

NIALL TIERNEY

B.A (NUI), Dip LS (King's Inns), B.L., (King's Inns), EEATMA (Irl), RTMA (UK)

Terms and Conditions of Business

About Me

I am a Registered Intellectual Property Lawyer. I have practised Intellectual Property law for over 30 years.

All services provided by me are invoiced through TIERNEY IP, of which I am Company Secretary and Director. Please note that all legal advice and assistance is provided directly and solely by me. I maintain a policy of Professional Indemnity Insurance – see further below.

You agree that you are operating a business and that you are *not* a consumer for the purposes of EU Council Directive No. 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

My aim

I aim to offer my clients quality legal advice with a personal service at a fair cost. As a start, I hope it is helpful to you for me to set out in this statement the basis on which I will provide my professional services.

To help me provide you with the best advice and service, please inform me of everything relevant to the work you have asked me to undertake for you. I will not accept any liability for the consequences of your failure to inform me of everything relevant to the work you have asked me to undertake for you.

I need to understand as clearly as possible what you are trying to achieve and the advice that you need. I will let you know as soon as possible if I cannot take on work (for example if there is a conflict with an existing client).

I reserve the right to immediately withdraw my services and recover legal costs from you if you knowingly withhold information relevant to the work you have asked me to undertake for you or if you act in a manner that would undermine my work.

If you instruct me to act for you in a contentious matter, I ask that you do not contact or communicate (*either in writing or orally*) with the other side without first informing me. Non-compliance may seriously prejudice your case and may lead to an automatic termination of my services to you.

During the term of this engagement, you must not use my representative details for, or in relation to, any filing you make in your own name before the Intellectual Property Office of Ireland, the European Union Intellectual Property Office, the United Kingdom Intellectual Property Office and the World Intellectual Property Organization. Using my professional representative details without my prior written consent before any of the aforementioned Intellectual Property Offices will be considered by me to be a breach of these Terms & Conditions.

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I reserve the right to amend these Terms & Conditions in the future, particularly if they are required to comply with changes in law or commercial practice.

Communication between you and me

I will aim to communicate with you by such method as you may request. I may need to virus check discs or email. Unless you withdraw consent, I will communicate with you and others when appropriate by e-mail or fax, but I cannot be responsible for the security of correspondence and documents sent by e-mail or fax.

Where I act for two or more clients jointly, it is on the clear understanding that I am authorised to act on instructions from either, both or any of them.

I may monitor incoming and outgoing emails for internal policy reasons and training purposes.

I reserve the right to amend these Terms & Conditions in the future, particularly if they are required to comply with changes in law or commercial practice.

Regulation

My aim is to always offer all my clients an efficient and effective service. My clients are of first importance to me. I hope that you will be pleased with the work I do for you. However, should there be any aspect of my service with which you are unhappy, please raise with me as soon as possible.

I am regulated as a European Economic Area Trade Mark Attorney by the [Controller of Intellectual Property of Ireland](#).

When acting in my capacity as a Practising Barrister, I am regulated by the [Legal Services Regulation Authority of Ireland](#).

In my capacity as a United Kingdom Registered Trade Mark Attorney, I am regulated by the [Intellectual Property Regulation Board](#). Any complaint regarding work I undertake in my capacity as a United Kingdom Registered Trade Mark Attorney can be referred to the [Legal Ombudsman](#). There are time limits for referring a complaint to the Legal Ombudsman. If you want to do so, you must contact the Legal Ombudsman within six months of my final response to your complaint. The Legal Ombudsman's postal address is P.O. Box 15870, Birmingham B30 9EB, United Kingdom and their helpline can be contacted by telephone on +44 (0) 300 555 0333 or by email at enquiries@legalombudsman.org.uk.

Use of Generative Artificial Intelligence (GenAI)

GenAI is technology that uses artificial intelligence to generate new content from an existing dataset in response to user prompts.

All documentation prepared by me on your behalf, whether submitted to courts, tribunals or the Intellectual Property offices, for which I have accreditation, is done so without the aid or input of GenAI. I may however use GenAI in line with the Law Society of Ireland's "*Guidelines for the Use of Generative Artificial Intelligence by the Legal Profession in Ireland*" to format and spellcheck documents I prepare for you.

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You should be aware that all communications sent by me to you will be treated as copyright protected works under the Irish Copyright and Related Rights Act, 2000 ('**CRRA**'). As such, TIERNEY IP reserves all its rights under the CRRA.

Please bear in mind that all advice provided by me to you is confidential and legally privileged. It is therefore important that you do not upload any documentation I send to you to publically available large language models (LLMs) including, but not limited to, *Copilot*, *ChatGPT*, *Claude* and *Gemini*. To do so will risk losing the confidentiality and privileged nature of the advice and documentation I provide to you. This could result in my advice and documentation provided to you being made available to legal opponents and could therefore seriously undermine any matter I am prosecuting on your behalf.

If I become aware that you have uploaded documentation prepared by me to you, or my written advice to you, to an LLM, I will consider this as a breach of these Terms & Conditions of Business. In such circumstances, I reserve the right to cease providing any further services to you.

I will not revise or modify in any way advice or documentation prepared and provided to you by me on the basis that you have obtained contradictory advice or revised documentation from a LLM. You should be aware that any advice you receive from a LLM is not confidential or legally privileged and could be made available to legal opponents.

Data Protection

In compliance with the [European Union Data Protection Regulation](#), I am committed to ensuring the security and protection of the personal information that I process, and to provide a compliant and consistent approach to data protection. I have always had a robust and effective data protection program in place which complies with existing law and abides by the data protection principles. However, I recognise my obligations in updating and expanding this program to meet the demands of the GDPR and the Irish Data Protection Act, 2018.

