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Intellectual property

General Terms and Conditions

Algemeen Octrooi- en Merkenbureau B.V. uses the following General Terms and Conditions when submitting quotations and carrying out assignments.

Article 1. General information

1. Applicability

These General Terms and Conditions (hereinafter: 'General Terms and Conditions') shall apply to all legal relationships between, on the one hand, any patent attorney and/or trademark attorney of Algemeen Octrooi- en Merkenbureau B.V. (hereinafter: 'Algemeen Octrooi- en Merkenbureau') and, on the other, any third party that commissions Algemeen Octrooi- en Merkenbureau to perform work. The Code of Conduct for Patent Attorneys forms a part of these General Terms and Conditions.

2. Definition of Algemeen Octrooi- en Merkenbureau

Algemeen Octrooi- en Merkenbureau shall be understood to mean, as the occasion arises, the attorney or any employee or employees of the attorney.

3. Inapplicability of the client's terms and conditions

Any applicability of such terms and conditions or stipulations as are observed by the client is explicitly excluded.

Article 2. The agreement

1. Conclusion of the agreement

Agreements between a client and Algemeen Octrooi- en Merkenbureau are concluded once the client indicates, or procures indication, either in writing or verbally, that he wishes to use the services of Algemeen Octrooi- en Merkenbureau and Algemeen Octrooi- en Merkenbureau accepts the assignment concerned, taking into account the provisions of Article 6, paragraph 3.

2. Acts in relation to performance and agreements

All agreements and/or acts that are entered into or performed as a consequence of, in relation to or further to the above shall be deemed a performance of the agreement.

Article 3. Client information

1. Confidential treatment of client information

Algemeen Octrooi- en Merkenbureau will treat all information that is provided by a client in strict confidence. This undertaking shall, nevertheless, not relate to information provided by a client (a) which is or has become generally known other than as a result of any acts or omissions on the part of Algemeen Octrooi- en Merkenbureau, (b) which was already known to Algemeen Octrooi- en Merkenbureau before the time at which it received the information concerned from the client, or (c) which it received from a third party entitled to provide the information concerned.

2. Information provided to third parties

Algemeen Octrooi- en Merkenbureau will oblige others who are engaged in the performance of the work to observe the same confidentiality in respect of information as it is obliged to observe itself. Algemeen Octrooi- en Merkenbureau nevertheless accepts no liability for any breach of the obligations referred to in this article if it can demonstrate that it was not reasonably able to prevent such a breach.

Article 4. Performance of the assignment

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1. Performance of the work to the best of one's ability

Algemeen Octrooi- en Merkenbureau warrants that it will perform the agreed work to the best of its ability and with due observance of the rules of conduct that normally apply in professional practice. Algemeen Octrooi- en Merkenbureau does not guarantee the accuracy or completeness of any data with which it is furnished by the client and does not accept any liability whatsoever in this respect. Algemeen Octrooi- en Merkenbureau shall be entitled to dissolve the agreement in the event that the client provides inaccurate and/or incomplete data, even when this is done in good faith.

2. Exclusion/limitation of liability

The client acknowledges that any work performed by Algemeen Octrooi- en Merkenbureau is consultative in nature. In connection with said nature of the work performed by Algemeen Octrooi- en Merkenbureau and the subjective aspects of evaluation which always play a role in this respect, Algemeen Octrooi- en Merkenbureau excludes any liability for loss or damage arising as a consequence of, or in connection with, the work. Algemeen Octrooi- en Merkenbureau shall only be liable if the loss or damage concerned is caused by wilful conduct or gross negligence on the part of Algemeen Octrooi- en Merkenbureau.

3. Limitation of liability in connection with policy

Should, despite the exclusions and limitations of liability contained in these General Terms and Conditions, Algemeen Octrooi- en Merkenbureau nevertheless be held liable in any case, vis-à-vis any person and for whatever reason, such liability of Algemeen Octrooi- en Merkenbureau shall always be limited in any event to the

amount that is paid in respect of the company and professional liability insurance that has been concluded by Algemeen Octrooi- en Merkenbureau.

4. Engagement of other experts

Algemeen Octrooi- en Merkenbureau may, if it deems such necessary or useful for the correct performance of the assignment that has been awarded, engage the services of other experts in the performance of such assignment; the costs of such other experts shall be borne by the client.

