

General Terms and Conditions

Version 2024

For providing quotations and for performing assignments, as well as for instructing and counselling expert parties that have been engaged by Biopatents IP Consultancy on behalf of the client, the below General Terms and Conditions are applicable, which general terms and conditions have been deposited at the Dutch Chamber of Commerce, where Biopatents IP Consultancy has been registered under number 70032718.

Article 1. General information

1. Applicability

These general and conditions are applicable on all legal relationships between the patent attorney of Biopatents IP Consultancy (hereafter 'Biopatents') and his or her employees on the one hand, and any (legal) person that awards an assignment to Biopatents to perform services on the other hand (hereafter the 'client'). These general terms and conditions are also applicable for expert parties that are engaged by Biopatents on behalf of the client, when deemed necessary by Biopatents for performing the services with regard to the assignment. The Rules of Conduct for Patent Attorneys, as drawn up by the Dutch Patent Attorney Bar are part of these General Terms and Conditions.

2. Definition of Biopatents

Biopatents is understood to comprise the patent attorney as well as employee(s) of the patent attorney.

3. Non-applicability of terms of the client

The applicability of conditions and terms of the client, irrespective of the nature thereof, is expressly excluded.

Article 2. The agreement

1. Establishment of the agreement

Agreements between client and Biopatents are established at the moment that the client shows his intention, either written or orally to use the services of Biopatents, and Biopatents accepts the respective assignment, taking into consideration what is stated in article 6 paragraph 3.

2. Performing acts and agreements

All agreements and/or acts that are made or performed, respectively, as a result of, or together with or following the above, are to be understood as execution of the agreement.

Article 3. Information of the client

1. Confidential treatment of provided information

Biopatents will treat all information that is provided by the client as strictly confidential. This obligation does however not apply for information, provided by the client that (a) is commonly known or has become known while not being the result of any acts or negligence by Biopatents; (b) was already known to Biopatents before obtaining the respective information from the client; or (c) was obtained by a third party that was entitled to provide such information.

2. Information provided to third parties

Biopatents will oblige experts that are engaged by Biopatents for performing the work to the same confidentiality as the confidentiality to which Biopatents is obliged. However, Biopatents is not liable for breach of the obligations mentioned in this article in case Biopatents can make plausible that it could not have prevented said breach in a reasonable manner.

Article 4. Performance of the assignment

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

Biopatents guarantees 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. Biopatents does not guarantee the accuracy or completeness of any data that are furnished to Biopatents by the client and Biopatents does not accept any liability whatsoever in this respect. Biopatents 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 Biopatents is consultative in nature. In connection with said nature of the work performed by Biopatents and the subjective aspects of evaluation which always play a role in this respect, Biopatents excludes any liability for loss or damage arising as a consequence of, or in connection with the work. Biopatents shall only be liable if the loss or damage concerned is caused by wilful conduct or gross negligence on the part of Biopatents.

3. Limitation of liability in connection with policy

Should, despite the exclusions and limitations of liability contained in these General Terms and Conditions, Biopatents nevertheless be held liable in a case, vis-à-vis any person and for whatever reason, such liability of Biopatents shall always be limited in any event to the amount that is paid in respect of the professional and general liability insurance that has been concluded by Biopatents for which maxima are determined by the insurance company of €1,000,000 and €2,500,000, respectively.

4. Engagement of experts

The client allows Biopatents, if Biopatents deems such necessary or useful for the correct performance of the assignment that has been awarded, to engage the services of experts in the performance of such assignment; the costs of such experts shall be borne by the client.

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

In all cases wherein Biopatents is dependent on third parties, such as the Dutch or European Patent Office as granting authorities, or engaged the above-mentioned experts such as attorneys-at-law or foreign patent attorneys, any liability of Biopatents 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.

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

If the work which Biopatents conducts on behalf of a client comprises, or includes, research in literature, patent, trademark, design and plant variety rights registers and databases, Biopatents 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 Biopatents has consulted. With regard to the reporting of the results of investigations in particular, the work conducted by Biopatents shall be deemed consultative in nature and Biopatents 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 Biopatents shall rest with the client, who accepts such burden of proof.

Article 5. Fee

1. Rates

The remuneration for work conducted by Biopatents is not dependent on the outcome of the awarded assignment and shall be payable according to the following rates:

- a) the hourly rate of the patent attorney in charge or, if applicable, of the respective employee for the agreed work set by Biopatents;
- b) government rates for costs of filing, keeping alive and prosecution of patent trademark, design of plant variety rights applications, registrations and other entries in patent, trademark, design and plant variety rights registers and any remuneration payable to third parties engaged, such as foreign patent attorneys, attorneys-at-law or correspondents, for which a surcharge of 10% is charged when the remuneration is paid by Biopatents before these are balanced by the client;
- c) travel and accommodation expenses, for which a surcharge of 10% is charged when the expenses are paid by Biopatents before these are balanced by the client. For traveling by a motor vehicle, a fixed fee per kilometre is charged, the fee being determined annually and is available upon request.
- d) Other fixed rates, if applicable, as mentioned in the most recent schedule of fees, that will be provided upon request.

