

TERMS OF SERVICE

By instructing us (or continuing to instruct us) to provide attorney services, you agree to these Terms of Service.

Your Instructions

You must provide us with full, timely and accurate instructions (including all necessary documents and information) for all matters, in order for us to provide the services you have requested efficiently and effectively.

How we will charge you

Our costs are based on a) professional fees for the time spent by our staff, b) fixed fees or service charges for some actions (which may be additional or instead of time-based charging), and c) costs for other goods and services incurred on your behalf.

a) Current hourly rates of our staff:

Position	Hourly rate \$ (excl GST)	Hourly rate \$ (incl GST)
Principal	880	968
Patent Attorney	390 – 720	429 – 792
Patent Professional	275 – 380	302.50 – 418
Paralegal	305	335.50
Clerical	180	198

These rates reflect differences in the experience, qualifications and training of our staff. Time spent is recorded per six-minute unit (rounded up to the nearest unit of six minutes). Time spent includes meetings and telephone conferences with you, experts, solicitors, barristers or other service providers, internal conferences discussing your matters, drafting correspondence, file notes and other documents, travelling, attending settlements, hearings and/or court.

b) Fixed fee charges

We also charge fixed fees instead of, or additional to, time-based charges. These fixed fees cover time spent by our clerical staff in file and deadline management of those actions, and provide certainty of costs for certain common or routine actions taken by our professional staff, or by service providers such as couriers. Our fixed fee charges are included within the total estimated cost provided to you.

c) Other goods and services, disbursements and including official fees

We may charge for goods and services supplied by us, by our associated entities or by third parties in the course of working on your matter.

Item	Charge (ex GST)	Charge (inc GST)
Official fees of the Australian and New Zealand Patent and Designs Offices	At cost	At cost (GST not applicable)
Charges from foreign suppliers – passed on to you on 14-day terms	At cost plus 15% plus \$25	At cost plus 16.5% plus \$2.50
Charges from foreign suppliers – pre-paid by you	At cost plus \$25	At cost plus \$2.50

Exchange rates – At the beginning of each week, we update our records with the latest exchange rates from the ANZ Bank. When we receive a foreign invoice, we immediately apply the most recent exchange rate from our records to calculate the Australian dollar amount that is subsequently invoiced to you. That amount may be different to the amount paid to the foreign supplier due to exchange rate variations.

Other expenses incurred on your behalf will be charged at cost, including amounts charged by third parties for goods and services supplied in the course of working on your matter. Such expenses include official fees, barrister’s fees, expert’s fees, draftsman’s fees, stamp duty, travel, parking, accommodation and external document production.

We may need to engage on your behalf an overseas attorney, barrister, lawyer or expert to provide overseas or specialist advice and services. That we may assume liability to the overseas attorney, barrister (etc) for payment of their fees does not detract from your responsibility to repay to us any fees we may choose to pay.

Our accounts

We trade on 14-day terms. If you do not pay one of our invoices within 14 days, we may charge interest on any unpaid amount at a rate that is equal to the cash rate target plus 10% as at the relevant date. Debt collection costs including legal fees will also be charged where incurred.

If you do not pay our account, we are entitled to exercise a lien over your file. The lien allows us to retain your documents until our account, *including interest and debt collection costs*, is paid.

We may request payment in advance for certain actions. Later, we will invoice you any difference between the advance payment and the actual costs in connection with the actions.

We may decline to take action on your behalf until we receive payment of outstanding invoices or until we receive requested advance payment. If we decline to take action, we will not incur any liability as a result, including any liability for missed deadlines, charges for late lodgement or for loss of rights or potential rights.

Use of email

If you provide us with your email contact details, we will take this as permission to correspond with you via email, unless you specifically instruct us otherwise. This may include sending confidential and/or privileged documents to you via email.

You agree that we are not responsible for any errors in transmission, failure to deliver or other problems caused through use of email as a communication method. Where you send us instructions by email, especially urgent or important instructions, you must not assume we have received your instructions unless and until we have confirmed receipt. If we have not confirmed receipt, you agree to telephone us or to re-send your email, advising you have not received confirmation.

Document retention and privacy

We will retain copies of any papers to which you are entitled. You authorise us (without further notice to you) to destroy all documents relating to a matter seven years after we have closed our file.

In the course of acting for you, we may collect personal information. This includes personal information about individuals who are employees (etc). Please ensure that they are aware that our acting for you may involve collection of personal information about them. In most cases, the individual is able to gain access to any of their personal information in our possession on request.

