

## Terms and conditions

ADC Patent Search™

### 1 Definitions

In these terms and conditions, unless the context requires otherwise, the following terms will have the following meanings:

**“ADC Patent Search”**: Curson Enterprises Limited, a company incorporated in New Zealand (company number 7180273) having its registered office at 24a Nikau Heights, Lansdowne, Masterton, New Zealand.

**“Agreement”**: has the meaning given to it in clause 2.

**“Client”**: the individual, company, or other entity (whether corporate or unincorporated), specified in the relevant Order as having entered into an Agreement with ADC Patent Search for the provision of the Services.

**“Client Materials”**: documentation, reference material and other material that the Client provides to ADC Patent Search in order for ADC Patent Search to be able to provide, or otherwise in connection with, the Services.

**“Deliverables”**: the agreed output to be delivered to the Client by or on behalf of ADC Patent Search, as specified in the Order or otherwise agreed between the parties from time to time.

**“Expenses”**: third party costs and other expenses, which are specified in the relevant Order, or which are reasonably and necessarily incurred by ADC Patent Search in connection with the Services.

**“Fees”**: the fees agreed with the client for the provision of Services as specified in the relevant Order, or otherwise agreed between the parties from time to time.

**“Force Majeure Event”**: an event or circumstances beyond the reasonable control of a party, including fire, flood, explosion, earthquake, storm or other natural disaster, civil commotion, sabotage, an act of terrorism, acts of war, strike, industrial dispute, and chemical or biological contamination.

**“GST”**: goods and services tax payable in accordance with the Goods and Services Tax Act 1985.

**“Intellectual Property Rights”**: any current and/or future intellectual property rights (whether registered or not) including any copyright, patents, designs, trade marks, trade names, domain names, rights in logos and get-up, all rights of whatever nature in computer software and data and rights in databases and all applications for registration, renewals and/or extensions in relation to any of the above and all intangible rights and privileges of a nature similar, analogous or allied to any of the above in any part of the world.

**“NZ Privacy Law”**: the Privacy Act 1993 (or replacement legislation); any other statute, regulation, or law regulating privacy or the use of personal information; any code of practice, guidelines, or rules established by the New Zealand Privacy Commissioner.

# ADC Patent Search™

Patent Research & Analytics | Intellectual Property Awareness

“**Order**”: an order or instructions by the Client for the provision of Services.

“**Services**”: the provision of research and analytics services in relation to intellectual property rights in New Zealand and throughout the world, including with respect to patents, trade marks, copyright, and designs.

## 2 Application

- 2.1 These standard terms and conditions form part of the Agreement between ADC Patent Search and the Client and govern the provision of the Services and the Deliverables to the Client.
- 2.2 The Agreement comprises the relevant Order and the latest version of the standard terms and conditions available at the following link:  
<http://www.adcpatentsearch.co.nz/ADC%20Patent%20Search%20Terms%20and%20Conditions.pdf>.
- 2.3 By placing an Order, the Client is deemed to have read and understood, and agree to be bound by the terms of the Agreement.

## 3 Services

- 3.1 ADC Patent Search will perform the Services and deliver the Deliverables on the terms and subject to the conditions set out in the Agreement.
- 3.2 The nature and scope of the Services, the Deliverables, the Fees, and the Expenses will be agreed between the parties for each Order.
- 3.3 ADC Patent Search undertakes that it will:
  - a exercise reasonable skill, care and diligence in carrying out the Services; and
  - b use all reasonable endeavours to meet any date(s) for completion of the Services specified in an Order (or otherwise agreed between the parties), provided that ADC Patent Search will not be liable for any loss arising from an errors, omissions, failures, or delays caused directly or indirectly by the Client (including, without limitation, any failure or delay by the Client to provide any Client Materials, or any errors or omissions in the Client Materials).
- 3.4 ADC Patent Search is not a law firm and the Client agrees that no Services, Deliverables, or other communications or materials provided by or on behalf of ADC Patent Search:
  - a in whole or in part constitute legal services; and
  - b may, in any way, be considered in whole or in part to constitute legal opinion.

## 4 Client Materials

The Client must ensure that all Client Materials:

- a are delivered on request to ADC Patent Search, in the manner requested;
- b are of a sufficient quality and integrity to enable ADC Patent Search to provide the Services and the Deliverables;
- c do not infringe any third party's copyright or other Intellectual Property Rights;
- d do not contain material that is defamatory or otherwise libellous in nature; and
- e do not breach any other law, statute, ordinance or regulation.

