

HÜBSCHER & PARTNER
PATENT, TRADEMARK AND DESIGN ATTORNEYS

GENERAL TERMS AND CONDITIONS
HÜBSCHER & PARTNER PATENTANWÄLTE

November 22, 2024



General Terms and Conditions of Business

1. Scope of Validity

1.1 Unless explicitly agreed or compellingly required otherwise by law, these General Terms and Conditions of Business (“GTCs”) are valid for all contractual relationships between Hübscher & Partner Patentanwälte GmbH, Spittelwiese 4, 4020 Linz, Austria (“Contractor”) and its clients, including future clients (“Client”), the subject-matter of which is consulting and/or representation.

1.2 These GTCs also apply to contracts that are not concluded in written form. These GTCs are also applicable to future follow-up, supplementary or subsequent contracts, as well as all amendments and supplements to existing contracts.

1.3 Applicability of the Client’s general terms and conditions to the contract between the Contractor and the Client is ruled out. Deviating, conflicting or supplementary terms and conditions of the Client are not a part of the contract. On conclusion of the contract, the Client waives the application of his own terms and conditions (including any defence clauses contained therein) and fully accepts the Contractor’s GTCs.

1.4 The version as amended at the time of conclusion of the contract applies (available online on the website www.huebscher.at/agb).

2. Scope and provision of services

2.1 The Contractor shall perform the contract without undue delay, professionally, punctually and competently, and shall thereby comply with the principles of good professional practice for patent attorneys. 2.2 The subject matter of the contract is the agreed service, but not a specific legal or economic success.

2.3 The place of fulfilment is always at the seat of the Contractor, even if services are rendered or handed over in a different location by agreement.

2.4 Essentially, the Contractor is entitled to perform contract-related services at his own discretion. The Contractor shall represent the Client’s interests with the due care.

2.5 The Contractor is only obliged to file appeals and legal remedies if he has received a contract to this effect and has accepted the same.

2.6 If it appears urgently necessary in the Client’s interest, the Contractor shall, in the case of imminent danger, also be entitled to take or omit an action that is not explicitly covered by the contract or is contrary to an instruction by the Client.

2.7 The Contractor is also entitled to contract third parties (e.g. subcontractors) for performance of the services.

3. Client’s Collaboration Obligation

3.1 The Client is obliged to collaborate fully, inasmuch as this is necessary for proper fulfilment of the contract.

3.2 The Client shall provide all documents and information to the Contractor within such good time that the Contractor has a reasonable period of time for fulfilment of the contract at his disposal.

3.3 The Client shall ensure that all the necessary information and documentation is available to the Contractor on time and without special request. This applies in particular to circumstances that arise or change during the term of contract.

3.4 The Contractor is entitled to consider the information disclosed and documents provided to him by the Client as being correct and complete and to base his further work thereupon.

3.5 Should information be incorrect, the Client shall be obliged to hold harmless and indemnify the Contractor for any resulting property losses.

3.6 The Client shall provide all and any information and documents requested in fulfilment of the Contractor’s duty of care in accordance with the relevant statutory provisions, in particular those of the Patent Attorneys Act, in the required form, in translation if necessary, promptly and at his own costs.

3.7 The Client shall sign a written power of attorney at the Contractor’s request. This power of attorney may be for specifically described or for all possible legal transactions or actions.

3.8 The documents sent by the Contractor to the Client for comment and review must be reviewed by the Client for technical accuracy and other errors. If the Client does not communicate appropriate corrections within a reasonable period of time, the Contractor may assume that the Client has accepted the documents as correct and complete.

4. Protection of the Contractor’s Intellectual Property

4.1 The Client is obliged to ensure that expert opinions, statements, reports, etc., including drafts thereof, prepared by the Contractor within the scope of the contract (“work results”) are used only for the purposes of the contract and are not made available to anyone other than the specified addressees. The disclosure of work results to third parties and their reproduction is permissible only if the Contractor has consented in writing and the GTCs, in particular the



limitations of liability therein, have been imposed upon the third party. This shall not establish liability of the Contractor to the third party, however, even if the Contractor has consented to disclosure or reproduction.

