

## GENERAL TERMS AND CONDITIONS OF TRADEMARK SERVICES

### Introduction

The Hungarian Patent Office (hereinafter referred to as the “Office”) shall provide, within its core activity established in its Deed of Foundation, the services specified in Section 1 for persons intending to make use of them (hereinafter referred to as the “Customer”), according to these present General Terms and Conditions. The provisions of the General Terms and Conditions shall apply for the performance and making use of the services specified in Section 1, as well as, in connection therewith, for the Office, for the Customer (the Office and the Customer hereinafter jointly referred to as “Contracting Parties”) and for third parties in contractual relationship with the Customer. Any deviation from the provisions of the General Terms and Conditions requires a written form.

### 1. Services

The Office within its core activity shall provide, *inter alia*, the following services:

*1.1. Simplified Trademark Filtering:* Within the scope of this service the Office shall conduct a similarity filtering for the word, combination of words, personal names, slogans, letters, numerals, figures, pictures, two- or three-dimensional forms presented by the Customer among the trademark applications and trademarks registered by the Office, Community trademarks and trademark applications, further, international trademarks and trademark applications designating Hungary. The filtering is restricted only for those product and service classes according to the Nice Classification, which are indicated by the Customer. In case of words, combinations of words, personal names, letters and numerals, those relevant signs (registered or applied for registration) are selected which are identical or have an identical pronunciation with the sign given by the Customer, further, contain an identical word element or having identical pronunciation therewith with regard to the product and service classes concerned. In case of figures or signs combined with figures, those figurative signs are selected which bear the most characteristic figurative element(s) of the given sign classified according to the Vienna Classification. The Office shall prepare a search list on the findings of the search supplemented with an explanatory text in Hungarian. The search list shall contain 30 (in case of words, combinations of words, personal names, letters and numerals) or 15 (in case of figures) relevant hits of the search or it shall establish the fact of the lack of any hits in a written statement (hereinafter referred to as the “Search List”). This service is hereinafter referred to as the “Simplified Trademark Filtering”.

*1.2. Trademark search:* Within the scope of this service the Office shall conduct a similarity search for the sign capable of being represented graphically presented by the Customer among the Hungarian national trademarks and trademark applications, Community trademarks and trademark applications, further, international trademarks and trademark applications designating Hungary via the Madrid Agreement or Protocol. In addition to the products and services presented or product and service classes according to the Nice Classification indicated by the Customer the search shall include the products and services, which shall be deemed as similar to these products and services. In case the order does not contain the

number of classes according to the Nice Classification, the Office shall classify the indicated products and services for an extra fee. The trademark search shall extend to all signs in the referred databases, registered as a trademark or included in a trademark application, which are identical or similar to the sign indicated by the Customer where the list of the goods and services contains identical or similar products or services. The preliminary search report (hereinafter referred to as the “Preliminary Search Report”) shall contain all trademarks and trademark applications which, having regard to the list of goods and services, may influence the opportunity of registration of the sign presented by the Customer as a trademark, if an opposition should be filed based thereon (so-called “remarkable findings”). In addition to these, the Preliminary Search Report shall contain the other relevant findings as well, which shall be given by the Office for information purposes. This service is hereinafter referred to as the “Trademark Search”.

1.3. In the context of these present General Terms and Conditions “Simplified Trademark Filtering” and “Trademark Search” are jointly referred to as “Services”.

1.4. Upon request of the Customer the Office shall supplement the Search List or the Preliminary Search Report with an explanatory text in English. Should the English version of the order be filled out, unless otherwise indicated by the Customer, the Office will supplement the Search List or the Preliminary Search Report with an explanatory text in English.

## **2. Entering into contract**

2.1. The contract of making use of the Services can be exclusively established by filling out of the order introduced by the Office for this purpose (including the order available in electronic format on the homepage of the Office, as well as, the printed or photocopied order) and by the receipt of the duly filled and signed order by the Office. The order can be sent to the Office by post, by facsimile or by e-mail as an attached file. Should the order be sent by e-mail, the Office does not require the signature of the order and the electronic signature of the e-mail. The Office shall provide the order with an individual identification number and advise the Customer thereon in a written reply, in case of orders sent by post, by facsimile or by e-mail in this way.

2.2. The orders filled out incompletely shall not be deemed as declarations which would be capable of establishing a contract. No further obligations of the Office shall arise from such orders.

2.3. Making use of the Services with content or under conditions deviating from the provisions of the General Terms and Conditions requires a separate written agreement.

