

## **General Terms and Conditions of Business**

### **01. Introduction and Validity**

These terms and conditions apply to all offers made by Southern Cross, to all agreements concluded with Southern Cross, to all agreements that may be a result thereof, and to any other services and advice provided by Southern Cross. In particular, the provisions of Articles 6:232-234 of the Netherlands Civil Code are applicable in the present case.

These terms and conditions define some of the important aspects of the business relationships between Southern Cross and its clients. By understanding and observing them the client can help the relationship to be successful. All professional work carried out by Southern Cross will be in accordance with these terms and conditions. Southern Cross may also provide a letter by mail, fax or e-mail setting out any further terms and conditions applicable to the client's relationship with it, in which case that letter will take priority over these General Terms and Conditions. Please note that these General Terms and Conditions of Business will take effect from the instant a relationship between a client and Southern Cross arises. Such a relationship will arise with immediate effect from the instant the client instructs Southern Cross to carry out a specific piece of work. The present provision prevails under all circumstances, in particular when a client has not yet signed for, or not yet sent in, their written agreement to these General Terms and Conditions while the work in question requires to be carried out without further let or delay.

### **02. Composition of the Firm**

All professional members of Southern Cross or those working on behalf of Southern Cross are (foreign) members of their professional bodies (such as the Netherlands Institute of Patent Attorneys, the Chartered Institute of Patent Attorneys, the Licensing Executives Society, etc.) and are thus bound by the appropriate codes of conduct of said professional bodies. These codes require in particular that members (a) practise competently, conscientiously and objectively, putting the interests of the client foremost while observing the law and their duty to any Adjudicative Body, Court or Tribunal; (b) avoid any conflict of interest. All staff of Southern Cross will perform the engagement with reasonable skill and care.

### **03. The Client**

The client is the natural or legal person from whom Southern Cross receives instructions. While new clients are welcomed, there is no obligation on Southern Cross to accept their work. If there is a conflict of interest with an existing client (or if one arises in time), then Southern Cross retains the right to ask the prospective client to seek advice elsewhere. Assistance with finding a suitable alternative can be offered. Please also see point 18 below.

The client expressly, fully and unconditionally accepts liability to all costs, charges and expenses in respect of work carried out and advice provided by Southern Cross, and instruc-

tions received from any natural person, firm or company ("the intermediary") acting on behalf of another (including his employer or partner, or in the case of a solicitor, accountant or other agent, his client) will be accepted on the basis that he has all necessary authority to give the instructions. If the intermediary does not disclose that he is acting as an agent and provide to Southern Cross full details (including the name and address) of his principal, or if he requires that all correspondence is with himself, then he will be the client and be deemed to act as principal for all purposes in his dealings with Southern Cross. Please also see point 7 below.

The client undertakes to notify Southern Cross promptly of any change of personnel or address or of any change in ownership of rights. Many such changes have to be officially registered. Please also see point 9 below.

#### **04. Warranties and Authority**

The client warrants that his instructions will not cause Southern Cross to infringe the laws or other regulations of any country and that all information provided to Southern Cross will be complete and accurate. The client authorises Southern Cross to complete and sign in the name of the client such forms etc. as are necessary or desirable to carry out the lawful instructions of the client. The client indemnifies Southern Cross in respect of all costs claims, demands and expenses that may result from exercise of the authority given by this provision.

#### **05. Basis of Acting**

Southern Cross can act for the client either to carry out specific instructions or on a retained basis (to advise on the client's intellectual property affairs on an on-going basis). For on-going matters such as pending procedures or litigation in respect of patent, trade mark or industrial design or any other IP right, the normal basis will be a retained basis unless otherwise expressly agreed with the client.

#### **06. Extent of Right of Use**

Any reproduction or forwarding of services provided by Southern Cross to persons other than the client, in particular to affiliated companies and subsidiaries (third parties), is prohibited unless expressly authorized in writing by Southern Cross or as otherwise permitted by applicable law. Only copies for the client's own use may be made. The client shall be held responsible by Southern Cross for any unauthorized copying of services supplied to him and shall be liable to a contractual penalty of EUR twenty-five thousand (25,000.00) per occurrence, unless charged with only simple negligence. This is without prejudice to any further claims for damages on the part of Southern Cross.

All services provided remain the disposable property of Southern Cross until full payment has been received for the same.

