

## GENERAL TERMS AND CONDITIONS

### 1. General provisions

- 1.1. Patentwerk B.V. (“Patentwerk”) is a private limited company which, according to its objects, carries on the business of a patent attorney in the broadest possible sense.
- 1.2. A customer with whom Patentwerk concludes a contract of assignment shall hereinafter be referred to as the “Client”.
- 1.3. These general terms and conditions shall apply to all assignments that Patentwerk accepts. The applicability of any general terms and conditions of the Client is excluded.
- 1.4. All assignments shall be accepted and performed solely by Patentwerk, even if it is the explicit or tacit intention that an assignment is to be performed by a specific person. The applicability of Book 7, article 404 and Book 7, article 407, paragraph 2 of the Dutch Civil Code (*Burgerlijk Wetboek*) is excluded.
- 1.5. The clauses in these general terms and conditions shall be considered to have been drafted also for the benefit of all of the professional companies-shareholders and all patent attorneys and other employees of Patentwerk as well as all persons who are engaged by Patentwerk during its performance.

### 2. Assignments

- 2.1. A contract of assignment between Patentwerk and the Client shall be concluded at the moment that Patentwerk accepts a written or verbal assignment from the Client. An assignment to file a patent application or to take over the representation of a current patent application shall also comprise *inter alia* the assignment to report on developments and do all that is required to ensure that the rights applied for are granted, and to maintain the acquired rights.

- 2.2. The Client shall provide Patentwerk in good time with all relevant instructions and data for the performance of an assignment. If the Client cannot do this in good time and a deadline is likely to pass, Patentwerk shall, where possible, request an extension to the deadline in question. In that case, fees and costs shall be charged to the Client, as further specified in article 3.1.
- 2.3. Patentwerk shall perform the assignments to the best of its ability and shall therefore only be bound by a duty of best efforts. Patentwerk shall never be liable for any failure to achieve the result intended by the Client.
- 2.4. Delivery times are stated by approximation. The Client may not derive any rights therefrom. A missed delivery time shall therefore not entitle the Client to any compensation.
- 2.5. Patentwerk shall be entitled to hire third parties for the performance of a contract of assignment for the Client.

### **3. Invoicing**

- 3.1. Patentwerk shall charge the Client a fee and costs for the performance of the assignment. The fee shall primarily be composed of the hourly rates charged by Patentwerk multiplied by the number of hours spent on an assignment, except where the parties have agreed a fixed sum. Additionally, all costs, such as taxes, fees for third parties as referred to in 2.5 and office expenses incurred by Patentwerk in connection with the performance of an assignment, shall be charged to the Client.
- 3.2. Patentwerk may make performance of an assignment dependent on the payment of a retainer by the Client. In that case, Patentwerk shall only undertake work in the context of the assignment in question once the Client has paid the retainer. If the retainer is not paid or not paid on time, Patentwerk shall never be liable for damages ensuing from non-performance of the assignment. Any retainers paid shall be set off against an invoice for the assignment.

- 3.3. Payment of invoices must be made within 30 days of the invoice date. Any right to a suspension or set-off is excluded. If the payment period is exceeded, the Client shall be in default by operation of law and Patentwerk shall be entitled to charge interest at the statutory rate for commercial debts. All costs of collection shall be payable by the defaulting Client.
- 3.4. The Client shall at all times remain liable for the payment of outstanding debts, even where the Client has indicated that the assignment has been given to a third party.
- 3.5. In addition to its right to suspend the performance of the assignment and with due observance of its rules of conduct, Patentwerk shall be entitled to keep the Client's files, and all information and correspondence from the files in question, in its possession until the Client has discharged its payment obligations to Patentwerk.

#### **4. Liability**

- 4.1. Within the limitations set out in this article, Patentwerk shall be liable for shortcomings in the performance of the assignment insofar as these are the result of Patentwerk failing to observe the proper care, expertise and professionalism that may be expected in the context of the assignment in question.
- 4.2. The liability for the damages caused by Patentwerk's shortcomings in the performance of the assignment shall be limited to a maximum of the sum paid out by Patentwerk's liability insurance in the case in question. Liability for lost business and/or consequential losses, and all other indirect damages, is excluded. If Patentwerk's liability insurer does not make any payment, Patentwerk's liability shall in any case be limited to the sum of the fee received by Patentwerk for the work done in the context of the assignment.
- 4.3. For assignments with a lead time longer than six months, the liability referred to in this article shall further be limited to a maximum of the invoice totals of the last three months.

- 4.4. The limitations of liability set out in articles 4.1, 4.2 and 4.3 shall not apply insofar as the Client's damages are attributable to wilful intent or gross negligence of Patentwerk or managers working under its authority.
- 4.5. The burden of proof in relation to any alleged liability of Patentwerk shall rest with the Client. The Client accepts this burden of proof.
- 4.6. Patentwerk excludes any liability for inaccuracies and/or omissions in the information provided by the Client. Patentwerk also excludes liability for any inaccuracies and/or omissions in the registers consulted by Patentwerk.
- 4.7. Patentwerk shall be authorised to accept any general terms and conditions and limitations of liability of hired third parties, as referred to in article 2.5, on behalf of the Client. Patentwerk's liability for errors or shortcomings of third parties is excluded.
- 4.8. The Client shall indemnify Patentwerk from any third-party liability in any way connected with the work for the Client. The Client shall compensate Patentwerk for any reasonable costs of conducting its defence against such claims.
- 4.9. Patentwerk shall not be liable for damages resulting from any violation of the confidentiality of communication by e-mail.
- 4.10. Any claim against Patentwerk, apart from those which are acknowledged by Patentwerk, lapses following the simple expiry of a period of 12 months from when the claim arose.
- 4.11. Any claim for compensation vis-à-vis employees, patent attorneys, directors of professional companies of shareholders and other persons or (legal) entities who are involved on behalf of Patentwerk in the performance of the assignment, is excluded. This is a third-party clause that the above persons may invoke at any time.

## **5. Force majeure**

- 5.1. In cases of force majeure, Patentwerk shall be entitled to suspend the performance of an assignment or to dissolve the agreement without resort to the courts. Force majeure shall be constituted where the performance of an assignment, be it temporarily or otherwise, is prevented by circumstances that are beyond the reasonable control of Patentwerk, such as accident, fire, illness and equipment malfunction.

## **6. Dissolution**

- 6.1. Patentwerk shall also be entitled to dissolve the agreement with the Client in writing without resort to the courts if:
- a. the Client is subject to an insolvency order;
  - b. an application is made for the Client's insolvency;
  - c. the Client has been granted a (provisional) suspension of payments order;
  - d. the Client winds up or liquidates his business or an important part of it, or if a decision is taken to do the same;
  - e. any part of the capital of the Client is seized in anticipation of or following a court order;
  - f. the Client remains in default of its obligations to Patentwerk, even after being granted a further period of seven days in which to discharge its obligations; or
  - g. the Client could in any other way be considered unable to meet its obligations to Patentwerk.

## **7. Disputes**

- 7.1. The legal relationship between the Client and Patentwerk shall be governed by the laws of the Netherlands. All disputes shall be brought before the competent court at 's-Hertogenbosch. However, Patentwerk reserves the right to bring a dispute before the courts in the Client's place of establishment.

## **8. Versions**

- 8.1. These general terms and conditions shall also apply to any additional and subsequent assignments of the Client.
- 8.2. These general terms and conditions are available in Dutch and English. In the event of any dispute concerning the content or meaning of any provisions herein, the Dutch text shall be binding.

These general terms and conditions have been deposited at the Chamber of Commerce and filed under number 17107940.

Version May 8, 2017