## **3. Provision of services by the Office**

3.1. The Office carries out the Services by an electronic search programme provided by a third party. The database of this search programme relies on the official registers of the Hungarian national trademarks, Community trademarks, and international trademarks designating Hungary. The Search List or the Preliminary Search Report is exclusively based on the data provided by this search programme at the date of conducting of the search, which data may eventually reflect a status earlier than the date of conducting of the search. The Office neither conducts any further searches or investigations, nor verifies the truth,

completeness and accuracy of the data provided by the search programme. The Office regards these data as corresponding to the facts and does not compare the findings of the search programme with its own or third parties' databases or official registers.

3.2. While performing the contract, the Office shall act independently, according to the written instructions of the Customer and in his interest, to the best of its knowledge and with reasonable diligence. Nevertheless, the Office, in accordance with the provisions of point 3.1., does not take the responsibility of the completeness and truth of the data, and eventual conclusions contained in the Search List or in the Preliminary Search Report. The limitation of the Office's liability pursuant to this present point shall also be valid in regard to all contracting parties of the Customer and to any third party who make use of any data contained in the Search List or in the Preliminary Search Report. The limitation of the Office's liability pursuant to this present point shall not apply in the case of wilful misconduct or gross negligence by the Office.

3.3. The date of completion of the Simplified Trademark Filtering and Trademark Search shall be indicated on the Search List or on the Preliminary Search Report, respectively. After this date the Office does not pursue any searching activity, irrespectively of the fact that the Day of Delivery (see: point 5.1.) is later in time.

3.4. By delivery of the Search List or the Preliminary Search Report to the Customer, the Office shall ensure an exclusive right of use in favour of the Customer concerning the Search List or the Preliminary Search Report without any limitation in time or in territory. This right of use shall include the utilisation of any parts of the Search List or the Preliminary Search Report separately as well.

3.5. The Office declares that the fact of making use of the Services or the result thereof shall not influence the application of and any proceedings conducted under Act XI of 1997 on the protection of trademarks and geographical indications or other industrial property laws, and are not suitable to redeem or substitute any official act prescribed by law. The Search List and the Preliminary Search Report shall be deemed as private documents prepared by third parties in regard to the aforementioned official acts.

3.6. The Office shall be obliged to advise the Customer without delay on any event which is in connection with the Services to be performed according to the contract and which may influence the carrying out of the tasks in due time and way, or the performance of the Services in conformity with the contract.

#### **4. Service fee**

4.1. In consideration for the Services, the Office shall be entitled to a service fee established in the prevailing Price List which is available at the Customer Service or on the homepage ([www.hpo.hu](http://www.hpo.hu)) of the Office (hereinafter referred to as the "Service Fee"). The Service Fee shall include the total countervalue of all activities of the Office carried out in order to perform the Services.

4.2. While establishing the Service Fee, the Office, in accordance with the provisions of Article 314(2) of Act IV of 1959 on the Civil Code, will take into consideration the exclusion and limitation of the liability of the Office pursuant to Section 3.

4.3. Upon receipt by the Office of the duly filled and signed order, the Office shall issue an invoice on the due Service Fee indicating the name and address given on the order and deliver it to the Customer. In case of orders sent by post, by facsimile or by e-mail the Office shall send the invoice by post to the Customer. The Customer shall pay the Service Fee to the account No. 10032000-01731842-00000000 of the Office held at the Hungarian State Treasury

- a) in cash or by bank card through the POS terminal at the cash desk of the Office,
- b) by bank transfer, or
- c) by postal cash-transfer order.

4.4. Should the payment be effected by bank transfer or cash-transfer order, the identification number referred to in point 2.1. shall be indicated by the Customer on the transfer order.

## **5. Performance**

5.1. The Office shall commence the carrying out of the Express Search after crediting the amount of the Service Fee on the account referred to in point 4.3., perform the filtering or search and prepare the Search List or the Preliminary Search Report until the 15th day following the crediting of the Service Fee at the latest (hereinafter referred to as the “Day of Delivery”).

5.2. The Office shall deliver the Search List or the Preliminary Search Report in printed format to the Customer at the Customer Service of the Office on the Day of Delivery, or, upon prior request by the Customer, it shall send it by post, by facsimile or by e-mail to the Customer on the Day of Delivery at the latest. The Customer shall verify the delivery of the Search List or the Preliminary Search Report in writing. In case of delivery by e-mail the Office requests a verification of the delivery by e-mail. Should the Customer fail to send a verification within two working days, the Office shall send the Search List or the Preliminary Search Report by post to the Customer.

