangements exist to ensure that advice and opinions you receive are wholly independent of and do not make any use of knowledge or information confidential to any third party and we will not make use of any information confidential to you to the advantage of any third party.

#### 16. Complaints

We value our good relationships with our clients. However, we accept that from time to time, difficulties and misunderstandings do arise. If you have any problems, you should feel free to discuss your concerns with the member of our professional staff responsible for handling your work. If, after such discussions, you feel that the matter has not been adequately dealt with, or any invoice is unreasonably high for the work involved, you should contact the Legal Representative of our Firm. If we cannot resolve the matter, you may refer the matter to the appropriate professional institute which will consider your complaint and seek to resolve the issue.

#### 17. Termination

17.1 We will continue to work for you until any of the following events occur:

- (a) we finish the work you have instructed us to do;
- (b) your invoice remains unpaid for a protracted period;
- (c) we consider that it is not in our mutual best interests for us to continue to work for you;
- (d) you notify us that you have decided not to use us any longer;
- (e) you (if an individual or a partnership) offer to make any arrangements with or for the benefit of your creditors, or a petition of bankruptcy is presented in relation to you or any of your partners; or
- (f) you (if a limited company) are deemed to be unable to pay your debts or you call a meeting to pass a resolution to wind up the company, or such a resolution is passed, or an administrator or receiver is appointed to all or any part of your business or property.
- (g) you become involved in similar processes to those in (e) and (f) under corresponding legislation abroad.

17.2 Irrespective of any termination or suspension of the Services in accordance with these Terms, you shall pay us at the contract rate for all Services provided up to and including the date of suspension or termination and the termination of the contract or any contract for whatever reason shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any sum owing or to become owing to the other.

17.3 You will accept responsibility for making alternative arrangements for compliance with all due dates of action, payment of official fees and the taking of any official steps necessary to preserve your rights in relation to the matters which we have handled for you prior to such termination.

#### 18. Force Majeure and Exclusion of Our Liability

- 18.1 Your relationship is with M&C. M&C will have exclusive liability for carrying out the Services and for any negligent act or omission by us in the course of providing those Services. You agree that no individual member or employee of M&C will have any personal liability for those Services. You also agree that a member or employee of M&C signing in his own name any letter, email or other document in the course of providing Services does not imply he is assuming any personal liability separate to that of M&C. Except for acts of fraud you agree that any claim brought in respect of any matter on which we were instructed will be made against M&C and not against any individual member or employee of M&C.
- 18.2 You agree that we shall have no liability nor shall we be deemed to be in breach of any duties or obligations owed to you if at any time we are prevented, delayed or hindered in complying with such duties and/or obligations by reason of any circumstances beyond our reasonable control.
- 18.3 Nothing in these Terms excludes or limits the liability of us for death or personal injury caused by our negligence, or for fraudulent misrepresentation.
- 18.4 We shall not be liable to you for any indirect or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) or loss or damage (contractual, tortious, breach of statutory duty or otherwise) which arises out of or in connection with the contract (including loss of profit or other economic loss) for any liability incurred by us to any other person for any economic loss, claim for damages or awards howsoever arising from the Services or otherwise.
- 18.5 Subject to the paragraphs above, M&C's total liability in connection with any engagement (whether arising out of breach of contract, negligence, breach of fiduciary duty or otherwise) shall not exceed the cap provided by our indemnity insurance (the current cap is £30 million), which can be adjusted by written notice from time to time. All claims which are to be considered as a single claim for the purposes of our indemnity insurance are to be aggregated in applying that limit, apportioning the capped liability between the aggregated claims in a just and equitable manner. You agree to indemnify M&C and our employees and members against any claims by persons connected with you or on whose behalf or on whose instructions you have sought to engage us or subsequently given us instructions in the subject matter of the engagement (either as agent or principal) or other third parties to whom we owe or are alleged to owe a duty or obligation (whether in contract, negligence, breach of fiduciary duty or otherwise) arising from this matter or our services to you or for any claims for contribution to or indemnity against a claim brought by you or those persons in each case to the extent that liability for such claims if brought by you under these contractual terms between us would be excluded by or exceed any limitation of our liability in the Contract. These persons connected with you may include, by way of example only, licensees, associated or affiliated businesses, distributors and joint holders of marketing authorisations or other licences.

**19. General**

- 19.1 Nothing in the contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.
- 19.2 If at any time any one or more of the conditions of the contract (or any sub-condition or paragraph or any part of one or more of these Terms) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the contract and the validity and/or enforceability of the remaining provisions of the contract shall not in any way be affected or impaired as a result of that omission.
- 19.3 A person who is not a party to the contract (including any employee, officer, agent, representative or sub contractor of either party) shall not have the right to enforce any term of the contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties which agreement must refer to this condition. Parent entities of M&C shall have the right to enforce any term of the contract without such agreement.

**20. Governing Law and Arbitration**

Hong Kong law shall apply to the construction and interpretation of our contract with you and any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted.

I agree to the Terms of Business set out above.

Signed on behalf of \_\_\_\_\_  
Name \_\_\_\_\_  
Position \_\_\_\_\_  
Date \_\_\_\_\_