

General Terms and Conditions

1. These general terms and conditions (“Terms and Conditions”) apply to all (requests for) offers, agreements and any other legal relationship between N.V. Nederlandsch Octrooibureau and another party (“Principal”), whereby N.V. Nederlandsch Octrooibureau has rendered or is to render certain services.
2. The in Article 1 indicated (requests for) offers, agreements and any other legal relationship as well as these Terms and Conditions shall be governed by Dutch law. The articles 7:404 and 407, paragraph 2 of the Dutch Civil Code do not apply. N.V. Nederlandsch Octrooibureau (“Commissionee”) shall exclusively be deemed to take the position of commissionee towards Principal. Acceptance of assignments of Principal will always be deemed to be provided by Commissionee, also in the event the assignment has been accepted by an employee or representative of Commissionee.
3. In the performance of any activities in connection with any assignment from Principal, Commissionee shall to the extent reasonably feasible, observe the standard of a careful and diligent commissionee. Commissionee does not guarantee the envisaged result. Accordingly, Commissionee’s obligations under any agreement with Principal shall solely amount to obligations to use its reasonable efforts.
4. Commissionee is entitled to engage one or more third parties to carry out any assignment from Principal. In case a third party is outside The Netherlands is engaged, Commissionee can be held liable for failures of that third party only if the Principal conclusively proves that the choice of the third party has manifestly been made by Commissionee without due care.
5. To the extent not agreed upon otherwise in writing, Commissionee is entitled to a fee to be fixed on the basis of the hourly rate prevailing at the time of carrying out the assignment as well as to a reimbursement for handling activities, advance payments and costs like telephone, fax, postage and copy costs made by Commissionee in carrying out an assignment, all this to be increased by the VAT due. In case of two or more Principals grant an assignment, they are liable jointly and severally towards Commissionee for the fee and reimbursement. Commissionee may ask advance payments and issue statements of fee in between. A statement of fee shall be paid by having the final amount of the statement been credited on the banking account referred to in the statement not later than twenty one calendar days after the date of issuance of the statement. The amounts due to Commissionee shall be paid in Euros. Setting off a counterclaim is not permitted except to the extent that the counterclaim has irrevocably been awarded in court or acknowledged by Commissionee expressly and in writing. If payment is not made in time, without prejudice to his other statutory rights, Commissionee will be entitled, at his option, to suspend the performance of the respective agreement or dissolve the agreement. Without prejudice to any other rights, Commissionee shall be entitled to compensation of all judicial and extrajudicial costs incurred if Principal fails to meet any payment obligation towards Commissionee. Extrajudicial costs shall include but not be limited to any costs associated with sending payment reminders and/or notices of default and are fixed in advance at a minimum of 15 percent of the amount to be collected, subject to a minimum amount of EUR 500.

6. The total aggregate liability of Commissionee whether arising out of contract, tort or otherwise relating to one or more faults in connection with one or more assignments, shall be limited as follows:

a. in the event Commissionee's liability for the damage is covered by an insurance, the amount ultimately paid out by Commissionee's insurance company increased by the applicable deductible;

b. in the event that Commissionee's liability is not covered by the pay-out of Commissionee's insurance company for a reason other than that the damage is in excess of the insured sum, to the amount in respect of the relevant assignment(s), up to a maximum amount of EUR 250,000,-.

Any entitlement of Principal to damages and/or compensation lapses, if damage after the moment of its actual discovery or the moment in which it should have been discovered, is not promptly reported to Commissionee in writing and in any event as soon as twelve months have lapsed since the event which the damage is resulting from and which Commissionee can be held liable for.

The foregoing also applies in case Principal claims damages and/or compensation on the basis of a claim assigned by another party. In the event a third party claims compensation from Commissionee for damage that he has suffered from an assignment granted by Principal and carried out by Commissionee, Principal shall hold Commissionee harmless against that claim and the costs related thereto to the extent that Commissionee shall have to pay a higher amount than he would have paid should Principal have claimed such compensation himself. Commissionee shall not invoke this limitation of liability to the extent that any damage is the result of the willful misconduct or gross negligence of Commissionee or its executive management. Principal shall never have a claim for damages and/or compensation, irrespective of its legal basis, vis-à-vis any natural person, employee and/or director of Commissionee or any legal entity that Commissionee has concluded a contract with in relation to its course of business.

7. If Principal's assignment only consists of translating, certifying and/or validating a European patent that assignment does not constitute a conflict of interest that would prevent Commissionee to render services to another principal against Principal.

8. Each party is entitled to terminate the agreement for convenience, also with immediate effect. Principal will in any event compensate Commissionee for all services rendered until the moment of termination.

9. The competent court in the Hague, the Netherlands, shall have exclusive jurisdiction over any and all disputes between Principal and Commissionee. The foregoing does not prejudice Commissionee's right to submit a dispute to a court that would have jurisdiction absent this clause.

10. These Terms and Conditions also apply to additional and subsequent assignments.

11. Those persons (both natural and legal persons such as legal entities) who in whatever way are directly or indirectly involved in carrying out assignments granted to Commissionee can also rely on these Terms and Conditions, including Article 6, by way of third party clause.

12. The Dutch version of these Terms and Conditions prevails over the version in a different language.