#### **07. Basis of Charging**

This is case-specific. Sometimes the nature of the work is such that the time it will take cannot be known before it is begun. If requested, quotations will be given where the nature of the work allows and estimates (not to be exceeded without further reference) where it does not. Only some classes of work are suited to a firm advance quotation. An estimate will also include an outline of the timescale and broad costs. These will be given in good faith based on knowledge existing at the time, but they are not binding, as costs may be affected by matters beyond the control of Southern Cross, and the amount of work involved often cannot be accurately forecast. If during the course of carrying out the work it becomes apparent that the actual charges are likely significantly to exceed a given estimate, then Southern Cross will inform the client. The client will be deemed to have accepted any exceeding of the estimate given earlier and all additional charges and costs as a result thereof unless s/he informs Southern Cross otherwise in writing within three (3) working days of being informed that actual charges and costs are likely significantly to exceed the estimate given earlier.

Southern Cross's charges and hourly rates are principally based on the amount of professional time spent on the matter, although other factors may also be taken into account. Such factors may include the size and complexity of the matter and the degree of urgency involved. The standard charges and hourly rates may be adjusted if highly specialized knowledge is required, or if the matter is complex and/or urgent. All charges and rates are subject to periodic reviews.

Professional fees will be fair to the client and sufficient to enable proper attention to be given to the work. Broadly, Southern Cross will charge in one or more of the following ways:

- a fixed rate for completing an agreed task (e.g. drafting and filing an application);
- time-based fees; and
- a commission.

All actions and attention provided by Southern Cross are chargeable. These include telephone calls, reminders and reporting on communications which Southern Cross may receive as the client's professional representative. The client will also be responsible for any expenses Southern Cross incurs on the client's behalf. These expenses may include Patent Office fees, Counsel's fees, Court fees, the costs of any experts or other agents (including any translators or foreign attorneys). They may also include such items as photocopying costs, courier costs, travel and accommodation expenses, and telephone and fax charges. While the charges and rates of Southern Cross are predictable, the client should appreciate that local representatives' charges and official fees are outside the control of Southern Cross since these may be changed without notice and (in the case of foreign matters) may vary with exchange-rate fluctuations.

Southern Cross may require payment on account, particularly of large items such as charges, fees and expenses to be incurred in foreign filings and actions. When such a request is made, Southern Cross will not carry out any instructed work until the requested payment has cleared into Southern Cross's bank account, so the client should allow good

time for payment.

## **08. Payment Terms**

Unless otherwise provided on the invoice, payment must be made net and without reduction within fourteen (14) days from the date of the invoice. Southern Cross is entitled to charge interest at the relevant Dutch legal rate on any overdue account.

Unless some other arrangement is agreed in advance by the management of Southern Cross, the body or person who gives Southern Cross instructions will be regarded as responsible for paying Southern Cross.

Southern Cross will suspend and refrain from taking any action in relation to a client's affairs without any liability to the client (even in the case of the irrevocable loss of, or failure to obtain, any rights of the client) if Southern Cross has specified that it will not take any action unless a payment on account is made and such payment has not been made in full, or if any invoice of Southern Cross rendered to the client has not been paid in full within the stipulated payment term. The client expressly, fully and without condition or qualification accepts that any such suspension of work, or any cancellation by the client of instructions given to Southern Cross, will be without prejudice to the rights of Southern Cross to invoice and be paid for work undertaken and advice provided prior to the date of suspension or cancellation and to take legal action for the payment of its costs. The client will be responsible for the consequences of the suspension of work, which may include the irrevocable loss of, or failure to obtain, rights.

Southern Cross also expressly retains unqualified copyright in any or all documents on file at least until payment in full has been received.

## **09. Liability and Claims**

Where instructions or advice are received or given orally by the client to Southern Cross and are not confirmed in writing, Southern Cross will not have liability to the client for any misunderstanding or misinterpretation whether on the part of Southern Cross or the client. The client expressly, fully and without condition or qualification accepts responsibility for and will indemnify Southern Cross in respect of any loss, cost, damage or expenses incurred by Southern Cross as a result of or in connection with carrying out the instructions of the client.

