

## TERMS OF ENGAGEMENT

### 1. These terms

- 1.1 Ellis Terry is the trading style for the firms Terry IP Law Limited, Terry IP Patent Attorneys Limited, Ellis IP Limited, and Ellis Terry Limited. Terry IP Patent Attorneys Limited is an incorporated patent attorney firm, Terry IP Law Limited and Ellis IP Limited are incorporated law firms. Ellis Terry Limited is a renewals provider firm.
- 1.2 We will provide you with Registered Patent Attorney, Registered Trade Mark Attorney, Legal and unregulated services on, and subject to, these terms.
- 1.3 Unless we have agreed otherwise, these terms apply whenever you engage us to act for you. You accept and agree to these terms by continuing to engage us after we have provided them to you.

### 2. Our services

- 2.1 We will provide our services:
- (a) in accordance with your reasonable instructions;
  - (b) in a timely fashion;
  - (c) in an efficient and cost effective manner; and
  - (d) with reasonable skill and care in accordance with applicable laws and legal professional duties.
- 2.2 If you have instructed Terry IP Patent Attorneys Limited or Ellis Terry Limited, if urgent action is required to avoid any of your registered intellectual property rights lapsing, we may, at our sole discretion, act without your express instructions, and you agree to pay our fees and expenses in the normal way. We highly recommend providing default instructions if you cannot be reached.
- 2.3 If we consider that we do not have the necessary expertise to carry out all or any part of the services requested by you, we will promptly advise you and agree with you an appropriate course of action.
- 2.4 We may decline your instructions to act on a new matter if we consider that we have a conflict of interest or other factors

prevent us from acting for you (e.g. capacity or other reasons as specified in Rule 4.1 of the *Rules of Conduct and Client Care for Lawyers*). If this happens, we will promptly inform you.

- 2.5 You may terminate our engagement on a matter by giving written notice to us.
- 2.6 If you have instructed Terry IP Law Limited, or Ellis IP Limited, that law firm may terminate our engagement in accordance with rule 2.4 of the *Rules of Conduct and Client Care for Lawyers*.
- 2.7 If you have instructed Terry IP Patent Attorneys Limited or Ellis Terry Limited that firm may terminate our engagement on a matter by giving written notice to you.
- 2.8 In any instance of termination you will pay our fees for work done and disbursements incurred up to and including the termination date.
- 2.9 Our advice is provided, and our duties are owed, to you only. Our advice may not be used or relied upon by other persons (including persons closely associated with you) unless we agree to this in writing.
- 2.10 You agree and represent that you are "in trade" and acquiring our services for the purposes of a business and that the Consumer Guarantees Act 1993 does not apply to the supply of our services or these terms.

### 3. Your obligations

You will:

- (a) use our services efficiently and appropriately, for lawful purposes only;
- (b) provide us with clear and timely instructions regarding the legal services you require us to perform; and
- (c) use reasonable endeavours to assist us to perform our services in accordance with these terms, including providing information, comments and feedback, or clarifying

your instructions as reasonably requested by us.

## 4. Our fees

- 4.1 We will charge you fees for the performance of our services on the basis generally agreed with you prior to starting each new matter.
- 4.2 We charge set amounts for certain tasks (such as filing applications and paying renewals) reflecting the typical professional and administrative costs involved. Otherwise our charges are generally based on the time spent by our principals and staff in performing the services at our standard hourly rates for work of that nature. If we have not agreed a specific charging basis for a matter, we will charge you a reasonable fee based on the principles of charging set by the New Zealand Law Society.
- 4.3 Our fees are exclusive of New Zealand GST which (if applicable) will be payable by you in addition to our fees.
- 4.4 For foreign applications and work (other than Australia) we will use foreign associates. Their charges will be passed on to you as a disbursement. We will convert their charges to New Zealand dollars using forward currency contracts and will charge you the amount we commit to pay at the time the forward currency contract is accepted plus any applicable bank charges.
- 4.5 We will send invoices for our fees and expenses at regular intervals, typically when a significant action is taken. We will forward a monthly statement of account setting out monies owing.
- 4.6 Our invoices will typically include a summary of the work carried out during the billing period and any other information reasonably requested by you.
- 4.7 You will pay our invoices in full without deduction or set off within 14 days of receipt of our invoice. Any payment received will be first applied to any interest payment. If you do not make payment by the due date, we may:
- (a) charge you interest on the overdue monies at a rate of 5% per annum over the then current commercial overdraft rate charged by ANZ Bank New Zealand Ltd. We will charge this