This personal information will only be disclosed and used in relation to your matters, as compelled by law, or otherwise in accordance with your instructions. You consent to our use of your contact details to maintain an ongoing professional relationship with you and to provide legal updates and invitations to seminars (etc) which may be of interest to you. However, if at any time you advise us that you do not wish us to so use your personal information, we will do as requested.

Use of and changes to our work product

Any advice, or document, provided by us to you in the course of a matter is provided specifically for that matter. It must not be relied upon by you in relation to any other matter, or by any other person or entity without our prior written consent.

We retain copyright in any advice or other documents (e.g. patent specifications) prepared by us until we are paid for that preparation. Thereafter, we retain copyright in such advice or other documents, subject to your right to use the document in relation to your matter. The advice and/or documents must not be reproduced or used by you in relation to any other matter.

If we have prepared a document and changes are made to that document by someone other than us without our specific written approval, we are not responsible and accept no liability for any loss caused by the changes.

Agreements with third parties

If you engage us on behalf of a third party, or together with another party, this agreement binds both you and the other party separately and together.

Even if you expect to be reimbursed by a third party, you must pay us as required by this agreement, even if you do not receive payment from the third party or payment is delayed.

Conflicts of interest

We will make internal enquiries to check if we have any conflict of interest in acting in a matter. You agree that we can disclose (on a confidential basis) your name, the name of all other parties involved, and the general nature of the matter to other members of the firm and our associated entities, to help reduce the firm's risks and to determine whether a potential conflict could arise.

We cannot always identify a conflict before it arises. If we become aware of a conflict, we shall inform you and implement measures to protect the confidential information of all parties involved.

Confidentiality and legal privilege

As far as the law permits, we will treat the instructions you give us, and any information we receive in the course of our work, as confidential.

We may disclose information about you and your matters to attorneys overseas and to our associated entities or suppliers for the purpose of conducting your matters (including making foreign applications, preparation of drawings or other documents, administration, deadline monitoring or invoicing). You agree that, unless you advise us otherwise, we can also disclose the fact that we have acted for you and the general nature of the matters in our tender and marketing documents.

In order for us to protect the confidential information of our clients, you agree that we need not disclose any information to you that we acquire in the course of acting for other clients (including information obtained via conflict searches conducted on behalf of any existing or prospective clients). Only the professional staff working, from time to time, on your matters are obliged to give advice and disclose information to you.

If you provide any of our advice to a third party, you may waive legal privilege in that advice. This is separate from waiving confidentiality. Even a confidential disclosure to a third party *could* still waive privilege. Waiving privilege can have serious adverse consequences if the advice relates to a matter that eventually goes to court.

Code of Conduct

The *Code of Conduct for Trans-Tasman Patent and Trade Marks Attorneys 2018* ('the Code') requires us to confirm that:

- i. Ben Mott is a registered patent attorney;
- ii. Ben Mott has the appropriate competencies for this work;
- iii. we are bound by the Code;
- iv. the Code is administered by the Trans-Tasman IP Attorneys Board (<https://www.ttipattorney.gov.au/>); and
- v. BRM Patent Attorneys Pty Ltd is an Australian privately-held company.

The names of our registered patent attorneys together with their qualifications, background and experience are available on our website. The competency of each of our attorneys to act in a given matter is based on their qualifications, background and experience.

If you have a concern

If you have any concern about our costs or our services, please do not hesitate to speak to us. We will seek to resolve your concerns.

If we cannot satisfactorily resolve your concern, you may:

- make a complaint to the Institute of Patent and Trade Marks Attorneys (IPTA); or
- make a complaint to the Professional Standards Board of Patent and Trade Marks Attorneys (PSB).

Jurisdiction

The law of Victoria, Australia shall apply to these Terms of Service and you agree to submit to the jurisdiction of competent courts, and courts of appeal therefrom.

Ending our engagement

You may terminate our engagement at any time by giving us written notice. If you do, you must pay our charges for work done, and for expenses incurred, up to the date of termination. We may terminate our engagement by giving you 14 days' notice, or if our charges are not paid when due.

If we cease to act for you:

- we will not incur any liability as a result
- you will receive a final account which will include all outstanding costs
- you must pay our costs up until the date when we cease to act
- we retain the right to keep your documents until we are paid.

BRM Patent Attorneys

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