5.3. The Office shall be entitled to an advance delivery. Within the scope of the advance delivery, the Office shall be entitled to deliver the Search List or the Preliminary Search Report to the Customer prior to the Day of Delivery, or the Search List or the Preliminary Search Report can be received at the Customer Service of the Office prior to the Day of Delivery. The provisions of point 5.2. shall apply *mutatis mutandis*.

5.4. The Customer shall be obliged to provide the Office with the information necessary to perform the Services in conformity with the contract, including the information not indicated on the order or on the electronic data carrier attached thereto. In case all the information provided by the Customer is not suitable for the performance of the Services by the Office in conformity with the contract, the Office shall give the Customer a notice thereof and request further information. If the Customer does not provide any further data despite the notice or does not response to the request of the Office on the merits within a reasonable time, the Office shall withdraw from the contract. In case where the Office would be able to commence the performance of the Services in conformity with the contract only by possessing the newly provided information, the delivery deadlines referred to in points 5.1. shall be calculated from the day on which the Office received such information.

5.5. In case of withdrawal from the contract referred to in point 5.4. the Office shall refund the settled Service Fee in a way that the refundable amount shall be reduced by the commissions and fees of transfer orders debiting the account of the Office held at the Hungarian State Treasury, by the cost of the postal transfer orders charged for the Office by the post and by a lump sum compensation amounting to 30 percent of the Service Fee.

5.6. Should the default by the Office exceed 5 days as compared to the Day of Delivery referred to in point 5.1. the fee to be paid by the Customer shall be reduced by 5 percent per day following this date, but by a maximum of 50 percent. Should the default by the Office exceed 30 days, the Customer shall be entitled to withdraw from the contract with immediate effect and to demand the refunding of the full amount of the Service Fee.

5.7. The Office shall fulfil its refunding obligation referred to in points 5.5. and 5.6. within 30 days from the day on which the fact of the withdrawal was communicated to the other Contracting Party.

## **6. Termination of contract**

6.1. Notwithstanding the provisions of points 5.4. and 5.6., the Customer shall be entitled to withdraw from the contract in writing and without justification with immediate effect from the date of the establishment of the contract until the settlement of the Service Fee.

6.2. Should the Service Fee not be credited on the account of the Office referred to in point 4.3. or not be paid in cash at the cash desk of the Office from thirty days from the establishment of the contract, the contract shall become null and void.

6.3. In addition to the aforementioned, any of the Contracting Parties shall be entitled to terminate the contract in writing with immediate effect in the event the other Contracting Party violates the provisions of the contract and does not cease the breach of contract despite a letter of notice within a reasonable time stated therein.

6.4. For the refunding of the settled Service Fee upon the justified termination by the Office the provisions of point 5.6. shall apply *mutatis mutandis*, with the exception that the Office shall be entitled to retain from the Service Fee an amount corresponding to the additional damage incurred at the Office.

## **7. Miscellaneous**

7.1. The Contracting Parties declare that all information and personal data obtained during the term of the Contract related to the other Contracting Party, its customers, employees or other contractual partners shall be treated confidentially and deemed as business secret, further, they do not disclose such information or data to any third parties without the prior written consent of the party concerned. This obligation of confidentiality especially applies for all technical and other information delivered to the Office in support to the performance of the contract and not available to the public, which shall be treated strictly confidential by the Office and can be used exclusively for the purpose of performing the contract. The Customer acknowledges that the obligation of confidentiality shall not apply for the fact of the establishment of the contract and for the confidential information to the extent stated by legal

regulations. The obligation of confidentiality pursuant to this present point shall remain valid even after the termination of the contract.

7.2. The Contracting Parties endeavour to solve their disputes arising in connection with the performance of the Services amicably through negotiations. Should these negotiations not bring any result, the Contracting Parties stipulate the exclusive jurisdiction of the Court of Central Districts of Pest (“*Pesti Központi Kerületi Bíróság*”) and of the Metropolitan Court of Budapest (“*Fővárosi Bíróság*”) respectively, subject to their competence.

7.3. The Office shall be entitled to amend unilaterally these present General Terms and Conditions and the Price List at any time. Nevertheless, such amendments shall not affect the contracts which have been established by the time of the amendment.

7.4. These present General Terms and Conditions have been prepared both in Hungarian and in English. In case of any legal dispute or divergent interpretation, the Hungarian version shall prevail.

7.5. These present General Terms and Conditions are in force as from 9 November 2009.