4.2 All work results prepared by the Contractor, including correspondence and memos, are not intended for publication unless agreed otherwise in writing. These documents and work results may not be published either in whole or in part in a publicly accessible document, on the Internet or in other public media, nor may reference be made to them in any such publications. This does not apply for documents that are intended for submission to a generally accessible part of a public register.

4.3 Both the copyright and the associated exploitation rights to all services and work results of the Contractor remain with the Contractor. The granting of utilisation rights or utilisation licences is subject to the Contractor's written consent.

5. Liability and Warranty

5.1 The Contractor shall be liable for personal injury to the Client, irrespective of the degree of negligence held against him. Otherwise the Contractor shall only be liable for damages caused wilfully or through gross negligence by him or a person for whom he is responsible. Any liability for indirect damages, consequential damages and other property losses, as well as loss of profit, third-party damages and loss of anticipated savings is ruled out.

5.2 All and any liability of the Contractor is limited in terms of amount for every single case to the concrete insurance sum paid by the Contractor's liability insurance. The maximum liability amount is currently EUR 10,000,000 for every insured event. If there is no insurance cover, liability is limited to three times the fee paid in the matter concerned.

5.3 The sum of the claims for damages of all aggrieved parties resulting from one damaging action is deemed a "single damage case". The sum of all claims for damages due to multiple damaging actions by one or more persons with the Contractor within the scope of one and the same contract or any otherwise uniform activity is also deemed a single damage case.

5.4 In the case of multiple aggrieved parties in one damage case, the maximum liability amount shall be divided between the aggrieved parties in proportion to their claim amounts, so that the maximum liability amount applies only once in total for all aggrieved parties.

5.5 Unless a shorter statutory period of limitation or preclusion applies, all claims against the Contractor must be asserted in court within six months of the time at which the Client gains knowledge of the damage and the damaging

person, or of any other event giving rise to a claim, on pain of loss of the claim, but in no case later than on expiry of two years after the event giving rise to the claim.

5.6 All warranty claims must - on pain of loss of the claim - also be asserted in court within six months of complete performance of the contract by the Contractor. Applicability of Section 924 ABGB [Austrian Civil Code] is ruled out.

5.7 If the Contractor employs a third party, e.g. a subcontractor, in the fulfilment of his contractual obligations, the Contractor shall only be liable for gross negligence in the choice of this third party.

5.8 Reversal of the burden of proof as set out in Section 1298 S 2 ABGB is ruled out. However, this only applies in the case of personal injury.

5.9 The Contractor is only liable for information provided by phone or verbally, if such information was confirmed by the Contractor in writing.

5.10 Liability for the appraisal of matters based on foreign law is ruled out.

5.11 The Contractor does not accept liability with regard to decisions by courts and administrative authorities, or with regard to the completeness and accuracy of information contained in publicly accessible databases. The fee claim remains unprejudiced.

5.12 The limitation of liability in accordance with this provision also applies to all partners or directors or employed patent attorneys of the Contractor.

5.13 If the Consumer Protection Act (KSchG) applies, paragraphs 5.1 to 5.10 do not apply. In this case the Contractor is liable to the Client without limitation for personal injury; for all other damages caused by faulty consulting, faulty representation or faulty other services, the Contractor is only liable up to the amount of the liability insurance sums available for an individual damage case (currently EUR 15,000,000 per insured event), if such damage was caused wilfully or through gross negligence on the part of the Contractor or a person for whom he is responsible.

6. Duty of Secrecy

6.1 In compliance with his duties under the Patent Attorneys Act, the Contractor shall handle all matters disclosed to him in his professional capacity in the course of his work for the Client with utmost confidentiality. This duty of secrecy shall survive termination of the contractual relationship and applies to the same extent to all the Contractor's employees. The Contractor shall not be bound by the duty of secrecy if released from the same by the Client in writing, or if the duty of secrecy is barred by statutory require-



ments. The Contractor shall further be released from the duty of secrecy if this is necessary in order to assert his claims or in the defence of claims against the Client.