2. Cost estimates

Cost estimates provided by Biopatents to the client are purely for information purposes and are exclusive of VAT. Cost settlements are possible for the rates mentioned under 1a) provided that these have been confirmed by Biopatents to the client before or at the beginning of performing services with respect to the agreement. In the event of any change in government rates during performance of services with respect to the agreement, Biopatents may adjust the agreed fee accordingly.

Article 6. Payment

1. Advance bills, interim and final invoice

Biopatents 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 invoices, including advance invoices, interim and/or final invoices, and it shall be entirely at the discretion of Biopatents whether it wishes to send advance bills and interim invoices.

The surcharge mentioned in article 5 paragraph 1.a) and b) will not be charged in case for these costs an advance invoice was paid before the respective costs were made. For payment of annuity fees by Biopatents, usually an advance invoice for the respective costs will be sent.

2. Periods for payment and repayment

Invoices are to be paid to Biopatents as soon as possible but not later than within 30 after the date of sending. For advance invoices, a shorter term can be set, dependent on the urgency of the work.

Any excess payments or restitutions to Biopatents of over €25 will be paid back to the client as soon as possible, under subtraction of any unbilled costs and unpaid invoices. For a back payment, a tariff of 10% of the respective sum is charged, with a minimum of €25.

3. Commencement of work after payment of advance invoice

If Biopatents has sent an advance invoice, the client's assignment shall not be deemed a definitive assignment until the advance invoice has been settled. Accordingly, Biopatents will commence its work after settlement of the advance invoice.

4. Separate claim

Each invoice from Biopatents shall be deemed a separate claim of Biopatents against the client.

5. Liable for payment

If, at the client's request, an invoice is to be sent to another (legal) entity, Biopatents will assume that the said person has given his consent thereto. If this turn out not to be the case or in case settlement of the invoice within the term set is not made, the client is still obliged to settle the invoice.

Biopatents may demand payment from both the client and the other entity, and both shall be subject to the provisions of Article 6, paragraph 2.

6. Payment of experts engaged by Biopatents

Biopatents reserves the right to pay any invoices of experts engaged by Biopatents after the respective costs have been invoiced to the client pursuant to article 1, paragraph b) and have been settled by the client. The client will be invoiced within two weeks after receipt of the invoice of the expert.

Article 7. Consequences of late payment

1. Client in default in the event of late payment

If any invoice is not settled 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 Biopatents on the outstanding debt(s) at the rate of 1.5% per month, a portion 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 interest.

3. Cessation of work

If a client is in default, Biopatents may cease its work on behalf of the 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 due time, Biopatents 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 Biopatents has drawn up or has made to be 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 Biopatents in accordance with Article 6 paragraph 3, or Article 7 paragraph 3 may 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 him to Biopatents in good time, in other words within the term set by Biopatents, Biopatents may as an extreme measure demand the assignment of the client's industrial property rights with respect to which Biopatents has conducted work to Biopatents. In such case the client confirms nunc pro tunc his consent to such assignment and is obliged to cooperate to a full extent to effect the said assignment.

7. Consequences of late payment

If one or more invoices are not paid in due time (Article 6 paragraph 2) then Biopatents cannot be held liable at a later date for (the effects of) any work performed in respect of the invoice or invoices for which payment was overdue.

8. Eligibility of other claims

Non-payment of any invoice 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 invoice sent by Biopatents shall always be paid without any discount or setoff. Disputes of whatever nature shall never give the client the right to refuse to make or suspend payment of any invoice unless a complaint has been received in due time by Biopatents.

Article 8. Complaints

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

Article 9. Force majeure

1. Definition of force majeure

Biopatents will perform the work to the best of its ability, exercising due care such as may be expected of a patent 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 mean: the absence of sufficient data of 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, Biopatents 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

Biopatents always retains the 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 Biopatents, 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 Biopatents shall be entitled, without notice of default or judicial intervention being required, to terminate any agreement or agreements existing between Biopatents 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

All agreements concluded between Biopatents and the client and between Biopatents and experts who have been engaged by Biopatents on behalf of the client as well as all acts performed on behalf of the client and on behalf of experts who have been engaged by Biopatents on behalf of the client 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 Biopatents 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 The Hague shall have sole jurisdiction to hear disputes existing between Biopatents and the client.

Article 12. Privacy statement

Biopatents handles personal data provided by or on behalf of the client with care and confidentiality in accordance with the requirements of the General Data Protection Regulation (GDPR) EU2016 / 679. Biopatents does its utmost to protect the personal data against unauthorized access or illegal use.

The personal data are used to obtain or defend the patent rights or other intellectual property rights desired by the client, to attack such rights of third parties, to inform the client about our activities or products, to process relevant assignments and to comply with legal requirements. Only for this purpose the personal data can be shared with third parties, such as with patent offices, patent law firms, patent agents and attorneys-at-law at home and abroad.



The personal data will not be used for other purposes unless explicit permission has been given by the client or the person concerned. Personal details are not sold by Biopatents to third parties.

A client or any other person may request the data protection officer of Biopatents to provide information about the personal data Biopatents IP Consultancy possesses with regard to the said client or person, respectively, and how these are used. If desired, these data are changed or deleted, unless applicable legal requirements do not allow this.

Biopatents stores personal data only for as long as necessary to provide the relevant intellectual property services and to comply with the applicable legal requirements.

This is a translation of the original text in Dutch. In case of discrepancies the Dutch text will prevail.