



HOWARDLOCK

INTELLECTUAL PROPERTY

Regulated by IPReg

Chartered Patent Attorney | European Patent Attorney | Trade Mark Attorney

Howard Lock Intellectual Property Limited **Terms of Engagement**

1. General

- 1.1. 1. These terms and the client care letter you will have received from us apply to all the services we will provide to you in respect of the matter set out in that client care letter. No changes to these terms shall be valid unless agreed in writing by Howard Lock Intellectual Property Limited.
- 1.2. We are retained by you on the basis that you are our principal both financially and in the matter of giving us instructions. These terms and your client care letter do not confer any rights or benefits on any third party.
- 1.3. We may be given instructions by someone claiming to give those instructions on behalf of a third party such as an employee on behalf of the employer, a partner on behalf of his partnership or a solicitor or accountant on behalf of their client. In this case we are entitled to assume that the person giving the instructions has authority to do so and consequently we will not accept any liability for consequential loss to the principal if we are misled.
- 1.4. If we give verbal advice as a result of being asked by you by telephone or in a meeting, we will view that advice as having been instructed.

2. Money Laundering

- 2.1. If we have not previously carried out any work for you we may ask you for evidence of your identity and address as set out in our list of proof of identification requirements. If you require us to be involved in a transaction in which you will be introducing money, such as an assignment of rights, we may ask you about the source of your funding for the transaction.
- 2.2. If you fail to provide us with appropriate proof of identity as requested in our client care letter or evidence as to the origins of money or other assets, we reserve the right to cease acting for you. You agree that we have no liability to you or any other party due to our need to comply with statutory or regulatory requirements or whilst we await clearance of funds.

3. Conflicts of Interest

- 3.1. A conflict of interest may arise if we accept work from a client which we discover may prejudice our ability to act in the interests of another of our clients. We request that you tell us of any individuals, firms or companies for whom you believe we could not act without a conflict of interest occurring. If we discover that a conflict exists, we reserve the right to refuse to act or to stop acting for one or more in respect of that matter.

4. Authorisation to act on your behalf

- 4.1. By accepting these terms you authorise us to complete and sign in your name and on your behalf all official forms and documents necessary or useful to carry out your lawful instructions. By appointing us as your agent, you agree to indemnify us in respect of all costs claims and expenses which result from the exercise of your authority, including liability for costs awarded in contentious procedures such as opposition procedures or enforcement of intellectual property rights.

5. Default Procedure

- 5.1. When we are instructed to start a procedure, we will continue that procedure until receipt of a written instruction from you to terminate the procedure and prior to termination we will exercise our duty of care to maintain your rights. However, we reserve the right to take the following as instructions not to act; such as not receiving instructions from you in due time, or if you have significant outstanding unpaid fees or disbursements or if we have asked you to pay for a disbursement within a deadline and you have not paid us. We would remind you that most intellectual property procedures are subject to strict deadlines. We must receive your instructions and required payment in good time before a deadline. Accordingly, we stress the importance of all deadlines. Failure to comply with official formalities or to respond to official letters or failure to pay fees within required deadlines can result in you losing your rights.

6. Pricing

- 6.1. We will charge you for our services on the basis of time spent or on a fixed fee arrangement or on a retainer basis. We will agree with you the preferred method for your matter and this will be confirmed in your client care letter.