6.2 File contents, documents handed over by the Client, and the like may only be disclosed to third parties with the Client's consent, except in the case of statutory disclosure obligations or if the provided documents were provided for the purpose of forwarding or submission to (national and international) offices, courts and authorities, or if the disclosure serves the defence of claims within the meaning of paragraph 6.1.

6.3 The Contractor is authorised to process the personal data provided by the Client, or to have such data processed by a third party. Thereby the Contractor undertakes to comply with the national and Union data protection regulations. Within the scope of these regulations, the Contractor is authorised to retain documents.

6.4 Unless agreed otherwise, or if there is no objective interest of the Client to maintain secrecy that is obvious to the Contractor, the Contractor is authorised to disclose the Client's name and the nature of the mandate to third parties. The Client explicitly releases the Contractor from his duty of secrecy in this respect and gives his explicit consent to the use of such data. The Contractor shall review whether the disclosure of such information could be disadvantageous for the Client on a case-by-case basis. The consent may be withdrawn at any time in writing.

7. Termination of Contract

7.1 Unless otherwise agreed in writing or stipulated by professional regulations, either contractual partner has the right to terminate the contract at any time with immediate effect.

7.2 For a period of 14 days after notice of termination, the Contractor shall only act on behalf of the client inasmuch as this is necessary to protect the Client from legal detriment.

8. Fee

8.1 Unless barred by compelling regulations or separate agreements, the Contractor's performance shall be billed on the basis of individual services and in accordance with the hourly rates generally applicable or specifically agreed for the work of the respective patent attorney, patent attorney candidate or case handler. Thereby the following amounts for the individual services serve as a non-binding guideline for the fees. Sales tax at the statutory rate must be added to the agreed fee or the fee due to the Contractor.

- Services Partner per hour:
EUR 400,00

- Services Patent Attorney per hour:
EUR 340,00

- Administration Services per hour:
EUR 200,00

8.2 An agreed hourly fee shall be adjusted to changed conditions annually by the parties to the contract. The Contractor shall in any case be entitled to adjust the agreed hourly fee annually in accordance with the consumer price index.

8.3 If remuneration of the Contractor on the basis of an hourly fee has been agreed, travel time and expenses shall be billed in addition to the agreed hourly rates. Time shall be recorded and billed in increments of 15 minutes or a multiple thereof.

8.4 In addition to his right to remuneration, the Contractor is also entitled to reimbursement of his expenses, including reimbursement of travel expenses, board and lodgings, as well as reimbursement of filing or registration fees as well as any other court or procedural, research, examination, publication and transmission fees. The costs charged by the databases or the Patent Office, but at least EUR 15.00 (plus VAT) per excerpt, shall be billed for company register, land register and register excerpts. All court and official costs (cash outlays) and expenses (e.g. outsourced services) may be sent to the Client for direct settlement.

8.5 All estimates made by the Contractor and not expressly referred to as binding regarding the anticipated amount of the fee are without commitment and cannot be regarded as binding cost estimate (within the meaning of Section 5 Par. 2 KSchG, since it is in the nature of the Contractor's performance that its scope cannot be reliably assessed in advance.

8.6 The Contractor is entitled to invoice a reasonable advance payment and to make the start and/or continuation of his work contingent upon its prompt payment.

8.7 The Contractor is entitled to invoice fees monthly. The term of payment for each fee is 14 days as from the invoice date.

8.8 In the event that the Client is in default of payment of all or a part of the fee, the Client shall pay interest on arrears to the Contractor in the statutory amount, but at least in the amount of 4 percentage points over the respective base rate. If the Client is culpable for the default of payment, the statutory interest rate is 9.2 percentage points over the respective base rate. Claims by the Contractor in excess thereof remain unprejudiced.

8.9 An offset against the Contractor's fee claims is not possible, unless the Contractor and the Client have ex-



plicitly agreed otherwise, a claim by the Client has been finally ascertained, or a claim by the Client has been explicitly recognised by the Contractor. A right of retention by the Client as set out in Section 1052 ABGB is ruled out.

