

Guidelines for Engagement Letters

FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INTELLECTUELLE
INTERNATIONAL FEDERATION OF
INTELLECTUAL PROPERTY ATTORNEYS
INTERNATIONALE FÖDERATION
VON PATENTANWÄLTEN



An engagement letter is an important document, setting out the working parameters with a new client.

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This paper was drawn up by members of FICPI's Practice Management Committee (also called PEC) and proposes basic guidelines for developing engagement letters between IP firms and their clients, to standardise procedures, reduce workload, and ameliorate the risk of miscommunication.

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Disclaimer

The “rules” herein do not imply any obligation on IP attorneys, agents or lawyers and merely reflect recommendations approved by FICPI's Practice Management Committee. They are subject to change at any time.

The examples provided herein are merely for assistance and are not meant to be complete or to comply with the laws and requirements of all jurisdictions in the world. For instance, local laws and regulations may dictate the content, scope, and enforceability of such letters. The reader is requested to ensure compliance with local requirements and adapt the contents of such letters accordingly.

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Purpose of an engagement letter

The purpose of an engagement letter is to set out the working parameters with a new client. It is meant to be an agreement signed by new clients or even with existing clients that have never signed such an agreement.

Before settling on any engagement, an appropriate **conflict check** should be performed.

Five key parts

Engagement letters normally consist of five key parts:

1. Welcome

a. Example: Thank you for choosing [FIRM NAME] for providing professional services in the intellectual property domain. We thank you for your trust and welcome you as a client. This letter sets out the main terms of our engagement. We ask that you please sign this letter confirming your understanding and agreement with these terms.

2. Mandate

a. Example: Our mandate will consist of providing the following professional services [INSERT LIST OF SERVICES]. Other services can be added upon mutual agreement. The terms of this letter will also apply to those other services.

3. Team

a. Example: The following team will be assigned to this engagement: [INSERT TEAM LIST WITH CONTACT INFO, ROLE and BILLING RATES]. The team is subject to change over time depending on availability. If you encounter any issues with the level of service provided by our firm, please do not hesitate to contact us [INSERT CONTACT INFO FOR PARTNER OR CLIENT SERVICE OFFICER].

Team (cont'd):

b. You can be specific as to the contact points for various issues such as: administrative inquiries, professional issues or billing issues.

4. Invoicing

a. Key terms should be provided, such as the type of invoicing: hourly rate, fixed fee or mixture of both.

b. Invoicing schedules should be provided, such as monthly or task-based invoicing.

c. If you have a pre-set schedule of fees, it could be provided here, if applicable, with perhaps an explanation that not all fees are covered by the schedule of fees and that the schedule is subject to change.

d. Example: Invoices will be provided at regular intervals and will consist of a mixture of fixed fee charges (regardless of time and effort spent on a task) and hourly charges. Fixed fee charges and hourly rates are reviewed typically once a year and thus subject to change. Each invoice will provide summaries of tasks performed. Unless indicated as a final invoice, each invoice is an interim invoice. Separate invoices will be sent for each matter being handled.

5. Business Terms

a. Insert any requirement for a monetary advance for work to be performed, payment terms, handling of overdue invoices, dispute resolution means including a choice of jurisdiction and laws, confidentiality and ending the engagement.

b. This section could also be presented as an appendix.

c. If you have a pre-set schedule of fees, it could be provided here, if applicable, with perhaps an explanation that not all fees are covered by the schedule of fees and that the schedule is subject to change.

d. Example: Our business terms are provided in Appendix A attached to this letter. We expect full settlement of invoices within 60 days of invoice date. An advance amount of [INSERT AMOUNT] is required to begin work. This advance will be held in trust and applied to the first invoice. Any issues with invoices should be directed to [INSERT PARTNER CONTACT]. The terms of our engagement are governed by the laws and the courts of [INSERT JURISDICTION]. Each party to this engagement can end the engagement at will. Upon ending the engagement, a final invoice may be issued.

Case material can be returned to you or stored by us for a limited period of time [INSERT TIME] and will be destroyed after such time.