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- 6.2. On a time charge basis we will charge for any time spent on your interest. This will include seeking instructions and reminding you for information requested. Our retainer will start from the date of receiving instructions and will last until termination. On termination we will charge you for all work carried out up to and including termination.
- 6.3. Retainer terms are where we agree a regular fee with you for a set range of services. This is designed to help clients budget for expected intellectual property advice needs. You can terminate retainer terms on three month's written notice to us.
- 6.4. We are happy to provide estimates of fees and costs to you. We will try to keep to estimates wherever possible but reserve the right to raise additional costs from you subject to your prior authorisation for work not originally accounted for.
- 6.5. Our charges relate to professional time for intellectual property advice working on files, telephone calls and meetings and office services including photocopying, postage, faxes, emails and disbursements[plus service charges for certain standard procedures. We will usually itemise our disbursements on our invoices and we will mark them up at a reasonable rate taking into account the cost of borrowing money and administering payment. We review our hourly rates from time to time and we reserve the right to raise them from time to time. The main part of our charges constitutes the time element particularly telephone advice and meetings. We will charge you for file records of advice and the need to prepare written confirmation of advice.
- 6.6. In some matters it is difficult to predict the level of work involved at the outset. We seek to keep you fully informed of the likely costs as the matter develops. In such matters we charge based on time spent as set out above.
- 6.7. We do not normally accept instructions on matters where funding of fees is on a contingency or conditional fee basis. If your fees are to be met by a third party, you accept that in contracting with us you are liable to meet our fees and disbursements should the third party fail to meet all or any of our fees and disbursements.
- 6.8. We reserve the right to raise additional fees where there are exceptional elements that we were not aware of at the outset of the matter. You may set a limit on the costs including fees and disbursements which we may incur on your behalf without further reference to you. Please inform us in writing of any such limit which you wish to impose.
- 6.9. If for some reason a procedure is not pursued to completion or an item of work is left unfinished we will charge in respect of the work which we have actually carried out or time and office services spent together with disbursements incurred on your behalf.

7. VAT and disbursements

- 7.1. Our fees do not include VAT or any disbursements incurred on your behalf and we will add this to our invoice. We endeavour to give you advance notice of likely disbursements (such as registration fees etc.) and usually require you to put us in funds to meet any such disbursements before we incur them on your behalf.
- 7.2. You hereby give us full authority to incur such disbursements as we reasonably deem appropriate to successfully meet the scope of your instructions and to fully meet the cost of all such disbursements.

8. Payment

- 8.1. Payment of our invoices is due within 30 days of the date of invoice.
- 8.2. Where payment is not made within our above 30 day terms, we reserve the right to charge interest at a rate of 4% over the base rate from time to time of the Royal Bank of Scotland plc from the date of invoice to payment in full. We will charge £25 minimum for representing a cheque issues by you
- 8.3. Where we hold funds or other property for you, we reserve the right to deduct what is due to us from such sums or hold such property until we have received payment in full.
- 8.4. Where we have requested payment prior to completion of a matter, we reserve the right to delay completion until our fees and disbursements have been met.
- 8.5. Where we receive funds for you at completion, we reserve the right to deduct our fees and disbursements from such sum before passing the balance to you.
- 8.6. Our fees and disbursements will be met by you, whether or not your matter is completed or successfully concluded. We reserve the right to request payment for all disbursements in advance including official fees, for example, at intellectual property offices, and also the anticipated costs of overseas associates.
- 8.7. If you have any queries on our invoices you should submit these in writing within 7 days of the date of the invoice.
- 8.8. These terms constitute an agreement with our principal that the principal will pay our costs and expenses in full including the cost of expense of time at our usual rates incurred in recovering payment of our invoices after 30 days from the date of issue.

9. Official Intellectual Property Offices

- 9.1. We will advise you on the registrability and allowability of intellectual property rights throughout procedures for obtaining rights, registration or grant but we cannot guarantee such grant or registration. This is because grant or registration is dependent upon the allowability or registrability before governmental offices of many territories.

10. Confidentiality

- 10.1. Our advice to you is confidential and attracts legal privilege under section 280 of the Copyright, Designs and Patents Act 1988 as amended. We advise you for your purposes and only in connection with your specific issues as our client. You should note that no other person may rely on our advice and we will not be liable to any third party other than our client.
- 10.2. We will treat all information of a confidential nature as confidential. We will keep such information and materials you supply to us under conditions of normal office security. You authorise us to forward such information or technical information to Patent Offices in the UK and other intellectual property offices in Europe and overseas and to disclose it to our employees and agents and overseas agents for the purpose of furthering your interests. The duty of confidentiality does not extend to information available from other sources in the public domain.

