



# SPRUSON & FERGUSON

PATENT AND TRADE MARK ATTORNEYS

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## TERMS OF ENGAGEMENT for local clients

Date of Entry:

### 1. THE WORK

- 1.1 You wish to engage Spruson & Ferguson to provide services concerning your intellectual property rights, in accordance with your instructions received from time to time.
- 1.2 The services will be provided by or under the direct supervision of a Principal of Spruson & Ferguson.
- 1.3 Our services are subject to the *Code of Conduct for Patent and Trade Marks Attorneys*, established by the Government's Professional Standards Board for Patent and Trade Marks Attorneys. A copy of the *Code* is available on request or can be downloaded from <http://www.psb.gov.au/pdffiles/code.pdf>.

### 2. YOUR INSTRUCTIONS TO US

- 2.1 So that we can best serve your interests, you must provide us with full and detailed information, including information about any change in ownership of your relevant IP rights and information about all other relevant matters. For example, information concerning previously filed applications or publications known to you that relate to the same or a similar subject should be provided.
- 2.2 In most circumstances, we will not proceed until we receive your instructions. If, however, action is necessary to protect your rights or interests, we may need to act without referring to you or waiting for your instructions and will charge for our services and disbursements accordingly.
- 2.3 All communications will be sent to the address you nominate (including any email address). If we are unable to reach you because you have not properly informed us of any changed address or contact details, our obligation to act in the matter ceases. Emails and faxes may lack security and jeopardise confidentiality of information. We cannot accept liability for non-receipt or late receipt by you of such emails or faxes, or for corruption or unauthorised disclosure of information contained therein.  
  
Further, electronic communications may not reach the recipient due to various technical problems, even if they appear to be delivered. Accordingly, if your electronic communication contains important instructions, in particular, time dependent instructions, we cannot accept any liability for any failure to act on those instructions, unless we have acknowledged their receipt.
- 2.4 Whilst it may be desirable to conduct a search for the purposes of, for example, assessing potential infringement, the prior rights of others or prior art, we will not do this unless you specifically instruct us to do so.

### 3. OUR FEES AND EXPENSES

We appreciate that you may want to discuss our professional fees with us. We are happy to answer any fee queries, including the basis of our professional fees or billing procedure.

#### 3.1 PROFESSIONAL FEES

- (a) Our professional fees are charged in accordance with our:
  - Scale of Charges for Specific Tasks - our scale of charges sets out our charges for specific tasks, such as filing applications. We are happy to provide you with our confidential scale of charges; and
  - Hourly Rate Charges - for matters outside our 'Scale of Charges for Specific Tasks', we charge on an hourly rate basis. Our hourly rate charges reflect the amount of professional time we spend on your matter(s). We will provide you with our hourly rate charges at the time of our engagement.
- (b) In certain circumstances, we may provide our professional services to you for an amount agreed in writing (this excludes any estimates referred to in clause 3.1 (d)).
- (c) We will usually ask you for payment in advance on account of our anticipated fees and disbursements, and third party disbursements.

- (d) Before starting any substantive work based on new instructions, we will endeavour to provide you with an estimate of our professional fees. Any estimate is given in good faith based on our knowledge at the time of the instructions. Accordingly, the estimate is subject to change. However, if we become aware of any circumstances that may substantially affect the estimate we will endeavour to promptly contact you. An estimate is not binding nor is it a fixed quote or capped fee unless otherwise agreed in writing.
- (e) In some cases our professional fees may be adjusted to take account of the urgency of the matter and necessary travelling time.
- (f) Our hourly rate charges may vary according to the expertise of the professionals involved, as well as the nature of the work performed. Our hourly rates charges are reviewed periodically. If you have any queries in this regard, please contact us.

#### 3.2 DISBURSEMENTS

- (a) All disbursements incurred by us in acting for you will be passed onto you. We do not charge you for local or international telephone charges. We do charge you for postage, photocopying, delivery charges and fax transmissions.
- (b) We will also charge all third party disbursements we incur on your behalf, such as official patent, trade marks or designs office fees, GST (where applicable), charges and disbursements of overseas associates, experts, solicitors or barristers, and reasonable travelling and accommodation expenses where required.
- (c) Where we need to use the services of overseas associates, we do so as your agents. We will convert the associate's charges to Australian dollars, and include an amount to cover exchange fluctuations on the payment of the associate, and a charge for dealing with the associate in the foreign currency.

