

GENERAL TERMS OF BUSINESS

Thank you for instructing IP Solved (ANZ) Pty Ltd (ACN 611 869 848) (“IP Solved”) to provide intellectual property services.

1. DEFINITIONS.

In these Terms, the following words and phrases that have their first letters capitalised have the following meanings

“**Agent**” means a person providing instruction to IP Solved in relation to the provision of Services in a Matter for and on behalf of a Client;

“**Attorney**” means a Trans-Tasman Patent Attorney and/or and an Australian Trade Mark Attorney employed by IP Solved;

“**Charges**” means the amount payable for the provision of Services by an Attorney to which an hourly rate method of calculation shall be used, where an hour shall be divided into ten, six minute units, each unit representing one tenth of the applicable hourly rate. The hourly rate payable shall be determined by the seniority and capability of the Attorney as set out in a Disclosure Statement relating to the Matter;

“**Code**” means the *Code of Conduct for Trans-Tasman Patent and Trade Mark Attorneys 2018* (Cth);

“**Client**” means the applicant for, or holder of, an IP Right and/or the person for whom the Services are sought;

“**Conflict of Interest**” means, in relation to a Matter, where IP Solved is unable to act in the Client’s best interests because it owes the same duty to one of its other clients;

“**Disbursements**” means in relation to a Matter:

- a. government and official fees payable to government departments or international organisations including, but not limited to, as lodgement, application, registration, renewal, extension, searching and other fees (“**Official Costs**”);
- b. fees, charges and disbursements incurred by a Foreign Attorney (“**Foreign Attorney Costs**”);
- c. fees, charges and disbursements incurred by an Other Professional (“**Other Professional Costs**”);
- d. sundries; and
- e. any other necessary fees, charges and disbursements that IP Solved incurs to adequately and professionally discharge the performance of the Services in a Matter;

“**Disclosure Statement**” a documentary statement provided by IP Solved in relation to the provision of Services for the purposes of meeting IP Solved’s obligations under s 16 of the Code containing, amongst other information, details of the Services to be provided, an estimate of the Fees, Charges and Disbursements likely to be incurred and paid, and the Attorney(s) who may provide the Services;

“**Fees**” means the amount payable for the provision of Services to which a set or flat fee applies as set out in the Schedule of Charges, as amended from time to time, and any handling fees in relation to Foreign Currency Disbursements;

“**Foreign Attorneys**” means patent attorneys, trade mark attorneys, lawyers and barristers practising in a country or jurisdiction other than Australia;

“**Foreign Currency Disbursements**” means a Disbursement that is billed to IP Solved in a currency other than Australian dollars and which shall be invoiced at the equivalent amount paid by IP Solved in Australian dollars plus 15% of the total of the Disbursement (which shall be added as a Fee and not a Disbursement) plus any bank charges incurred in paying such Disbursement. The exchange rate is set on the first day of each month using rates from the website <https://www.xe.com/currencyconverter/>;

“**IP Right**” means:

- a. a trade mark, patent, registered design, plant breeder’s right and any other intellectual property right; and
- b. any domain name, business name and/or company name;

“**Matter**” means a specific matter in relation to which the Services are provided;

“**Other Professionals**” means Australian lawyers, barristers, draftspersons, translators or any other advisors or consultants;

“**Schedule of Charges**” means IP Solved’s schedule of charges, as amended from time to time;

“**Services**” means advice and assistance in relation to IP Rights and their application, registration, maintenance, enforcement, defence, invalidation and any other advice and assistance set out in any Disclosure Statement that relates to IP Rights, including, but not limited to, passing off, rights under Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any other advice and assistance that IP Solved determines is within its sphere of competence; and

“**Terms**” means these terms and conditions.

2. ABOUT IP SOLVED

- 2.1. IP Solved is an independently, privately owned incorporated Australian Registered Patent and Trade Mark Attorney practice that is regulated by the Trans-Tasman IP Attorneys Board – see www.ttipa.gov.au. IP Solved is not a law practice.
- 2.2. The provision of Services by IP Solved are subject to the Code. A copy of the Code will be provided to you or is available on request or can be downloaded from www.ttipattorney.gov.au/resources/code-of-conduct.

3. SCOPE OF THESE TERMS AND CONDITIONS

- 3.1. These Terms contain the terms and conditions on which IP Solved will provide its Services as amended from time to time in accordance with their terms.
- 3.2. Any and all Services provided by IP Solved shall be provided under and in accordance with these Terms, as amended from time to time in accordance with their terms.
- 3.3. These Terms shall prevail over any other terms and conditions, terms of business, purchaser order terms or invoicing terms provided by or on behalf of the Client.
- 3.4. IP Solved may at its absolute discretion accept or decline to provide its Services or may cease to provide its Services in accordance with these Terms.