8.10 If, in proceedings in which the Client is represented by the Contractor, costs are awarded to the Client, the Contractor shall, on account of his claim and his predecessors' claims for reimbursement of cash outlays and remuneration for representation in these proceedings, have a (statutory) lien on the Contractor's claim for reimbursement of costs in analogy to Section 19a of the Attorneys' Code.

8.11 In the event of termination of the contract, the Contractor shall in any case be entitled to the portion of his fee corresponding with the services provided so far.

8.12 Multiple Clients shall be jointly and severally liable for the Contractor's fee and cash outlays.

9. General Provisions

9.1 All declarations by the Contractor to the Client shall be deemed to have been received if sent to the address provided by the Client on closing of contract or a changed address later notified in writing. However, the Contractor shall be free to correspond with the Client in any matter that he deems suitable.

9.2 Unless agreed otherwise, declarations to be made in writing may also be sent by fax or e-mail.

9.3 The Client shall refrain from sending urgent information to the Contractor exclusively by e-mail or SMS, or leaving such information on the Contractor's voice mail. If information is sent to the Contractor solely by these means, it shall not be deemed received until the Contractor listens to or reads such messages. The Contractor accepts no liability for missed deadlines resulting from delayed receipt of information due to the use of e-mails, SMS or voice mail.

9.4 On demand by and at the costs of the Client, the Contractor shall return all documents that he received from the Client within the scope of the contract after complete satisfaction of all his claims. This regulation shall not apply to correspondence between the Contractor and the Client. In addition, the Contractor is entitled to make copies of all documents that are to be returned to the Client.

9.5 The Contractor shall keep the documents handed to him and prepared by him in connection with the performance of contract, as well as the correspondence relating to the contract for five years after termination of the respective mandate. Aside from statutory obligations to keep records for a longer period, for instance for account-

ing or tax purposes, the Contractor may also keep said records for a longer period if he has a major legitimate reason to do so within the meaning of Art. 6 Par. 1 lit f of the General Data Protection Regulation, in particular for a possible assertion, exercise or defence of legal rights. The Client agrees to destruction of the files (including original documents) after expiry of the five-year or longer, if applicable, retention period after termination of the mandate.

9.6 The Contractor shall in any case keep those books and records that are necessary in order to ensure due and proper continuation and handling of his work by a substitute or successor.

9.7 These GTCs, all contractual relationships (including of a pre-contractual nature), as well as all claims and disputes arising from the same between the Contractor and the Client shall be governed by Austrian law under exclusion of rules of conflict and UN CISG.

9.8 The venue for all and any disputes arising in connection with these GTCs or a contract, including disputes about its conclusion, validity, amendments and termination, shall be the court of jurisdiction *ratione materiae* in Linz. The Contractor is nonetheless entitled to sue the Client at his general venue.

9.9 The Client waives the right to contest the contract for *laesio enormis* (Section 934 ABGB in conjunction with Section 351 UGB [Austrian Business Code]), as well as the right to voidability and adaptation due to error, as well as the right to voidability and adaptation due to initial absence or subsequent lapse of valid subject-matter.

9.10 Where the contractual relationship is compellingly subject to the provisions of the Consumer Protection Act, KSchG in short, individual provisions of these GTCs, in particular paragraphs 5.1 to 5.10 (see also paragraph 5.13), 8.5, 8.9, 9.9, 9.10 and 9.12, shall apply only inasmuch as the compelling provisions of the KSchG do not provide otherwise.

9.11 Any amendments, supplements, side agreements and a waiver of the written form requirement must be agreed in writing.

9.12 Should any provision of these GTCs be or become ineffective in whole or in part, the other provisions of these GTCs shall remain unprejudiced. The Contractor and the Client undertake to replace the ineffective provision with an effective provision that covers the economic purpose of the ineffective provision as closely as possible. This also applies to omissions.

9.13 The data privacy statement below applies with regard to processing of the Client's personal data by the Contractor.



Data Privacy Statement

I. General Information

Protection of your data is very important for Hübscher & Partner Patentanwälte GmbH. Your personal data will only be processed in compliance with the Austrian and European regulations (GDPR, DSG [Data Protection Act], TKG 2003 [Telecommunications Act 2003]). Hübscher & Partner Patentanwälte GmbH handles the data gathered from you with utmost care and protects them from possible misuse in the best possible way with suitable technical and organisational measures. This obligation is already set out professionally in the Patent Attorneys Act in the form of a comprehensive duty of secrecy.

