

# Terms and Conditions

## Vereenigde Octrooibureaux N.V.

### 1. General

**1.1** Vereenigde Octrooibureaux N.V. (hereinafter 'V.O.')

 is a public limited company incorporated under Dutch law in The Hague, registered in the Trade Register of the Chamber of Commerce under number 27288995, the object of which is the practice of patents, trademarks and designs, the practice of law and the provision of other services in the field of intellectual property.

**1.2** V.O., V.O. Patents & Trademarks, VEREENIGDE and Oostenbroek Advocatuur are trade names of V.O.

**1.3** These Terms and Conditions apply to all work and/or services performed or to be performed by or on behalf of V.O. in connection with an agreement. "Agreement" means any assignment accepted by and/or agreement entered into or to be entered into with V.O.

**1.4** These Terms and Conditions also constitute irrevocable third-party clauses for the benefit of attorneys-at-law, advisers, employees (such as patent, trademark and design attorneys) and other auxiliary persons working with V.O.

**1.5** These Terms and Conditions also apply to supplementary and follow-up agreements.

### 2. Performance and scope of the agreement

**2.1** All assignment awarded by a client to V.O., its attorneys-at-law, advisers or associates (such as patent, trademark and design attorneys), or natural persons or legal entities affiliated to V.O., shall be deemed to have been given exclusively to V.O. and shall be accepted exclusively by V.O. No agreement shall at any time be concluded between the client and V.O.'s attorneys, advisers or associates (such as patent, trademark and design attorneys), or to natural or legal persons affiliated to V.O. who, by virtue of whatever legal relationship with V.O., perform or are involved in the agreement. This applies even where an assignment has been expressly or implicitly awarded with a view to a particular person. The applicability of Articles 7:404 and 7:407 paragraph 2 of the Dutch Civil Code is expressly excluded here. The agreement shall include the authority of

V.O. to perform legal acts on behalf of and at the expense of the client within the framework of the assignment.

**2.2** The client is deemed to have given the assignment itself and the agreement will then be in force between V.O. and the client. This may be different if the client expressly notifies in writing in advance to V.O. that the assignment is being given on behalf of a third party and V.O. has confirmed in writing that it accepts that third party as a client. Only in that case shall the agreement between V.O. and the third party enter into force (and this third party shall be regarded as client). In such situations (i) these Terms and Conditions (also) apply to the representative of the client, (ii) the representative of the client guarantees vis-à-vis V.O. that the representative has valid and adequate power of attorney to represent the client in relation to the assignment; (iii) the representative of the client is jointly and severally liable for the obligations of the client; and (iv) the representative of the client shall indemnify and hold V.O. harmless from and against any damage suffered by V.O. in the event that the representative of the client does not have an adequate power of attorney and/or the client is not otherwise bound by an agreement and/or these Terms and Conditions. Except in cases where V.O. expressly agrees otherwise, there is only one client. In case there is more than one client, these Terms and Conditions shall apply to all clients. In that case, the parties agree that the party designated by V.O. on its confirmation as "client" - or, in the absence thereof, the first named applicant/party - shall be principal and his/her instructions shall be leading for V.O. The principal shall ensure and guarantee unambiguous instructions to V.O. Unless otherwise agreed, V.O. shall correspond exclusively with the client/principal. V.O. shall, if so requested, or if deemed necessary, also inform and keep other (legal) persons and parties involved informed of the progress of the agreement. In the event of ambiguities or discrepancies, V.O. may require explicit instructions from the client/principal. The client/principal shall indemnify and hold V.O. harmless from and against all claims of other parties involved or third parties with which V.O. - as a result

of these instructions and/or manner of communication - is confronted.

**2.3** V.O. is entitled to engage third parties in the performance of an agreement.

**2.4** Cost statements are not provided as standard. Unless expressly agreed otherwise, cost statements are not binding on V.O. Unless stated otherwise, they are approximate and therefore only indications.

**2.5** An agreement is deemed to have been accepted after V.O. has confirmed it in writing, or after V.O. has started to perform the requested work.

**2.6** V.O. shall always endeavour to perform the assignments granted to and accepted by it to the best of its ability. V.O. shall not be obliged to perform work that is not specified in the agreement or otherwise not explicitly instructed. Failure to perform work not explicitly instructed cannot lead to any liability. If V.O. nevertheless performs such non-commissioned work, these Terms and Conditions will apply thereto. As regards the agreement to file a patent application, a trade mark application, a design application or a utility model application, or to take over the representation or to perform other work, this agreement shall in any case also include the instruction to report on the developments in respect of that agreement.