4. SERVICES

- 4.1. IP Solved will use its reasonable endeavours to provide the Services in a manner commensurate with services provided by an Australian Registered Patent and Trade Mark Attorney practice of its size and expertise.
- 4.2. The Services to be provided in a Matter will be set out in a Disclosure Statement that will be provided on or around the beginning of a Matter. Subsequent Disclosure Statements may be provided during a Matter where required, depending on the direction and/or course of the Matter.
- 4.3. IP Solved is entitled to rely on instructions provided to it in relation to a Matter as being provided with adequate and appropriate authorisation for and on behalf of the Client.
- 4.4. IP Solved is entitled to rely on information provided to it in relation to a Matter as being complete, accurate and up to date as at the time on which it was provided to IP Solved.
- 4.5. IP Solved shall not be required to update advice after it has been given.
- 4.6. IP Solved will use its reasonable endeavours to obtain instructions to maintain any IP Right, and where practical, keep any such IP Right from lapsing or expiring or ceasing to be held by the Client. IP Solved shall be entitled to invoice and be paid for the provision of Services in relation to maintaining any IP Right.
- 4.7. The Services provided by IP Solved in relation to a Matter are provided for the sole use and benefit of the Client and are not to be used for any other purpose.
- 4.8. IP Solved may need to instruct Foreign Attorneys in countries or jurisdictions where IP Solved has been instructed to provide Services in relation to a Matter. Foreign Attorneys may require execution of powers of attorney or other documents by the Client, or on its behalf before they can assist in a Matter. IP Solved shall not be liable for the failure of a Client or its Agent to provide executed powers of attorney and other documents in a timely manner which may result in an IP Right lapsing, expiring, not being renewed or otherwise not being maintained.
- 4.9. IP Solved may need to instruct Other Professionals to provide Services in relation to a Matter.
- 4.10. IP Solved shall not be liable for the advice and assistance provided in relation to a Matter by any Foreign Attorneys or Other Professional or any omission by any Foreign Attorneys or Other Professional to provide advice and assistance.

5. INVOICES AND PAYMENT

- 5.1. IP Solved shall use its reasonable endeavours to disclose the Fees, Charges and/or Disbursements for its Services in relation to a Matter in a Disclosure Statement.
- 5.2. IP Solved shall be entitled to invoice any Fees, Charges, Disbursements and/or Foreign Currency Disbursements plus any applicable GST for a Matter in accordance with these Terms.
- 5.3. The Client, or its Agent, will pay IP Solved's invoices in relation to the provision of Services in relation to any Matter(s) in accordance with these Terms and on the Terms.
- 5.4. IP Solved may invoice the Fees and Charges in relation to Matter separately to the Disbursements. [Note: this generally happens where Foreign Attorneys are instructed and IP Solved wishes to invoice its Services before the Foreign Attorney issued its invoice.]
- 5.5. IP Solved's invoices shall be paid within 14 days from the date on the invoice or the date on which the invoice is sent to or on behalf of the Client.
- 5.6. IP Solved may require payment of its invoice(s) before completing the provision of Services in relation to a Matter and reserves its right not to complete the provision of its Services in relation to a Matter until such time as it has received payment in full of its invoice(s).
- 5.7. IP Solved shall be entitled to apply a surcharge of 1.8% to the total of any invoice paid for by credit card.
- 5.8. IP Solved's invoices shall be made out in Australian dollars.
- 5.9. IP Solved will only accept payment of its invoices in Australian dollars and payment of an invoice in any other currency shall be returned and the invoice shall be deemed not to have been paid and shall remain payable in accordance with these Terms.
- 5.10. IP Solved will only accept payment of its invoices by electronic means and any attempt to pay by cheque, cash or other non-electronic means the invoice shall be deemed not to have been paid and shall remain payable in accordance with these Terms.
- 5.11. IP Solved may charge interest at a rate of 10% per annum calculated monthly for any overdue invoices for any months of parts



thereof that an invoice is overdue (“Interest”).

- 5.12. IP Solved may suspend the provision of its Services in relation to a Matter or Matter(s) where the Client or Agent has unpaid and overdue invoices of more than 30 days and totalling more than AUD\$5,000.00 and in such circumstances, IP Solved:
- a. may, at its absolute discretion and where applicable or available, seek deferral or suspension of any Matter(s);
 - b. shall not be liable for the consequences of the suspension of its Services in relation to any Matter(s); or
 - c. shall not be liable for the consequences of it seeking or not seeking a deferral or suspension of any Matter(s), and IP Solved may insist upon:
 - d. the full payment of any such unpaid and overdue invoices plus Interest; and
 - e. the payment of any Fees, Charges and Disbursements incurred relation to seeking any such deferrals or suspensions (“Deferral Costs”),

before it resumes the provision of the Services in relation to any Matter(s).

- 5.13. Where an Agent is responsible for the payment of IP Solved’s invoices in relation to a Matter or Matters and that Agent refuses to pay or delays in paying an invoice for more than 60 days, IP Solved shall be entitled to request payment of any such invoices plus Interest and any Deferral Costs, directly by, and from, the Client.
- 5.14. IP Solved is entitled to retain and exercise a lien over any documents that it holds in relation to any Matter(s) or Client(s) until any overdue invoices in relation to those Matter(s) and Client(s) have been paid in full. Such lien shall be lifted upon payment of any such unpaid and overdue invoices plus Interest and any Deferral Costs.