5. No liability for loss or damage caused by third parties

In all cases in which Algemeen Octrooi- en Merkenbureau is dependent on the co-operation of third parties, or engages the services of third parties, such as (but not limited to) Bureau voor de Industriële Eigendom (the Netherlands Industrial Property Office), any liability of Algemeen Octrooi- en Merkenbureau for loss or damage resulting from or relating to any acts or omissions of such third party is excluded. The client will hold such third party directly liable as the occasion arises. Algemeen Octrooi- en Merkenbureau will lend its assistance to the client in this respect.

6. No liability for loss or damage resulting from incorrect sources

If the work which Algemeen Octrooi- en Merkenbureau conducts on behalf of a client comprises, or includes, research in literature, patent, trademark and design registers and databases, Algemeen Octrooi- en Merkenbureau shall not accept any liability whatsoever for any loss, damage and/or costs which the client and third parties incur as the direct or indirect result of any inaccuracy or deficiency of the sources which Algemeen Octrooi- en Merkenbureau has consulted. With regard to the reporting of the results of

investigations in particular, the work conducted by Algemeen Octrooi- en Merkenbureau shall be deemed consultative in nature and Algemeen Octrooi- en Merkenbureau cannot guarantee the full enumeration of the data provided (see paragraph 2 of this article).

7. Burden of proof

The burden of proof with regard to any alleged liability of Algemeen Octrooi- en Merkenbureau shall rest with the client, who accepts such burden of proof.

Article 5. Fee

1. Rates

The remuneration for work conducted by Algemeen Octrooi- en Merkenbureau is not dependent on the outcome of the assignment and shall be payable according to the following rates:

- a. government rates for costs of filing and intervention with regard to patent applications, registrations and other entries in patent, trademark and design registers and any remuneration payable to foreign agents/correspondents;
- b. hourly rates, set by the attorney for other agreed work;
- c. office expenses, such as typing, drawing and copying work as well as travel expenses.

2. Indicative nature of cost estimates

Cost estimates given by Algemeen Octrooi- en Merkenbureau are purely for information purposes and are exclusive of BTW (Dutch VAT). Algemeen Octrooi- en Merkenbureau may adjust the agreed fee in the event of any change in government rates after the conclusion of the

agreement, but prior to performance of the assignment.

Article 6. Payment

1. Advance bills, interim and final invoices

Algemeen Octrooi- en Merkenbureau will charge the client for the work conducted and to be conducted and will charge him any costs incurred and to be incurred on the basis of bills, including advance bills, interim and/or final invoices, and it shall be entirely at the discretion of Algemeen Octrooi- en Merkenbureau whether it wishes to send advance bills and interim invoices.

2. Periods for payment and repayment

Any excess payments will be returned to the client after completion of the work. Bills shall be paid to Algemeen Octrooi- en Merkenbureau as soon as possible, and in any event no later than 30 days after the date of sending.

3. Commencement of work after payment of advance bill

If Algemeen Octrooi- en Merkenbureau has sent an advance bill, the client's assignment shall not be deemed a definitive assignment until the advance bill has been settled. Accordingly, Algemeen Octrooi- en Merkenbureau will not commence its work until the advance bill has been settled.

4. Separate claim

Each bill from Algemeen Octrooi- en Merkenbureau shall be deemed a separate claim of Algemeen Octrooi- en Merkenbureau against the client.

5. Liable for payment

If, at the client's request, an invoice is to be sent to another (legal) entity than the holder of the intellectual property right, both the (legal) entity in whose name the invoice is made out and the holder of the

intellectual property right shall be liable for payment. Algemeen Octrooi- en Merkenbureau may demand payment from both, and both shall be subject to the provisions of Article 6, paragraph 2.

Article 7. Consequences of late payment

1. Client in default in the event of late payment

If any bill is not paid within the period indicated in Article 6 above, the client and/or receiver of the invoice (hereinafter: the client) shall be ipso jure in default without any further notice or warning being required.

2. Interest for delayed payment and (extra)judicial costs

The client shall then be liable to pay interest for delayed payment to Algemeen Octrooi- en Merkenbureau on the outstanding debt(s) at the rate of 1.5% per month, with any part of a month being considered a full month. In the event of collection, judicial or otherwise, the client shall be liable to pay all extrajudicial and/or judicial costs, with a minimum of 15% of the due amount including interest, in addition to payment of the principal and inte-rest.

3. Cessation of work

If a client is in default, Algemeen Octrooi- en Merkenbureau may cease its work on behalf of such client with immediate effect without this resulting in any liability whatsoever for loss or damage vis-à-vis the client.