**2.7** The client shall provide V.O. with all information and instructions relevant to the performance of an agreement in good time. The client shall ensure the accuracy and authenticity of these data. The client shall also inform V.O. in a timely manner and in writing of any changes in address details, name details and other relevant data concerning the client and any other parties involved in the performance of the agreement. If the client does not comply with these obligations, this will be at his/her own risk.

**2.8** All electronic communications, including e-mail, are considered to be in writing. The client and the other parties involved acknowledge that electronic communication can be intercepted, manipulated, infected, delayed or mis-directed, for example by viruses and spam filters. The client grants V.O. the right to communicate with him/her and third parties by e-mail, being aware that the confidentiality of information sent by e-mail is not guaranteed. If the client acts in the exercise of a profession or business, the applicability of Article 6:227b paragraph 1 of the Dutch Civil Code, which relates to the provision of information in e-commerce transactions, and of Article 6:227c of the Dutch Civil Code, which relates to the manner in which e-commerce transactions are effected, is hereby excluded.

**2.9** V.O. shall not be obliged to forward any correspondence received by V.O. with regard to business and/or rights, for the maintenance of which V.O. has not received and accepted an assignment. V.O. in any case does not take note of the content of this correspondence. Any risks associated with this shall be borne entirely by the client.

**2.10** The parties may terminate their cooperation at any time. If, during the performance of an agreement, it appears that a conflict of interest, as referred to in the applicable rules of conduct, arises or is likely to arise, or there is a real risk that such a conflict may arise, or if sanctions imposed by public authorities or supranational bodies give rise, directly or indirectly, to such a conflict, V.O. may be obliged to return the assignment and terminate its work. The costs incurred up to and including termination and other amounts due shall then be settled and any remainder of an advance payment received shall be reimbursed.

### **3. Exclusion of liability**

**3.1** Any liability of V.O. and any liability of a person, who pursuant to any legal relationship to V.O. performs the agreement or is involved in the performance of such agreement (such as attorneys-at-law, patent, trademark and design attorneys), shall in no event exceed the amount paid out in the case concerned under the professional liability insurance(s) taken out by V.O., increased by the amount of the deductible in accordance with the relevant applicable policy or policies. The above limitation of liability shall also apply if V.O. is liable for the improper functioning of hardware, software, files, registers (such as in cases of incorrect or incomplete information in the registers it consults) or other assets used in the performance of the agreement. The limitation of liability shall also apply in the event of incorrect, incomplete or untimely transfer or receipt of communications.

**3.2** In the event that the liability insurance referred to in Article 3.1 does not pay out, and V.O. is nevertheless liable, any liability shall be limited to a maximum of €25,000.00 (twenty-five thousand euros) exclusive of VAT or, if the fee exclusive of VAT that was paid for performance of all or part of the agreement to which the claim pertains is greater than €25,000.00 (twenty-five thousand euros) exclusive of VAT, any liability shall be limited to an amount equal to this paid fee, up to a maximum of €100,000.00 (one hundred thousand euros) exclusive of VAT. If V.O. expressly accepts an assignment from multiple clients, the total cumulative liability of V.O. with respect to the principal and the other clients jointly (i) shall not exceed the abovementioned amount and (ii) shall be subject to the provisions of 3.1 and the other paragraphs of this Article 3. The clients themselves shall be responsible for internal settlement of any claims in view of the maximum liability of V.O.

**3.3** V.O. shall not accept any liability for any incorrect and/or incomplete information in the literature sources and registers it consults or any incorrect and/or incomplete information from the client or other stakeholders. Moreover, it shall not accept any liability for damages resulting from communications carried out at the request or with the consent of the client.

**3.4** V.O. shall not accept any liability for the shortcomings of third parties it enlists in the performance of an agreement. V.O. shall be authorised to accept the Terms and Conditions (with any limitations on liability) of these third parties, including on behalf of the client. The client shall indemnify and hold V.O. harmless from and against any claims of these third parties related to claims of the client with respect to these third parties.

**3.5** The client hereby waives the right to assert any claims against a natural person or legal entity that performs or is involved in the performance of the agreement by virtue of a legal relationship with V.O. (such as attorneys-at-law, patent, trademark and design attorneys), due to a shortcoming or tort or other issue related to the agreement and/or its performance.

**3.6** Any claims for compensation for damages against V.O. and/or any natural person or legal entity that performs or is involved in the performance of the agreement by virtue of a legal relationship with V.O. (such as attorneys-at-law, patent, trademark and design attorneys) that can nevertheless be asserted, despite provisions such as those in Article 3.5, shall expire one year after the client became or reasonably could have become aware of the damages in question and of V.O. or the relevant natural persons or legal entity as the potentially liable party, unless the claim expires prior to this under the applicable provisions of the law.