Southern Cross relies on its client to give it timely, complete and accurate information and instructions. National and international Intellectual Property Offices often impose time-limits and failure to meet these limits can be fatal to the rights concerned. Please remember that registration of IP rights can take years and that there may be little activity for long periods followed by a situation which requires immediate action. Southern Cross cannot accept responsibility for any loss of rights as a consequence of the client's failure to inform Southern Cross of any changes, such as in relation to contact details or ownership of IP rights.

tions early enough for it to act within official time-limits. Southern Cross will normally tell its client of time-limits, and of actions and instructions that are required, but it does not undertake to give reminders, incur costs on the client's behalf, or take other action in the absence of instructions to do so. In this situation, the client's rights may be lost irrevocably.

If Southern Cross receives late instructions, then it may not be able to implement these in time, in which case the client's rights may be lost irrevocably. In the event of late instructions or late payments to Southern Cross, urgency charges may be incurred which Southern Cross shall have to pass on to the client.

Any claim by the client in respect of obvious defects or damages to the services provided must be made in writing within fourteen (14) days of receipt.

Southern Cross will not have liability to the client for the completeness and correctness of the information supplied or for the timely delivery of the services ordered.

Further warranty claims as well as claims for damages resulting from a deficiency or defect in the services provided by Southern Cross are excluded unless Southern Cross has caused the damage willfully or through gross negligence. At any rate, the limit of indemnity vis-à-vis the client will not exceed the net amount actually paid by the client for the services provided by Southern Cross for which the client has made a claim for warranty or damages.

## **10. Electronic Communications**

Southern Cross normally communicates with its clients by mail, fax or e-mail. Given that e-mails sent over the Internet may lack security or jeopardise confidentiality, Southern Cross cannot accept responsibility for any corruption in the information exchanged with the client or its disclosure to other parties as a result of the interception of such communication. Due to the very nature of the Internet, Southern Cross cannot accept any responsibility for non-receipt or late receipt by the client of such communications.

Southern Cross shall be responsible for carrying out regular virus checks; however, Southern Cross also advises its clients to carry out their own virus checks on any communications (whether in the form of computer disc, e-mail, Internet or otherwise). To the extent that Southern Cross has fulfilled its obligations indicated above, it cannot accept responsibility (including in negligence) for any viruses that may enter the client's system or data by these or any other means. Furthermore, while Southern Cross observes reasonable precautions, it regrets that it cannot guarantee the security of its IT systems.

## **11. Instruction of Third Parties to Act on the Client's Behalf**

During the work by Southern Cross for the client, Southern Cross may need to instruct third parties, e.g. foreign lawyers or patent attorneys, to act on the client's behalf. Southern Cross may instruct such third parties directly on the client's behalf, or alternatively the client may need to sign a power of attorney or similar appointment to engage such third

party.

Such third parties are not part of this Firm. While Southern Cross shall endeavour to select third parties it regards as being of good quality and value for money, Southern Cross will not be liable for any default or negligence by such third parties. Southern Cross shall, of course, monitor such third parties on an ongoing basis to ensure that the required service is provided and that the performance standards of Southern Cross are maintained.

## **12. Ownership of Files**

The files of Southern Cross remain its properties at all times. Files which are no longer current, including those containing details of or otherwise relating to the affairs of clients which may still be in force but for which Southern Cross no longer has responsibility, may be retained by Southern Cross or destroyed. Southern Cross normally destroys its correspondence files, draft documents and other papers five (5) years after the files have been closed. Renewals are not affected. Specific arrangements may be made with the agreement of Southern Cross for maintenance of files or records on a longer-term basis, but a charge will be made by Southern Cross for this service.

If files are passed over in toto on a case being transferred, Southern Cross does not have to have in its possession the necessary papers to defend a dispute arising at a later date as to its handling of the matter. Southern Cross will give access to the files or provide photocopies of documents properly needed by the client successfully to transfer the case, any provision of access or photocopies being subject to a charge for the work involved. Copy files will be released when all of Southern Cross's charges have been paid.

## **13. Confidential Information**

While acting for the client, Southern Cross is likely to receive information which relates to the client. Such information will be kept confidential, except where disclosure is required by law or regulation, or in other exceptional circumstances.

In general, Southern Cross recommends that the client restricts the release of, and maintains strict control over, any information not already in the public domain connected with instructions Southern Cross receives. Southern Cross would be happy to advise on the desirability of releasing confidential information to the public in specific cases.