6. DISBURSEMENTS

- 6.1. IP Solved shall be entitled to incur and invoice any reasonable Disbursements that are that are necessary to adequately and professionally discharge the performance of the Services in a Matter, whether disclosed in a Disclosure Statement or not.
- 6.2. Where Disbursements have not been disclosed in a Disclosure Statement, IP Solved shall, where possible and where time permits, seek estimates of those Disbursements before incurring them, and where possible and where time permits, seek approval to incur those Disbursements for and on behalf of the Client.

7. TERMINATION

- 7.1. The provision of Services in relation a Matter or Matters may be terminated by a Client or on its behalf, by written notice to IP Solved.
- 7.2. IP Solved may, at its absolute discretion, terminate the provision of its Services in relation to any Matter(s) in the following circumstances:
- a. where there are invoices that are overdue more than 60 days and totalling more than AUD\$10,000.00;
 - b. where adequate and/or timely instructions are not provided in relation to any Matter(s);
 - c. where information provided in relation to any Matter(s) is false or misleading;
 - d. where advice and assistance provided in relation to any Matter(s) is refused or not followed;
 - e. where another person is instructed to provide advice and assistance in relation to any Matter(s);
 - f. IP Solved believes it has a Conflict of Interest in relation to any Matter(s);
 - g. any abuse against IP Solved staff; and/or
 - h. any other just cause.
- 7.3. Upon termination in accordance with clause 7.1 or 7.2:
- a. IP Solved may render invoices for any Services provided up to the date of termination;
 - b. any and all invoices, whether or not due or overdue, shall become immediately payable plus any Deferral Costs and subject to Interest if not paid within 14 days of the date of termination, and the provisions of clause 5.15 shall apply; and
 - c. IP Solved shall immediately cease providing its Services the subject of the termination, and IP Solved:
 - i. may, at its absolute discretion and where applicable or available, seek deferral or suspension of any IP Right(s) or any Matter(s) the subject of the termination;
 - ii. shall not be liable for the consequences of the termination of its Services; or
 - iii. shall not be liable for the consequences of it seeking or not seeking a deferral or suspension of any IP Right(s) or Matter(s) the subject of the termination.
- 7.4. IP Solved shall be entitled to invoice its Fees in relation to the transfer of files relating to any Matter(s) the subject of the termination to a person nominated by the Client, or nominated on its behalf.

8. LIABILITY AND INSURANCE

- 8.1. IP Solved does not make any representation, guarantee, warranty or any other kind of legally binding promise in relation to the availability of any IP Right or the outcome of any Matter and shall not be liable for the failure to secure an IP Right or the desired



outcome in any Matter.

- 8.2. IP Solved shall not be liable for any indirect loss, consequential loss, loss of goodwill, loss of profit, loss of business or any other loss not directly arising from or in relation to the provision of the Services or failure to provide the Services.
- 8.3. IP Solved's total aggregate liability to a Client, or its Agent, in relation to the provision of Services in relation to a Matter(s) shall be the lesser of the cost of IP Solved performing the Services (under its then current Schedule of Charges) and AUD\$1,000,000.00.
- 8.4. IP Solved holds and shall at all times maintain professional indemnity insurance with a reputable insurer in an amount of not less than AUD\$1,000,000.00
9. **MISCELLANEOUS**
- 9.1. IP Solved shall not provide Services in relation to Matter where it believes it has a Conflict of Interest and shall immediately take steps to cease providing its Services as soon as it becomes reasonably aware that a Conflict of Interest has arisen during the provision of Services in relation to a Matter. IP Solved shall cease to provide the Services to the Client or on its behalf, and shall also cease to represent the other party in relation to the matter that conflicts with the Matter.
- 9.2. The failure of IP Solved to insist on performance of obligations by the Client, or on its behalf, including, but not limited to the obligation to pay IP Solved's invoices and any other costs on the terms and conditions of these Terms, shall not amount to a waiver of the performance of those obligations by IP Solved. A waiver of a breach of these Terms shall not be effective unless it is agreed to by IP Solved in writing to be a waiver. Any failure to insist on performance of obligations by the Client, or on its behalf, shall not be deemed to be a waiver of any subsequent failure to perform any of the obligations by the Client, or on its behalf, including by its Agent.
- 9.3. If any provision of these Terms are found to be invalid or unenforceable or violate any laws or regulations, they shall be deemed to be deleted from these Terms and the remainder of the provisions of these Terms shall, to the extent permissible by law, be valid and enforceable and remain in full force and effect.
- 9.4. IP Solved reserves the right to amend these Terms in its absolute discretion, provided that, it shall provide notification of any such amendments to the provisions of these Terms 30 days before any such amendments shall come into force and effect and at the expiry of that 30 day period, any Services provided shall be conducted on the amended Terms. Any new Matter commenced after the notification of any amendment to these Terms shall be conducted on the amended Terms.
- 9.5. These Terms are governed by the laws of New South Wales.

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