4. Right of retention

If a client fails to settle any bill in good time, Algemeen Octrooi- en Merkenbureau may in any event exercise a right of retention on all objects which it actually holds or has

received from the client in respect of the work, with it being understood that such shall in all cases mean the complete files including all recommendations, reports, overviews and suchlike which Algemeen Octrooi- en Merkenbureau has drawn up or has had drawn up, irrespective of the information carriers on which all such is stored.

5. Lapse of industrial/intellectual property rights

The client should take due note of the fact that non-commencement or cessation of work by Algemeen Octrooi- en Merkenbureau in accordance with Article 6 paragraph 3, or Article 7 paragraph 3 can or will result in the lapse of intellectual or industrial property rights for which the client is solely responsible and liable.

6. Assignment of industrial property rights

If, in a case such as referred to in Article 7 paragraph 1, a client fails to settle any sums payable by it to Algemeen Octrooi- en Merkenbureau in good time, in other words within the term set by Algemeen Octrooi- en Merkenbureau, Algemeen Octrooi- en Merkenbureau may as an extreme measure demand the assignment of the client's industrial property rights with respect to which Algemeen Octrooi- en Mer-kenbureau has conducted work. In such case the client confirms nunc pro tunc that it consents to such assignment and undertakes, in so far as necessary, to do or refrain from doing, as the case may be, everything which is useful or necessary to effect such assignment.

7. Consequences of late payment

If one or more invoices is not paid in good time (Article 6 paragraph 2) then Alge-meen Octrooi- en Merkenbureau cannot be held liable at a later date for any work performed in respect of the invoice or invoices for which payment was overdue.

8. Exigibility of other claims

Non-payment of any bill on the due date shall also result in all other current claims against the client becoming immediately due and payable.

9. Payment without discount or setoff

Any bill sent by Algemeen Octrooi- en Merkenbureau shall always be paid without any discount or setoff. Disputes of whatever nature shall never give a client the right to refuse to make or suspend payment of any bill unless a complaint has been received in good time by Algemeen Octrooi- en Merkenbureau.

Article 8. Complaints

Complaints regarding any failure on the part of Algemeen Octrooi- en Merkenbureau to perform work should be received in writing by Algemeen Octrooi- en Merkenbureau within 30 days after the client might reasonably have discovered the failure or failures. Complaints regarding any bill should be received in writing by Algemeen Octrooi- en Merkenbureau within 30 days after the date on which the bill was sent. The client may not enforce any claim against Algemeen Octrooi- en Merkenbureau after the expiry of the terms specified in this respect.

Article 9. Force majeure

1. Definition of force majeure

Algemeen Octrooi- en Merkenbureau will perform the work to the best of its ability, exercising due care such as may be expected of a patent attorney and/or trademark attorney. Any loss or damage arising for the client in spite of the due care that is observed shall be deemed a case of force majeure. In this article, force majeure shall also be understood to be mean: the absence of sufficient data on or the provision of incorrect data by the client, or

the lack of sufficient co-operation on the part of the client.

2. Consequence

In the event of force majeure, Algemeen Octrooi- en Merkenbureau may, without judicial intervention, either suspend the performance of the agreement as long as the circumstance resulting in force majeure continues, or terminate the agreement wholly or in part, without being liable in any respect vis-à-vis the client in either of such cases.

3. Entitlement to payment

Algemeen Octrooi- en Merkenbureau retains a right to demand payment for the work carried out in the performance of the agreement concerned before the circumstance resulting in force majeure became manifest.

Article 10. Termination of the agreement

If a client fails to perform, fails to perform properly or fails to perform in good time any obligation arising for him under the agreement concluded with Algemeen Octrooi- en Merkenbureau, as well as in case of bankruptcy, suspension of payments, the closing down or winding up of his business, such client shall be deemed to be ipso jure in default and Algemeen Octrooi- en Merkenbureau shall be entitled, without notice of default or judicial intervention being required, to terminate any agreement or agreements existing between Algemeen Octrooi- en Merkenbureau and the client, in so far as the same has or have not already been performed, and to demand payment from the client for any work already carried out and any costs, loss, damage and interest incurred which have been caused by the client's default.

Article 11. Applicable law

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All agreements concluded between Algemeen Octrooi- en Merkenbureau and a client and/or acts performed shall be solely governed by and construed in accordance with the laws of the Netherlands. The client acknowledges that the characteristic performance of the work to be conducted by Algemeen Octrooi- en Merkenbureau shall take place in the Netherlands, even if such work is partly carried out elsewhere. All agreements and/or acts shall be deemed to have been concluded or performed in the Netherlands. The competent court in 's-Hertogenbosch shall have sole jurisdiction to hear disputes existing between Algemeen Octrooi- en Merkenbureau and the client.