## **14. Data Protection**

By instructing Southern Cross, the client consents to the use by Southern Cross of relevant data as appropriate in the course of rendering professional services to the client, including the sending of information which Southern Cross thinks might be of interest to the client.

## **15. Searches**

Any searches the client requests may be carried out by Southern Cross, by Patent Offices or by an independent specialist searching firm. Due to the limitations and occasional errors

in classifications, indices, computer databases and official records, no search can be guaranteed for comprehensiveness or accuracy. Southern Cross shall endeavour to point out any particular limitations when reporting search results and may recommend extending the search.

## **16. Indemnity for Threat of Infringement Proceedings**

Before Southern Cross sends any warning to a third party on the client's behalf, the client will by virtue of the representative nature of their business relationship with Southern Cross be deemed to indemnify Southern Cross against the risks of Southern Cross being sued for making an unjustified threat of infringement proceedings. The aim of this automatic indemnification is to maintain Southern Cross's objectivity in contentious matters, which would diminish if Southern Cross were to become a party to any proceedings. Southern Cross reserves the right to refuse to act for the client if the client is not able to provide the automatic indemnity.

## **17. Client's Privilege**

In general, and increasingly in various jurisdictions worldwide, communications between patent attorneys and their clients are privileged. This means that other people, including the courts, are not entitled to discover the content of such communications where they concern professional advice. However, the client should take notice that there are circumstances in which the privileged status of a letter or other document can be lost.

## **18. Conflicts of Interest**

Southern Cross cannot act simultaneously for two clients whose interests in the matter on which Southern Cross is advising conflict, unless (exceptionally) both clients consent to such an arrangement. When potentially taking on a new client, Southern Cross tries to identify conflicts of interest that may preclude Southern Cross from acting. It is helpful if new clients identify to Southern Cross any firms or companies for whom they believe Southern Cross will be unable to act without a conflict of interest arising.

Sometimes conflicts arise later because, for example, Southern Cross's clients acquire new companies or diversify into new areas of business. In such circumstances, Southern Cross reserves the right to decline to act further, at least in relation to the area of conflict, for one of the clients in question, generally the client with the shorter relationship with Southern Cross. Because of obligations of confidentiality, it is often not possible for Southern Cross to divulge the identity of the other client or the subject-matter involved when Southern Cross advises a client that it regrettably no longer can act for them.

## **19. Client Care and Complaints**

Southern Cross values its good relationships with its clients. However, it accepts that from time to time difficulties and misunderstandings may arise. If a client has any problems, they should feel free to discuss their concerns with the professional member of Southern

Cross dealing with their work.

If the matter cannot be resolved to mutual satisfaction, then the client will be helped by Southern Cross in contacting the relevant and appropriate Professional Body which will consider the client's complaint and seek to resolve the issue.

## **20. Termination of Relationship**

The client may terminate their relationship with Southern Cross at any time by writing to Southern Cross. If there is a good reason that prevents Southern Cross from continuing to act for the client, then Southern Cross itself will terminate the relationship by giving the client reasonable notice. In either case, if the relationship is terminated, the client will be required to pay Southern Cross's charges and expenses up to and including the date of such termination.

## **21. Third-Party Rights**

It is not intended that any terms and conditions of the relationship between the client and Southern Cross shall be enforceable by a third party in any way whatsoever.

## **22. Competent Court of Jurisdiction**

This agreement shall be subject to the jurisdiction of the courts of The Hague and it shall be governed by Dutch law.

## **23. Changes in General Terms and Conditions of Business**

These General Terms and Conditions of Business will apply until varied or replaced with alternative terms and conditions agreed with the client in writing. Southern Cross reserves the right to change any terms and conditions to take effect ex nunc and in such event it will give ample notice of change on this website. No other changes to the terms and conditions of the agreement between the client and Southern Cross will be valid unless agreed in writing by the management of Southern Cross.

## **24. General**

The invalidity of individual provisions shall not affect the validity of the other provisions of these General Terms and Conditions of Business with Southern Cross. In such a case, the parties undertake to conclude an agreement which comes closest in practice to the invalid provision.

## **25. Agreement**

The client expressly, fully and without condition or qualification agrees that the above terms and conditions of business apply to (i) all orders accepted by Southern Cross for the provision of intellectual property rights-related services specified in the order(s) and (ii)

any use of any information which such services comprise.

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