interest on a day to day basis from the due date until all monies owing, including all interest, have been paid in full; and/or

- (b) cease all current work for you and retain your papers and files until all accounts are paid; and/or
  - (c) start proceedings against you to recover all amounts owed, including interest in accordance with clause 4.7(a) and full collection costs on a solicitor client basis.
- 4.8 You may, on reasonable grounds, query or dispute an invoice, in which case we will provide you with information you reasonably request in respect of that invoice and we will each use our best endeavours in good faith to resolve the query or dispute. You may, acting in good faith, withhold the relevant portion of the amount payable under that invoice until the query or dispute is resolved.
- 4.9 If requested, we will provide you with an estimate of the fees that you will incur for a matter. This is a guide for your general information and is not a fixed quote. Estimates do not include GST or disbursements.
- 4.10 Once applications are filed to secure protection for intellectual property you will incur certain ongoing charges from us and disbursements incurred on your behalf. These may include foreign associate charges. You acknowledge your liability to pay these charges and to reimburse disbursements incurred by us notwithstanding that you may not have received advance notification of the nature or quantum of the specific charge made or disbursement incurred.
- ## 5. Confidentiality
- 5.1 Any information that you provide to us will be kept confidential unless (and only to the extent that) disclosure is authorised:
- (a) by you; or
  - (b) by law, or by the Rules of Conduct and Client Care for Lawyers or Code of Conduct for Patent and Trade Marks Attorneys mentioned below.

## 6. Communication

- 6.1 We will communicate with you in the mode requested by you to the address requested by you. We will communicate with you exclusively by email except where physical documents must be sent, unless you request otherwise. It is imperative that you notify us of any change in your contact details as rights may be lost if we cannot contact you to obtain instructions.

## 7. Retention of Documents

- 7.1 When necessary to meet professional and legal obligations we will retain documents on your files.
- 7.2 You authorise us (without further reference to you) to scan inactive or completed files and to destroy all files and documents 7 years after our engagement ends, or earlier if we have converted those files and documents to an electronic format.

## 8. Maintenance fees

- 8.1 You hereby agree or confirm your standing instructions that all maintenance fees including renewal fees, annuities, or other fees required to be paid to maintain an application or granted right in force shall be handled by Ellis Terry Limited and you hereby authorise us to entrust responsibility for such matters to Ellis Terry Limited.

## 9. Professional Indemnity Insurance:

- 9.1 We hold professional indemnity insurance that meets or exceeds the minimum standards specified by the New Zealand Law Society. We will provide you with particulars of the minimum standards upon request.

## 10. Lawyers Fidelity Fund:

- 10.2 The New Zealand Law Society maintains the Lawyers Fidelity Fund for the purposes of providing clients of lawyers with protection against pecuniary loss arising from theft by lawyers. The maximum amount payable by the Fidelity Fund by way of compensation to an individual claimant is limited to \$100,000. Except in certain circumstances specified in the Lawyers & Conveyancers Act 2006 the Fidelity Fund does not cover a client for any loss relating to money that a lawyer is instructed to invest on behalf of the client.

## 11. Persons Responsible for the Work:

- 11.1 The names, statuses and competencies of the person or persons who will have the general carriage of or overall responsibility for the services we provide for you are set out in our letter of engagement and our Firm Profile.
- 11.2 Our staff include Trans-Tasman Registered Patent Attorneys, Australian Registered Trade Mark Attorneys and New Zealand Lawyers, as set out in our Firm Profile.