**3.7** As part of agreement performance, V.O. and Stichting Beheer Derdengelden Oostenbroek Advocaten may retain funds of the client, other stakeholders and/or third parties. V.O. and Stichting Beheer Derdengelden Oostenbroek Advocaten shall deposit these funds with a bank of their choosing that is accredited by the central bank of the Netherlands ('DNB'). V.O. and Stichting Beheer Derdengelden Oostenbroek Advocaten shall not accept any liability if this bank fails to meet its obligations.

**3.8** Nothing in these Terms and Conditions is intended to limit or exclude liability resulting from wilful recklessness or intentional misconduct on the part of employees of V.O. in management roles.

## 4. Invoices

**4.1** Unless agreed otherwise, V.O. shall charge a fee to the client (in arrears) based on the hourly rates of V.O. applicable at the time of performance of the work and unilaterally determined by V.O., multiplied by the number of hours spent on the assignment. V.O. may also charge travel time based on an hourly rate. In the event of urgency, work required outside of regular office hours or other extraordinary or unforeseen circumstances beyond the control of V.O., V.O. shall be entitled to increase the hourly rates by applying a premium or a factor. In addition, V.O. also applies fixed fees. It shall charge the client for all expenses, including third-party expenses (such as taxes, court fees, charges for

services from foreign agents, translation fees, etc.), associated with performance of an agreement. V.O. shall apply a surcharge to expenses for work performed by third parties (such as foreign agents).

**4.2** V.O. may request an advance payment from the client at any time. V.O. shall be entitled to suspend the start or continuation of work on an assignment while awaiting payment of an advance of this kind. In addition, in the event of default of payment of any invoice from V.O., V.O. shall be entitled to suspend/cease performance of the agreement. The client shall cover any damages resulting from any such suspension/cessation.

**4.3** As a general rule, V.O. shall automatically increase its hourly rates once a year on 1 January, without prior notice, if V.O. deems market conditions to warrant a general rate increase. If an employee of V.O. receives a higher hourly rate due to their expertise, qualifications or experience or a new position, V.O. shall apply an immediate (i.e. interim) adjustment to the former hourly rate.

**4.4** Unless expressly agreed otherwise in advance and in writing, the client shall be deemed to be in default 30 days after the date of an unpaid invoice (by virtue of Article 6:83a of the Dutch Civil Code). Foreign clients (based outside the Netherlands, Belgium and Germany) shall have a term of 60 days from the invoice date. In the event of default, the client shall owe V.O. interest in the amount of the statutory rate plus 2%. The client shall cover any and all legal and extralegal expenses incurred in the enforcement of one or more of the aforementioned payment obligations, which amount to at least 15% of the amount of the claim, with a minimum of €100.00 (one hundred euros) exclusive of VAT.

**4.5** The client may request issue of invoices to a natural person or legal entity other than the client. However, if V.O. agrees to this, the client shall be and remain jointly and severally liable for payment of all invoices, interest and expenses with respect to V.O. In addition, these Terms and Conditions shall also apply to this natural person or legal entity, and the client hereby accepts their application on behalf of this natural person or legal entity. In the event of multiple clients, each client shall bear joint and several liability for the fees due and payment of the invoices for the agreement (and any expenses associated with failure to pay on time).

**4.6** V.O. shall settle payments first against all collection costs that the client owes, then against the interest on these costs, and finally against the principal sum (from the oldest to the most recent unpaid invoice) and the associated interest, even if the client indicates a preference for a different invoice or order. The client shall only be entitled to apply offsetting with the express written approval of V.O. The client shall not be entitled to apply any deferrals, discounts or other deductions. If the client disputes part of an amount, it shall pay the undisputed portion within the payment term. If the client believes that an invoice is

incorrect, it shall dispute it within 1 week after receipt of the invoice by contacting the Business Support Department at V.O. (email: BusinessSupport@vo.eu). V.O. shall be authorised to settle any and all outstanding debts of a client or a third party (including foreign agents) against any amount it will receive from said client or third party and/or any invoice it will issue to said client or third party.

## 5. Force majeure

**5.1** Without prejudice to the other rights falling to V.O., in the event of force majeure, V.O. shall be entitled to suspend performance of an agreement, or to terminate the agreement without judicial intervention, without any obligation to provide compensation for damages.

## 6. Termination/Right of retention

**6.1** V.O. shall be entitled to terminate the agreement with the client in writing, without judicial intervention and without liability for any resulting damages, if the client, or any other natural person or legal entity that the client designates as the debtor as per Article 4.5, remains in default of its or their obligations after a written reminder.