II. Data Processing Controller

Hübscher & Partner Patentanwälte GmbH as the controller collects, processes and uses personal data within the meaning of the General Data Protection Regulation (GDPR) and the Austrian Data Protection Act (DSG) exclusively for its own purposes as a service provider. Pursuant to the provisions of the GDPR, we disclose the following information about us as the controller:

Hübscher & Partner Patentanwälte GmbH, Spittelwiese 4, 4020 Linz
Registered office: Linz
E-mail: patent@huebscher.at
Internet: www.huebscher.at
Phone: +43 732 772289-0
Fax: +43 732 779416

III. Purpose of Processing, Legal Bases and Rights of the Controller

Hübscher & Partner Patentanwälte GmbH processes personal data primarily within the scope of a business relationship with the data subject or with a business represented by the data subject (mandate relationship), in particular in the area of contractual and, in the case of an inquiry by the data subject, pre-contractual relationships (Art. 6 Par. 1 lit b GDPR). The data concerned are the name of the data subject, his or her contact details (such as e-mail address, phone number, home address) and account details, possibly information about creditworthiness, social insurance data if necessary, information from the data subject in connection with fulfilment of the contractual relationship that is exchanged between the controller, the processor and the data subject in the form of records, documents and correspondence.

Moreover, personal data are processed inasmuch as this is necessary for compliance with a legal obligation to which Hübscher & Partner Patentanwälte GmbH is subject (for instance various obligations to preserve records, such as

accounts, social insurance reporting duties as employer, and the like; Art. 6 Par. 1 lit c GDPR), or such processing is necessary for the performance of a task carried out in the public interest (Art 6 Abs 1 lit e GDPR). In this context, primarily the business correspondence and all records of the contractual relationship with the data subject that are relevant under tax law are processed, as well as social insurance data within the scope of employment relationships.

The data subject's personal data are also processed with the data subject's consent to processing, which may be withdrawn at any time (Art. 6 Par. 1 lit a GDPR). In this case, all the data subject's personal data are processed for the purpose for which the data subject has given his or her consent.

In addition, data are also processed as necessary and reasonable for the purposes of the legitimate interests of Hübscher & Partner Patentanwälte GmbH as controller (Art. 6 Par. 1 lit f GDPR), such as in particular for the assertion, exercise or defence of legal rights, for direct advertising (marketing and information activities, in particular about the services offered by the controller), for IT security and technical administration, and for the purposes of file, client and supplier administration. In this context processing comprises all data processed within the scope of the contractual relationship where necessary in order to achieve the purpose.

IV. Potential Recipients of Personal Data

The following categories of recipients within the meaning of Art. 13 Par. 1 lit e GDPR exist:

- processors contracted by the controller (IT and back-office service providers, bookkeeping, payroll accounting, tax consulting);
- courts (especially in disputes with opponents and in the registration procedure) and authorities, in particular the Austrian Patent Office and the European Patent Office (EPA), as well as the World Intellectual Property Organization with seat in Geneva (Switzerland, EEA) – WIPO;
- Opponents (of the registered patent(s) or patent(s) to be registered) and their (legal) representatives in disputes with the data subject or companies represented by the data subject, as well as other involved parties and informants in matters in which Hübscher & Partner Patentanwälte GmbH is assisting its clients;
- expert witnesses (in and out of court);



- third-party suppliers and cooperation partners (credit card providers, banks, substitutes, correspondence firms);
- tax consultants and chartered accounting firms for fulfilment of the accounting obligations;
- Chamber of Patent Attorneys in Vienna for fulfilment of the legal and professional duties of Hübscher & Partner Patentanwälte GmbH
- lawyers and law firms consulted by the controller for review or consultation in legal matters.