## 12. Client Care and Service:

- 12.1. When our staff are acting as a Trans-Tasman Registered Patent Attorney or as a Australian Registered Trade Mark Attorney in a particular task they are bound by the Code of Conduct for Patent and Trade Marks Attorneys 2013.
- 12.2 If you have any questions please visit [www.ttipattorney.gov.au](http://www.ttipattorney.gov.au)
- 12.3 The New Zealand Law Society client care and service information is set out below.
- 12.4 When our staff are acting as a New Zealand Lawyer, he or she must:
- *Act competently, in a timely way, and in accordance with instructions received and arrangements made.*
  - *Protect and promote your interests and act for you free from compromising influences or loyalties.*
  - *Discuss with you your objectives and how they should best be achieved.*
  - *Provide you with information about the work to be done, who will do it and the way the services will be provided.*
  - *Charge you a fee that is fair and reasonable and let you know how and when you will be billed.*
  - *Give you clear information and advice.*
  - *Protect your privacy and ensure appropriate confidentiality.*
  - *Keep you informed about the work being done and advise you when it is completed.*
  - *Let you know how to make a complaint and deal with any complaint promptly and fairly.*

12.5 The obligations lawyers owe to clients are described in the *Rules of Conduct and Client Care for Lawyers*. Those obligations are subject to other overriding duties, including duties to the courts and to the justice system. When our staff are acting as a New Zealand Lawyer they are bound by the Rules of Conduct and Client Care for Lawyers.

12.6 If you have any questions, please visit [www.lawyers.org.nz](http://www.lawyers.org.nz) or call 04 472 7837.

### 13. Complaints:

13.1 We maintain a procedure for handling any complaints by clients, designed to ensure that a complaint is dealt with promptly and fairly.

13.2 If you have a complaint about our services or charges, you may refer your complaint to the person in our firm who has overall responsibility for your work.

13.3 If you do not wish to refer your complaint to that person, or you are not satisfied with that person's response to your complaint, you may refer your complaint to John Terry or, if you prefer, an independent lawyer from another firm who has agreed to independently assess any complaint.

13.4 John Terry may be contacted as follows:

- by letter to PO Box 10 932, The Terrace, Wellington 6143;
- by email [john.terry@ellisterry.com](mailto:john.terry@ellisterry.com);
- by telephone at 04 499 8553.

13.5 The New Zealand Law Society maintains a complaints service. When our staff are acting as a New Zealand Lawyer you can make a complaint to that service. To do so you should contact the Wellington District Law Society PO Box 494, Wellington 6140 (3rd Floor, NZ Law Society Bldg, 26 Waring Taylor St, Wellington) Tel (04) 472 8978 Fax (04) 471 0375.

13.6 The Professional Standards Board for Patent and Trade Marks Attorneys (PSB) maintains a complaints service. When our staff are acting as a Trans-Tasman Registered Patent Attorney or Australian Registered Trade Mark Attorney you can make a complaint to that service. To do so you should contact the Secretary to the PSB to discuss the complaint:  
[secretary.ttipab@ipaustalia.gov.au](mailto:secretary.ttipab@ipaustalia.gov.au)

### 14. Limitations on extent of our Obligations or Liability

14.1 Any limitations on the extent of our obligations to you or any limitation or exclusion of liability are set out in our letter of engagement.

### 15. General

15.1 These terms are governed by New Zealand law and you agree that you are subject to the non-exclusive jurisdiction of the New Zealand courts.

15.2 Your rights under these terms are personal to you and may not be assigned or transferred in any way.

15.3 To the extent that clauses in these terms are, by their nature, intended to survive termination of our engagement, those clauses continue and are enforceable after that termination.

15.4 Instructing us on a matter will be treated as acceptance of these terms.



John Terry

*Ellis Terry Limited*

*Terry IP Law Limited*

*Terry IP Patent Attorneys Limited*



Emily Ellis

*Ellis Terry Limited*

*Ellis IP Limited*

### We accept your terms and conditions:

Accepted by:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Date)