**6.2** V.O. shall be entitled to cancel the agreement with the client in writing, with no need of any reminder or notice of default, in the following cases:

- the client, and/or any other natural person or legal entity that the client designates as the debtor as per Article 4.5, is granted a provisional or definitive suspension of payment;
- the client, and/or any other natural person or legal entity that the client designates as the debtor as per Article 4.5, has filed for bankruptcy and/or been declared bankrupt;
- the company of the client, and/or any other natural person or legal entity that the client designates as the debtor as per Article 4.5, is in liquidation;
- the client, and/or any other natural person or legal entity that the client designates as the debtor as per Article 4.5, ceases operation of the current company;
- a significant portion of the capital of the client, and/or any other natural person or legal entity that the client designates as the debtor as per Article 4.5, has been seized; or
- the client, and/or any other natural person or legal entity that the client designates as the debtor as per Article 4.5, must otherwise be deemed unable to meet their obligations with respect to V.O.

**6.3** V.O. shall be entitled to retain the files of the client and any and all correspondence related to the files of the client until the client or any other financially responsible natural person or legal entity that the client designates, has met its/their payment obligations towards V.O.

## 7. Privacy

**7.1** V.O. shall respect the personal data of the client and other stakeholders and shall ensure their confidentiality. V.O. has technical and organisational measures in place for the proper protection of these data, and asks the same of its agents and suppliers.

**7.2** Where applicable, V.O. is obligated to share information, including personal data, that it receives from the client and the other stakeholders with patent-granting authorities, trademark offices, courts and other parties involved in the performance of the agreement. This is necessary to meet the requirements set by these authorities and/or to perform the agreement. However, V.O. shall only gather, store, use or disclose information obtained from the client and the other stakeholders in the context of performance of agreement(s) concluded with it, including collection of receivables and performance of its own obligations under the law. In the absence of a retention period, or a desire to store records with a view to future agreements, V.O. shall destroy this information or return it to the client after completion of the agreement. (V.O. shall choose between these two options). With permission, V.O. shall also use contact details to distribute its newsletters and offers. By providing V.O. with these details, the client agrees to the provisions of this article and guarantees to V.O. that this also applies to the other stakeholders.

**7.3** Requests to view, correct, restrict, transfer or delete personal data may be submitted to [clientrecords@vo.eu](mailto:clientrecords@vo.eu). The requesting party shall receive subsequent communications from V.O. Under certain circumstances, V.O. may be unable to comply with all or part of a request, such as because it is bound to confidentiality, professional standards or statutory retention periods.

**7.4** Website(s) and other communications from V.O. may feature buttons and/or links for promotional purposes or to enable sharing over social media or other third-party networks, such as Twitter, LinkedIn or Facebook. V.O. shall neither monitor nor be responsible for data processing by these third parties. All parties shall use these media at their own risk. Further details are available in the privacy statement at [www.vo.eu](http://www.vo.eu).

## **8. Governing law and disputes**

**8.1** Dutch law shall apply exclusively to all legal relations with V.O., which arise in connection with assignments awarded to V.O.

**8.2** If the registered office of the client is in an EU Member State, Liechtenstein, Norway, Switzerland or Iceland at the time of initiation of court proceedings between V.O. and the client, all disputes between the client and V.O. shall be settled exclusively by the competent court in the district of The Hague. If the registered office of the client is not in an EU Member State, Liechtenstein, Norway, Switzerland or Iceland at the time of initiation of court proceedings, all disputes between the client and V.O. shall be settled exclusively in accordance with the rules of the Netherlands Arbitration Institute (NAI). In the latter case, the place of arbitration shall be The Hague, the arbitration tribunal shall consist of three arbitrators, the language of arbitration shall be Dutch and the arbitrators shall apply Dutch law.

**8.3** Legal work performed by the attorneys of V.O. shall be subject to the complaints procedure of law firm Oostenbroek Advocatuur.

## **9. Versions of Terms and Conditions**

**9.1** In the event of any discrepancy between the English, German or French text and the Dutch text of these Terms and Conditions, the Dutch text shall be binding.

**9.2** If these Terms and Conditions deviate from the accepted assignment or engagement letter, the provisions of the accepted assignment or engagement letter shall apply.

**9.3** V.O. is entitled to amend these Terms and Conditions unilaterally. The amended Terms and Conditions shall be deemed accepted if the client fails to submit an objection within 14 days after it receives or becomes aware of the amended Terms and Conditions.

These Terms and Conditions (in Dutch) are deposited with the Chamber of Commerce and are available for inspection and download (including all translations) on the V.O. website at [www.vo.eu](http://www.vo.eu).