Additional provisions could be included regarding the two following items that highly depend on national requirements:

6. Preservation of Files

a. In accordance with the law, we will keep the files for a period of [INSERT DURATION] years after termination of the Mandate (and we reserve the right to keep the files in electronic format only).

b. We are entitled to dispose of the files after the expiration of [INSERT DURATION] years from the termination of the Mandate and / or expiration of the intellectual property rights without prior request or notice.

7. Liability Insurance

a. [FIRM NAME] has liability insurance cover up to a maximum amount of [INSERT AMOUNT].

b. If in your assessment of the possible risks of the Mandate, the insurance amount seems insufficient, we ask you to inform us accordingly.

Nota bene:

According to your local practice, you may want to look at the following aspects:

- Business terms might be in a separate document, covering for instance limitation of liability, dispute resolution, privacy, finance and payment terms, file preservation.
- For those countries where the profession is regulated, mention the applicable Code(s) of Conduct.
- State the name of the individual/s at the client company who is/are authorised to give instructions (as far as possible).
- Set out the party other than the client that will be paying the bills (if possible/known at the time of the letter) and ideally set up a costs agreement with that other party.
- Complaints procedure
- Hours of business and what might happen if instructions are sent late
- The importance of informing of change of contact details

Sample engagement letter

[Firm letterhead or details]

[Date]

Dear [CLIENT NAME]

Thank you for choosing [FIRM NAME] for providing professional services in the intellectual property domain. We thank you for your trust and welcome you as a client. This letter sets out the main terms of our engagement. We ask that you please sign this letter confirming your understanding and agreement with these terms.

Mandate

Our mandate will consist of providing the following professional services: [INSERT LIST OF SERVICES].

Other services can be added upon mutual agreement. The terms of this letter will also apply to those other services.

We have conducted a conflict check and believe we are free to act for you.

Work on this engagement and predictions on our part concerning the outcome of your matters are expressions of our best professional judgment, not guarantees of outcome. Such opinions are necessarily limited by our knowledge of the facts, of typical outcomes in similar circumstances, and limited by the state of the law at the time of our analysis.

Service Team

The following team will be assigned to this engagement. Other firm members not mentioned below can also contribute depending on the task to be performed. Hourly rates are subject to change, typically once a year.

Name	Role	Hourly rate and currency	Contact details

Invoicing

Invoices will be sent at regular intervals and will consist of a mixture of fixed fee charges (regardless of time and effort spent on a task) and hourly charges. Fixed fee charges and hourly rates are reviewed once a year and subject to change without notice. Please refer to Appendix A providing our current schedule of fixed fee charges. This schedule is not exhaustive and is subject to change, typically once a year.

Each invoice will provide summaries of tasks performed. Unless indicated as a final invoice, each invoice is an interim invoice. Typically, separate invoices will be sent for each matter being handled.

Business terms

[Our business terms are provided in Appendix B to this letter]. We ask for full settlement of invoices within 60 days of invoice date. Overdue invoices are subject to interest charges of [%] per annum.

[*OPTIONAL*]: An advance amount of [INSERT AMOUNT] is required to begin work. This advance will be held in trust [OPTIONAL] and applied to the first invoice

Should you encounter any issues with invoices or service levels, please direct inquiries to [INSERT CONTACT INFORMATION].

Communications will be provided mainly electronically, without encryption. If you require encrypted communications, please let us know and we can agree on an encryption protocol.

The terms of our engagement are governed by the laws and the courts of [INSERT JURISDICTION]. In the event of any dispute arising out of or in connection with the present engagement, the parties agree in the first instance to discuss in order to amicably resolve any issue and also consider referring the dispute to an appointed mediator as per the International Chamber of Commerce (ICC) Mediation Rules.

Each party to this engagement can end the engagement at will at any time. Upon ending the engagement, a final invoice may be issued. If requested, case material can be returned to you or stored by us for a limited period of [INSERT TIME IN YEARS] after which period, it will be destroyed.

We thank you once again for choosing our firm and look forward to a successful and efficient collaboration.

[FIRM, eg. PARTNER'S NAME, SIGNATURE and DATE]

I have read, understand, and agree to the terms set out above:

[CLIENT'S NAME, SIGNATURE and DATE]



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