11. Samples and Documents

- 11.1. You must give us a written request to return to you any samples, models, prototypes or documents. If we do not receive such a request we will retain these as long as we require them and dispose of them as we think fit.

12. Files and Papers

- 12.1. These remain our property to be retained for so long as we deem appropriate following completion of your matter after which they will be destroyed. We reserve the right to destroy or retain files unless specifically instructed by you.

13. Copyright

- 13.1. We expressly reserve the right to copyright in all our letters, patent specifications, legal opinions and other documents which we may issue. You may only use such documentation for the purpose for which it was created for you. However, we will allow you to copy such documents for your own use after our costs have been paid in full. We also expressly reserve any database right in the content of our database, including lists of our foreign associates.

14. Termination of instructions

- 14.1. You may terminate your instructions to us by giving us reasonable written notice. We reserve the right to cease acting for you for good reason such as a conflict of interest; your failure to instruct us adequately; your failure to pay one of our invoices; or if you refuse to meet our request for payment on account of significant disbursements. If either we or you terminate instructions you must pay all our costs incurred before termination. You must also pay us costs resulting from instructions which we have already acted on. You are also responsible for the payment of costs for foreign associates resulting from work already carried out by us or instructed to foreign associates before the date of termination. We will draw your attention to time delays in intellectual property procedures particularly in the case of registration of foreign rights. When we receive your instructions to terminate or we terminate, you will be responsible for complying with ongoing procedures and deadlines in connection with any of your matters.

15. Transfer of Agency

- 15.1. If you instruct us to transfer work to another agent we will normally make copies of our files available for that agent subject to your invoices having been paid in full and subject to our own property rights being protected including intellectual property rights from our competitors. We reserve the right to withhold any documents which we regard as our own for our own internal use. These would include copies of letters written to the client, file notes, attendance notes, tape recordings of conversations, diary entries, time sheets, office journals, computerised entries, books of account, and details of our suppliers and foreign associates. We reserve the right to charge a minimum disclosure fee of £50 plus VAT per file plus photocopying costs. We will require payment of these in advance of sending the copies to another agent.

16. Complaints

- 16.1. If you have any complaint concerning our service to you please write to us and we will address this in line with our internal complaints procedures. In the event that we cannot sort out the complaint to your satisfaction, you may contact the Legal Ombudsman, PO Box 15870, Birmingham, B30 9EB, telephone 0300 555 1777, email enquiries@legalombudsman.org.uk. Ordinarily a complaint must be referred to the Legal Ombudsman within six months of receiving a written reply from us dealing with your complaint. You can find further information, on the Legal Ombudsman website www.legalombudsman.org.uk.

17. Code of Practice

- 17.1. Howard Lock is a member of the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys and is a Professional Representative before the European Patent Office and the Office for Harmonisation in the Internal Market. Howard Lock and Howard Lock Intellectual Property Limited are regulated by the Intellectual Property regulation Board.

18. Data Protection

- 18.1. For the purposes of this clause 18, "**Data Protection Legislation**" shall have the following meaning: (i) unless and until the General Data Protection Regulation ((EU) 2016/679) ("**GDPR**") is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or

updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

- 18.2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 18 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 18.3. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Provider is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation). Schedule 1 sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, **Personal Data**) and categories of Data Subject.
- 18.4. Without prejudice to the generality of clause 18.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this agreement.
- 18.5. Without prejudice to the generality of clause 18.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this agreement:
- 18.5.1. process that Personal Data only on the written instructions of the Customer unless the Provider is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Provider to process Personal Data ("**Applicable Laws**"). Where the Provider is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Provider shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer;
- 18.5.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 18.5.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 18.5.4. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- 18.5.4.1. the Customer or the Provider has provided appropriate safeguards in relation to the transfer;
- 18.5.4.2. the data subject has enforceable rights and effective legal remedies;
- 18.5.4.3. the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 18.5.4.4. the Provider complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 18.5.5. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 18.5.6. notify the Customer without undue delay on becoming aware of a Personal Data breach;
- 18.5.7. at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- 18.5.8. maintain complete and accurate records and information to demonstrate its compliance with this clause 18.
- 18.6. The Customer consents to the Provider appointing service providers, including but not limited to: Debt Collection Services UK Limited, Xero Limited and its subsidiary companies, and Knowles Warwick Limited, as third-party processors of Personal Data under this agreement. The Provider confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 18. As between the Customer and the Provider, the Provider shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 18.
- 18.7. Either party may, at any time on not less than 30 days' notice, revise this clause 18 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 18.8. **If you do not wish to be contacted as set out in this clause 18, please tick here and return to us. []**

19. Limitation of Liability

- 19.1. **Our firm carries professional indemnity insurance giving clients cover of £1 million for any one claim for our negligence. We accept no liability for any loss or damage beyond the level of our insurance cover. If you have concerns that our cover is not adequate for your matter please raise this at the outset so that alternative arrangements can be discussed and agreed in writing.**

Schedule 1 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

PROCESSING BY THE PROVIDER

1. SCOPE and NATURE

We collect most of this personal information directly from you – in person, by telephone, text or email. However, we may also collect information:

- From publicly accessible sources, eg Companies House.
- Directly from a third party, eg Customer due diligence providers.

3. PURPOSE OF PROCESSING

Under Data Protection law, we can only use your personal information if we have a proper reason for doing so, eg:

- To comply with our legal and regulatory obligations.
- For the performance of contract with you or to take steps at your request before entering into a contract.
- For our legitimate interests or those of a third party.
- Where you have given consent.

A legitimate interest is when we have a business or commercial reason to use your information, so long as this is not overridden by your own rights and interests.

The table below explains what we use (process) your personal information for and our reasons for doing so.

| What we use your personal information for | Our reasons |
|---|--|
| To provide services to you | For the performance of our contract with you, or to take steps at your request before entering into a contract |
| Other processing necessary to comply with professional, legal and regulatory obligations that apply to our business | To comply with our legal and regulatory obligations. The data may be published by an Intellectual Property office. |
| To gathering and providing information required by or relating to audits, enquirers or investigations by regulatory bodies | To comply with our legal and regulatory obligations |
| Statutory returns | To comply with our legal and regulatory obligations |
| Marketing our services to existing and former customers, third parties who have previously expressed an interest in our services and third parties with whom we have had no previous dealings | For our legitimate interest or those of a third party, ie to promote our business to existing and former customers |

If we think it may be necessary to data share in order to complete your instructions with Howard Lock Intellectual Property, some of those third party recipients may be based outside the European Economic Area (EEA).

4. DURATION OF THE PROCESSING

We will hold keep your personal information while you have an account with us, or we are providing services to you.

Thereafter, we will keep your personal information for as long as is necessary:

- To respond to any questions, complaints or claims made by you or on your behalf.
- To show that we treated you fairly.
- To keep records required by law.

We will not retain your personal information for longer than necessary for the purposes set out in this policy.

Data is destroyed after the completion of the period set by the Limitation Act 1980 being six years from the time that the data is no longer required to carry out the necessary work, which may be after the Intellectual Property right has expired.

5. TYPES OF PERSONAL DATA

- Your name and contact information, to include, address, email address, telephone number and name of company who employs you.
- Information to enable us to check and verify your identity, eg your date of birth and nationality.

- Your gender information, if you choose to give this to us.
- Your billing information, transaction and payment card information.
- Intellectual Property rights held by you.

This personal information is required to provide services to you. If you do not provide the personal information we ask for, it may delay or prevent us from providing services to you.

6. CATEGORIES OF DATA SUBJECT

- The Customer;
- The Customer's representatives;
- Any agent of the Customer.