## 5 Fees, estimates, and payment

5.1 Unless otherwise specified in the Order, or agreed between the parties:

- a ADC Patent Search will issue a valid invoice to the Client for the Fees and any Expenses upon completion of the Services; and
- b all Fees and Expenses are stated as being exclusive of GST (if any), which is payable in addition.

5.2 The Client must pay ADC Patent Search the full amount specified in the invoice on or before the due date specified in the invoice or, if no due date is specified, within 10 working days of the date the invoice was issued, to the bank account specified by ADC Patent Search in the invoice.

5.3 If the Client fails to pay the amount specified in the invoice in accordance with clause 5.2, ADC Patent Search may charge and the Client must pay:

- a late payment interest on the amount outstanding at a rate of 10% per annum, compounding monthly, on the amount outstanding for a period which starts on the date on which the amount is due for payment and ends on the date on which the Client has paid ADC Patent Search all outstanding amounts in full; and
- b all costs of recovery incurred by ADC Patent Search including all legal costs and disbursements on a solicitor and client basis, debt collector costs, and/or court services fees.

5.4 If the Client disputes the amount payable as specified on an invoice issued by ADC Patent Search on the basis that the Fees and/or the Expenses have not been calculated correctly:

- a the Client must pay the full amount specified on the invoice;
- b the Client may notify ADC Patent Search in writing if the Client disputes the invoice; and
- c if ADC Patent Search determines that the Fee and/or the Expenses have not been calculated correctly and that the Client has overpaid ADC Patent Search, ADC Patent Search will refund the amount of overpayment.

- 5.5 If ADC Patent Search provides any estimate or quote for the Fee and/or the Expenses then (in addition to any stated assumptions) it does so subject to the following assumptions:
- a the Order is complete and accurately describes ADC Patent Search's role;
  - b the matter will proceed and be completed in the manner anticipated in the Order and within any indicated or normal timeframe;
  - c the Client will provide any information or instructions ADC Patent Search requires to carry out the Services and provide the Deliverables in a timely and efficient manner;
  - d no unforeseen impediments will arise that require additional work;
  - e all parties and other advisers involved in the matter will be co-operative; and
  - f any third party or regulatory consents or approvals will be given in a timely manner and will not involve protracted negotiations.
- 5.6 Any work the Client asks ADC Patent Search to do outside the scope of an estimate or quotation given by ADC Patent Search will be charged for separately. This includes supplementary reporting or explanations and any additional work that ADC Patent Search does because any of the assumptions set out in clause 5.5 are incorrect.

## 6 Confidentiality

- 6.1 ADC Patent Search will keep information and documentation disclosed to it by the Client on a confidential basis in confidence and will not disclose that information or documentation to any third party (other than to its employees, professional advisers, financiers, prospective financiers, shareholders and their respective advisers, and sub-contractors), except:
- a information which ADC Patent Search knew prior to its engagement by the Client without any obligation of confidentiality: or
  - b information which is publicly available or enters the public domain other than through the fault of ADC Patent Search: or
  - c where ADC Patent Search is required to disclose such information as a result of a binding order from an authority of competent jurisdiction or is compelled to disclose any of the information by law or regulation;
  - d where the Client expressly or impliedly authorises ADC Patent Search to do so.
- 6.2 Nothing in clause 6.1 will prevent ADC Patent Search from using information and documentation disclosed to it by the Client, or otherwise obtained by ADC Patent Search:
- a for the purposes of providing the Services and/or the Deliverables;
  - b in any other manner contemplated in the Agreement or in an Order;
  - c in any other manner for which it has obtained prior written consent from the Client.

## 7 Cancellation and postponement

If the Client notifies ADC Patent Search that it wishes, for any reason, to postpone or cancel any Services, ADC Patent Search may (at its discretion) agree to such postponement or cancellation, subject always to the Client paying all Fees which have accrued and all Expenses that have been incurred up to the date of cancellation or postponement (as applicable) in accordance with clause 5.

## 8 Copyright

- 8.1 ADC Patent Search owns copyright in all works and materials that it creates for the Client, including the Deliverables, unless expressly agreed otherwise in writing.
- 8.2 ADC Patent Search grants the Client a right to use, copy and reproduce all works and material that it creates for the Client, including the Deliverables, for usual business purposes and/or as contemplated in connection with the Agreement.