#### 3.3 INVOICES AND PAYMENTS

- (a) We will issue invoices or debit notes in Australian dollars for our services and disbursements, and third party disbursements. Our account operates as a tax invoice for the amount of GST (if applicable). The tax invoice will contain particulars as are required by law in order for you to obtain an input tax credit for the amount of GST paid by you if you are registered, and are otherwise entitled to claim input tax credits.
- (b) Our accounts are payable within 14 days after the date of the invoice or debit note.
- (c) If you fail to pay an account, we may:
  - (1) not carry out any further work for you until our accounts are paid in full;
  - (2) retain custody of all materials in our possession (including, without limitation, all physical samples, specimens, documents and our files) until all of our accounts are paid in full;
  - (3) charge interest on any amount outstanding for more than 30 days from date of invoice at the rate prescribed from time to time under section 95 of the *Supreme Court Act 1970*; or
  - (4) subject to clause 12, report you to a credit reporting agency for any account which is overdue by more than 60 days from the date of our invoice, and we have sought payment of that overdue amount from you.

### 4. PRIVILEGE AND CONFIDENTIALITY

Generally speaking our communications with you, provided they are kept confidential, will be protected in Australia by patent and trade mark attorney/client privilege.

### 5. ONGOING COSTS

Obtaining and maintaining intellectual property rights involves ongoing costs over a long period. You should seek our advice on these costs so as to be fully aware of the anticipated costs and to budget for them.

## 6. CASE MANAGEMENT

When we prepare documents in respect of a matter and submit them to you, you will check that they are accurate, and if not, contact us promptly to correct or clarify anything or raise any queries.

## 7. PROGRESS OF MATTERS

We will keep you informed of the progress of a matter. You will, at our request, promptly provide us with any information or assistance we need to progress the matter. Failure to do so may jeopardise the validity or existence of the intellectual property rights involved.

## 8. ABANDONMENT OF MATTERS

- 8.1 You will ensure that your instructions for maintaining or abandoning a matter are complete and clear. Any work carried out on a matter before your instructions to abandon a matter can be implemented will be considered unbilled work.
- 8.2 If we do not receive your instructions or a requested payment in time in relation to any matter for which action needs to be taken, we may conclude that you wish to abandon the matter and act accordingly.

## 9. RENEWALS

Almost all intellectual property rights to be handled on your behalf will require renewal (or annuity) fees to be paid to the relevant government authority on a periodic basis. We ordinarily refer our clients to CPA Global Limited (CPA) of Jersey, Channel Islands (unless instructed otherwise). CPA is an established independent specialist renewals business with a representative office in Sydney and Spruson & Ferguson's preferred partner for the renewal of Spruson & Ferguson's clients intellectual property rights worldwide. You will be contacted directly by CPA who will already have received your case details from us. There is no obligation upon you to use the services of CPA, however, where those services are used Spruson & Ferguson and certain of its principals have an interest in and financially benefit from CPA and Spruson & Ferguson shares relevant client information with CPA to enable CPA to provide its renewal services.

## 10. DIFFICULTIES

- 10.1 If, at any time, you have any concerns regarding the conduct of a matter, please contact the Principal responsible for the matter or our Managing Principal (currently David Griffith).
- 10.2 If you are not satisfied with the way we handle any query or dispute, you may make a written complaint to:
- (a) The Institute of Patent and Trade Mark Attorneys of Australia at Level 2, 302 Burwood Road, Hawthorn VIC 3122; and/or
- (b) The Professional Standards Board at IP Australia, Woden, ACT ([www.psb.gov.au](http://www.psb.gov.au)).
- If you require further information, please contact us.
- 10.3 If any dispute other than a dispute regarding payment occurs, you agree that the dispute must be submitted to mediation by the Australian Commercial Disputes Centre Limited, and that each party bears its own costs in relation to the mediation.