V. Storage of Personal Data

The personal data are stored for as long as is necessary for complete fulfilment of the entire business relationship (from initiation, in the pre-contractual phase through handling and until completion of the contract), and beyond that for the fulfilment of statutory obligations in accordance with defined retention and documentation provisions (for instance the 7-year retention periods for contracts and other documents as well as relevant correspondence in accordance with the UGB [Austrian Business Code], BAO [Federal Tax Code], UStG [Turnover Tax Act], or the 5-year retention period for files and documents after termination of the representation contract pursuant to the Patent Attorneys Act, etc.).

Furthermore, personal data are stored for the necessary assertion, exercise or defence of legal rights, whereby the statutory periods of limitation set out in the Austrian Civil Code - ABGB - must be taken into consideration, which may require storage of necessary documents for up to 30 years after termination of the mandate.

The data of job applicants who are not hired are erased seven months after the end of the application procedure, unless consent was given for their being kept on record. If the applicant is hired, the application data are stored until termination of the employment contract, or longer for the purposes set out in the previous paragraph.

In the case of consent (especially for transmission of electronic messages), the data are stored until consent is withdrawn by the data subject, which is possible at any time.

VI. Rights of Data Subjects

Pursuant to the GDPR, data subjects have the following rights with the exceptions provided for in the respective provisions:

- Right of access (Art. 15 GDPR),
- Right to rectification (Art. 16 GDPR),

- Right to erasure (Art. 17 GDPR),
- Right to restriction of processing (Art. 18 GDPR),
- Right to data portability (Art. 20 GDPR),
- Right to object to processing (Art. 21 GDPR),
- Right to lodge a complaint with a supervisory authority (Art. 77 GDPR, in particular with the Austrian Data Protection Authority – DSB),
- Right to withdraw consent to processing of personal data with effect for the future (Art. 7 Par. 3 GDPR), without prejudice for the lawfulness of processing based on consent before its withdrawal.

These rights can be exercised by contacting the controller at the contact details set out in Article I. The controller is at your disposal for questions at any time.

VII. Right to Object and Direct Marketing

If personal data are processed for direct marketing purposes as set out in Art. 21 Par. 2 GDPR, the data subject has the right to object at any time to the processing of his or her personal data. In the case of such an objection, the personal data processed for direct marketing purposes will no longer be processed for these purposes in the future.

VIII. Obligation to Provide Personal Data

The provision of personal data is required by law or based on a contractual obligation. Therefore the data subject is obliged to provide personal data and failure to do so could result in a rejection of the business relationship.

IX. Personal Data not obtained directly from the Data Subject (Art. 14 GDPR)

In given cases, Hübscher & Partner Patentanwälte GmbH (for contact see Article II.) as the controller obtains personal data from other sources than the data subject himself; in these cases the information is obtained exclusively from publicly accessible databases, from clients or from credit rating agencies:

- company register data from various bodies authorised by the Federal Ministry of Justice, such as for instance ADVOKAT, Manz, lexunit, IMD and others; patent data from national and Union or international databases (in particular see.ip, TMview, es-each plus, Madrid Monitor); data concerning the trade carried on from the federal trade information system GISA



- credit-rating data including payment history details (KSV, AKV, ÖVC, ISA queries)
- insolvency data (in particular from the federal edicts file)
- registration data from the relevant registration authorities (town hall, city council in statutory cities, district council office in Vienna)
- information about the data subject from search engines, social networks, various websites
- information concerning contact details, payment history, business relationship from clients or their business partners, if the data subject is an opponent of the clients of Hübscher & Partner Patentanwälte GmbH

The personal data that Hübscher & Partner Patentanwälte GmbH obtains and stores from these sources are limited to contact information (e-mail address, phone number, postal address), information about the function and assignment/responsibility in the company, as well as data concerning the professional career; in this case information about the data subject's professional and educational career may also be obtained from publicly accessible sources.

These data are processed on the basis of a legitimate interest of Hübscher & Partner Patentanwälte GmbH in efficient communication for professional reasons and for performance of the mandate or business relationship, as well as with a view to due and proper applicant management (Art. 6 Par. 1 lit f GDPR). The data thus processed by Hübscher & Partner Patentanwälte GmbH are stored for the periods set out in Article V.

The data subject has the same rights as set out in Article VI. when his or her data are obtained from third parties by the controller.