## 9 Privacy

ADC Patent Search may collect and hold personal information (as that term is defined in NZ Privacy Law) about the Client when the Client provides such information to ADC Patent Search in accordance with NZ Privacy Law and as set out in ADC Patent Search's privacy policy. The Client has a right to access personal information held by ADC Patent Search in accordance with NZ Privacy Law.

## 10 Indemnification

The Client must indemnify ADC Patent Search on demand for all losses, liabilities, damages, costs and expense (including reasonable legal fees and expenses) incurred or suffered by ADC Patent Search:

- a arising out of or in connection with any claim made or brought against ADC Patent Search by a third party alleging that the Client Materials, or the use thereof by ADC Patent Search infringes any contractual rights or Intellectual Property Rights of any person, or are otherwise defamatory in nature; or
- b in relation to the consequences of any negligent or other wrongful act by the Client, its affiliates, and/or its sub-contractors.

## 11 Liability

- 11.1 Subject to clause 11.3, ADC Patent Search will not be liable to the Client, whether in tort (including negligence), for breach of contract, breach of statutory duty, misrepresentation or otherwise, for:
- a any loss of profit, loss of revenue, loss of goodwill or reputation, or loss of contract (in each case whether direct or indirect) including in relation to the Client's position under law; or
  - b any damages or expenses incurred or suffered by the Client;
  - c any indirect or consequential loss.
- 11.2 Without limiting clause 11.1 and subject to clause 11.3, the aggregate liability of ADC Patent Search to the Client due to, under, and/or arising out of or in connection with the Agreement in contract, tort (including negligence), breach of statutory duty or otherwise will not exceed the amount actually paid by the Client to ADC Patent Search during the preceding twelve (12) months for the Deliverables giving rise to the claim.
- 11.3 Nothing in this Agreement will in any way exclude or in limit a party's liability to the other for fraud or fraudulent misrepresentation and/or, any other matter for which it would be illegal to exclude or attempt to exclude a party's liability.

## 12 Termination

- 12.1 ADC Patent Search may terminate the Agreement and cease providing the Services immediately by notice in writing to the Client if:
- a ADC Patent Search considers (acting reasonably) that the Client has committed a material breach of the Agreement and such breach is incapable of remedy;
  - b the Client fails to remedy a breach capable of remedy after being given 10 working days' written notice from ADC Patent Search specifying the breach and requiring it to be remedied;
  - c the Client fails to pay the Fees and/or Expenses on or before the payment date specified by ADC Patent Search.
- 12.2 Upon termination of the Agreement:
- a the Client must immediately pay all Fees and Expenses;
  - b ADC Patent Search may immediately cease providing the Services;
  - c the Client's obligations and ADC Patent Search's rights under clause 5 (fees) will continue in full force and effect.

## 13 Dispute resolution

Any disagreements or disputes arising in connection with the Agreement, including with respect to the quality of the Services and/or the Deliverables, which cannot be resolved between the parties shall be referred to an arbitrator to be agreed and appointed by the parties.

## 14 Force Majeure Event

- 14.1 ADC Patent Search will not be liable to the Client for its inability to perform, or delay in performing, any obligations under the Agreement caused by a Force Majeure Event.
- 14.2 If a Force Majeure Event occurs, the party delayed or unable to perform must give prompt notice to the other party of the nature of the Force Majeure Event and its best estimate as to the likely period of the Force Majeure Event.
- 14.3 The party not affected by the Force Majeure Event may, during the continuance of such Force Majeure Event, terminate the Agreement immediately by notice in writing to the other party if a Force Majeure Event occurs which:
- a substantially affects the other party's ability to carry out its obligations under the Agreement; and
  - b continues for more than 20 working days.

## 15 Variation

ADC Patent Search may amend these terms and conditions from time to time by publishing an amended version on its website. If the Client continues to instruct ADC Patent Search (including by placing an Order) then the Client will be bound by the varied terms.

## 16 Governing law and jurisdiction

The validity and interpretation of these terms and conditions and the enforcement thereof shall be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

## 17 Assignment

The Client may not assign, charge, encumber, or otherwise deal with any rights and obligations under the Agreement, or attempt or purport to do so, except the prior written consent of ADC Patent Search.

## 18 Partial invalidity

If any provision of the Agreement or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of the Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.

## 19 Entire agreement

The Agreement:

- a contains the entire agreement between the parties with respect to its subject matter;
- b sets out the only conduct relied on by the parties; and
- c supersedes all earlier conduct and prior agreements, representations, and understandings between the parties in connection with its subject matter.