## 11. WITHDRAWING REPRESENTATION

### 11.1 TERMINATION BY YOU

You may terminate your engagement of us at any time in writing. If you do so, you will be required to pay our outstanding costs and disbursements as at the date of termination.

### 11.2 TERMINATION BY US

We reserve the right to cease acting in a matter, or to withdraw from representing you and terminate your engagement of us at any time. We may for example terminate your engagement if:

- (a) you do not comply with a request for funds in advance within a nominated period;
- (b) we are unable to obtain adequate instructions;
- (c) our accounts have not been paid as provided in these terms;
- (d) we cannot continue to represent you for reasons of conflict of interest, whether ethical, commercial or otherwise, at our discretion.

## 12. PRIVACY

- 12.1 Personal information which you provide to us will only be used in accordance with your instructions and to enable us to carry out our professional activities in that connection. That information may therefore be disclosed by us to, for example, IP Australia and to foreign

associates. On request, we will provide to you details of your personal information and will update that information as required from time to time. That information may otherwise be used by us to contact you via newsletters (and other correspondence) concerning developments in the field of intellectual property but will not be used for the purpose of any third party direct marketing.

- 12.2 If you do not wish us to contact you via our newsletters (and other mailouts), please contact us immediately. If we do not hear from you we will assume that you are happy for us to contact you in accordance with this statement.
- 12.3 **If you are an individual**, by signing these terms of engagement, you agree that we may also give information about you to a credit reporting agency for the purpose of allowing the credit reporting agency to create or maintain a credit information file containing information about you. This information is limited to the matters set out in section 18E of the *Privacy Act, 1988* and may include identity particulars (such as your name and address), payments which we have notified you are overdue by more than 60 days and which we have taken steps to recover from you, and cheques drawn by you for \$100 or more which have been dishonoured more than once. This information may be given before, during or after the provision of professional services to you.
- 12.4 **If you are an individual**, by signing these terms of engagement, you agree that we may obtain a consumer credit report containing information about you from a credit reporting agency for the purposes either of assessing your creditworthiness prior to providing you with professional services, or collecting overdue payments owed by you relating to professional services provided by us. This clause is not effective unless these terms of engagement are signed by you, as required by section 18K(1)(b) or (h), as the case may be, of the *Privacy Act, 1988*.
- 12.5 A copy of our Privacy Policy can be found on our web site [www.sprusons.com.au](http://www.sprusons.com.au) or can be sent to you on request.

## 13. FILE CONTENTS

- 13.1 When instructed to transfer work to another representative our services involved in the transfer of files, including photocopying fees, as appropriate may be charged. We may not transfer files (and physical samples or specimens) over which we exercise a lien because of unpaid accounts.
- 13.2 We may destroy files that are no longer current in accordance with our file destruction policy (which may vary from time to time) and after any ongoing work is required after the file is "closed". If you would like a copy of our file destruction policy, please let us know. Subject to these terms, if you wish us to return documents from our file to you after the completion of a matter please let us know immediately, otherwise we will assume that you consent to the destruction of the file in accordance with our file destruction policy at the relevant time. **If you have any reason to believe that any of the documents may be relevant to any future litigation, please contact us immediately.** We are prepared to retain documents on our file, upon request, beyond the time period set out in our policy, however we reserve the right to charge storage fees for those documents. Physical samples or specimens will only be retained until a file is closed and, unless you instruct us to the contrary, will then be destroyed. Files maintained by overseas associates on your behalf will be governed by their own file destruction policies and applicable laws. If you would like a copy of those associates' policies please let us know. If the files maintained by those overseas associates (to which you may be entitled) are to be returned to you upon the completion of the work please instruct us accordingly, otherwise we will assume your consent to the above.

## 14. ACCEPTANCE OF TERMS

If you begin or continue to instruct us, and do not advise us to the contrary within 14 days, we will consider (subject to 12.3 and 12.4 above) that you have accepted these terms and agree to be bound by them. If you have any questions, please contact us as soon as possible.

Having read and understood the above terms of engagement, I/we agree to engage Spruson & Ferguson on those terms.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_