

Marks & Clerk (Malaysia) Sdn Bhd Terms of Engagement

These terms of engagement represent the entire understanding between us and shall be the basis of our relationship unless specifically modified by mutual agreement in writing. Issuing or continuing to issue instructions to us after notice of these terms will be treated as indicating your acceptance hereof. The same terms will apply to other services or matters not presently contemplated unless agreed otherwise.

1. Our Obligations

We are a private limited company comprising Patent Agents, Trade Mark Agents and other suitably qualified professionals. Each of our professionals is guided by the applicable rules of professional conduct. These include a duty to avoid conflicts of interests and obligation in respect of confidential information entrusted to us in our professional capacity. We will exert our best efforts in the discharge of our professional duties.

2. Our Client

The person, firm, company, society or association who issues instructions to us will be regarded as our client and will consequently be responsible for payment for our services. If we are requested to invoice any other person or body, you will remain responsible to ensure timely payment is made to us by such other person or body, failing which we will look to you for settlement of our charges.

You hereby expressly agree that we are authorized to complete and sign in your name and/or on your behalf such forms or other documents as may be necessary or desirable to carry out your instructions and ratify our signature of any such form or document within the month prior to first notice of these terms. You hereby indemnify us in respect of all costs, claims, demands and/or expenses arising from exercise of that authority.

3. Conflicts of Interest

i) Appropriate internal arrangements exist to ensure that work conducted for you does not make any use of knowledge or information which is confidential to any third party and we will not make use of any information confidential to you to the advantage of any third party.

ii) For purposes of determining whether a conflict of interest exists, we are representing you and not your stockholders, subsidiaries, related companies or the like. Equally, you are engaging the services of the particular office you are dealing with and not the entire Marks & Clerk group and you will not assert any claim of conflict against any of the other offices of the Marks & Clerk group or seek their disqualification from acting for any other party.

4. Complete and Timely Instructions in Writing

i) To enable us to act properly and promptly you agree to give us timely, clear, accurate and complete information and instructions, and we can accept no responsibility for any errors, omissions or loss of rights attributable to your failure to do so.

ii) We will advise you of any applicable deadline by which instructions or certain documents should be received by us. In the event that such instructions/documents are received from you after the deadline, we cannot accept responsibility for any failure to achieve the desired result. While we will make every effort to remind you of impending deadlines, we are not bound to do so.

iii) Instructions should always be issued or confirmed in writing. We do not accept liability for any misunderstanding of oral instructions that may arise before we receive confirmation thereof in writing.

iv) We communicate via any appropriate medium including traditional mail, facsimile transmission and email, accepting that there are inherent risks attached to such modes of communication. Please give us prior notice if you object to the use of any particular mode of communication.

v) You should notify us promptly in writing of any change in your particulars. Our duty to communicate will have been discharged by writing to you according to the latest particulars given to us.

5. Third Parties

You agree that we may need to instruct third parties on your behalf. Whilst we exert our best judgment in the selection of such third parties, we will not be liable for any losses, liabilities, costs or expenses arising from their default or negligence. We instruct them on your behalf as your agents. If any third party issues an invoice in respect of services provided by them in relation to one of your cases, you will be legally responsible for ensuring payment thereof.

6. Billing

i) Our bills will be issued at appropriate intervals and not necessarily at conclusion of a matter. These will include charges for services rendered by us as well as for services reasonably engaged by us on your behalf and expenses reasonably incurred to perform our services.

ii) Our charges are based in part on standard charges for a particular task and in part on the actual time taken to do a particular job. Any estimate given by us is given in good faith based on our knowledge and information available to us at the time, but we cannot be bound by such estimate as the actual time and costs may be affected by factors beyond our control.

iii) In many matters, after initiating the same, charges will be incurred in connection with developments in the matter, and for foreign cases, these may include the charges of the overseas associate engaged in the matter which we must pass on to you. As is the nature of intellectual property cases, this may occur some time after we last communicated with you. We shall assume that we are authorized to continue to incur such charges unless we have received explicit instructions to the contrary. You must promptly inform us should you decide not to pursue a matter, giving us reasonable time to take steps accordingly, for example to transmit instruction to an overseas associate to cease further work on a foreign case.

iv) Any invoice sent by us to you must be settled in full within thirty days of the date of invoice. We reserve the right to charge interest at prime rate on any overdue account. We will provide full explanation of our charges, and copies of documents as may be relevant, without charge on your request.

v) We reserve the right to ask for advance payment before acting on your instructions.

vi) Any termination of our relationship shall be without prejudice to your responsibility to pay for services already rendered.

7. Indemnity for Threat of Infringement

If you instruct us to send any warning to a third party on your behalf, you agree that you fully indemnify us against the risks of being sued for making an unjustified threat of infringement.

8. Insurance

We maintain professional liability insurance in accordance with rules and recommendations of professional bodies of which we and/or qualified professionals of our company are members. The amount of our liability to you will be limited to such amount as may be recoverable from the insurer, whose name will be disclosed to you on your written request.

9. Termination of Services

i) You have the right to terminate our services at any time by written notice. Where we are engaged to perform a specific service, our attorney client relationship will be considered terminated upon completion thereof. You will continue to be responsible for our fees and/or expenses for all work done prior to termination, and/or fees and/or expenses of overseas associates or other service providers incurred up until such time as we could reasonably have instructed the termination of their services.

ii) We reserve the right to withdraw from representing you generally or in relation to a particular matter if you are in arrears for services rendered and invoiced to you, irrespective of whether further work is related to the work for which payment has not been received, or if we determine in our reasonable discretion that our representation will be unethical or impractical. In such event, subject to due notice to you, we will not be obliged to act on any instruction we may have received from you.

10. Records

We will maintain file records for as long as and in such form as we may in our sole discretion deem appropriate. Please inform us immediately if you require us to return any papers or materials supplied to us by you, or any document to be copied at your expense. These will be released to you or to another party appointed by you subject to the usual lien for any unpaid costs and satisfactory undertaking to us that we will be given free access to the file records if required.

11. General

If any provision or term of this engagement shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, such term or provision shall be divisible from the agreement between us and shall be deemed to be deleted herefrom, provided always that if such deletion substantially affects or alters the commercial basis of this agreement, the parties shall negotiate in good faith to amend and modify the terms of this agreement as may be necessary or desirable in the circumstances.

Headings in this document are for convenience only and are not intended to have any legal effect.