For the purposes of Irish and European Union Data Protection law, TIERNEY IP is a Data Controller. The Data Processor is Mr Niall Tierney of Tigurnmas Limited, t/a TIERNEY IP of Galway Technology Centre, Mervue Business Park, Galway, County Galway, Ireland.

I keep the information you provide primarily for the provision of legal services to you and for related purposes including updating and enhancing client records, analysis to help me manage my practice, statutory returns, and legal and regulatory compliance.

My retention of the information you provide is subject to your instructions, EU and Irish Data Protection law and my duty of confidentiality. Please note that my work for you may require me to give information to third parties such as expert witnesses and other professional advisers, e.g., Accountants and Tax Consultants. For me to effectively deliver services under these Terms and Conditions of Business, it may be necessary to transfer your personal data to regulated legal advisers who are located outside the European Union.

The data that I collect from you is stored on secure servers located within the European Union and will only be kept for as long as you are my client.

Unfortunately, the transmission of information via the Internet is not completely secure. Although I will do my best to protect your personal data, I cannot guarantee the security

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of your data transmitted to my site via email. You agree that any transmission is at your own risk. Once I have received your information, I will meet strict procedures and security features to try to prevent unauthorised access.

You have the right to access information I hold about you. You also have the right to request that any information I hold about you be amended if you believe it is inaccurate.

You have the right to ask me not to process your personal data for marketing purposes. You can exercise your right to prevent such processing at any time by contacting me at office@tiernevip.com.

Deadlines

I will confirm any deadlines with you and, where appropriate, agree a timetable. I will do my best to meet this timetable. However, sometimes this will not be within my control and will depend on the degree of co-operation I get from you, other parties involved or their advisers. If there is an issue, I will inform you and agree a course of action.

It is important that you act quickly when I notify you of an important deadline and that you provide me with requested information and instructions in good time before the deadline expires.

My hours of business

The normal hours of opening at my office are between 8:30 a.m. and 6:30 p.m. (UTC+0) on weekdays. Messages can be left on voicemail outside those hours and appointments can be arranged at other times when this is essential.

People responsible for your work

I will be solely responsible for dealing with your work.

Charges and expenses

My fees will be governed by these Terms & Conditions. Notwithstanding, it is my policy to discuss with you charges and billing at an early stage to make sure you understand how legal fees are calculated and charged.

On request from you, I will try to give you an estimate of how much the work is likely to cost based on my understanding of the facts known at the time. Where this is difficult to do because of the nature of the work, I will try to provide an indication of how much to budget for, based on my experience of similar work undertaken previously. I will let you know as soon as I can if this budget changes.

I am also happy to advise when fees reach a certain level or when you can set a limit on the level of charges that may be incurred without further reference to you.

Any estimate of charges for work to be carried out is not intended to be fixed unless I say so expressly. I will ensure that the difference between an estimate and a fixed fee is made clear.

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Please be aware that, after providing you with a cost estimate, I will continue to work on your matter unless I receive your written instructions by return to cease all further work.

I reserve the right to charge for all work done between providing you with my cost estimate and receiving your instructions to cease work.

I may have to pay out various other expenses on behalf of clients ranging from Trade Mark and Designs Registry fees, court fees, barristers' fees, foreign professional advisers' fees, experts' fees, and so on. I will not make such payments unless you have provided me with the funds in advance for that purpose. I refer to such payments generally as 'Disbursements'. VAT may be payable on certain expenses. In cases where I have not been provided with funds in advance and I am required to pay 'Disbursements' in order to meet a vital deadline (e.g. Paris Convention Priority claim), please note that an additional surcharge of 20% the Disbursement will appear on my firm's invoice to you.

I charge a minimum of €3,000 (**'Hearing Expenses Fee'**) to cover my expenses in travelling to, and attending at, oral hearings on your behalf. My Hearing Expenses Fee must be paid in advance of any hearing you instruct me to attend.

I may not undertake any further work in relation to a matter instructed by you and invoiced by TIERNEY IP unless all bank charges in attending to payment of our invoices are incurred and paid by you in full.

Please be aware I will not accept responsibility for the loss or abandonment of Trade Mark and/or Design rights due to your failure to provide me with funds in timely manner.

Some Intellectual Property Offices offer expedited examination of Trade Mark and Design applications upon full payment of the filing fee at the date of application. If you want expedited examination, I will require funds in advance of filing the application.

Please note that if you instruct me 24 hours before a vital deadline (e.g. Convention Priority) and I am required to pay Intellectual Property Office outlays on your behalf, I will charge an additional levy of 4% on the amount that has been outlaid by my practice.

Unless I agree otherwise, my charges will be calculated mainly by reference to my Hourly Rate in respect of any work which I do on your behalf. From time to time I may arrange for some of this work to be carried out by persons not directly employed by me; such work will be charged to you at the hourly rate which would be charged if I had done the work.

I charge an hourly rate for non-fixed fee work. **My current hourly rate is €600 plus VAT.**

My hourly rate work includes, but is not limited to, the following:

- Meetings with you and/or others within your business (in person, telephone, or video conference).
- Correspondence with you whether by email, letter, or messaging services, e.g., Signal®.
- Reading, preparing, and working on papers.
- Attending at Court/Intellectual Property Office hearings. This may involve time necessarily spent travelling away from the office.

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For work undertaken outside our normal hours of business, my charges will be calculated based on my **'Urgent Hourly Rate' of €1,000**. Urgent work applies to instructions received for action to be taken, or a deadline to be met, within the following 24 working hours or if the matter involves and requires work over the weekend/public holiday to meet a deadline, whether official or not, falling on the next working day.

I charge on a Fixed Fee basis for routine work carried out before relevant Intellectual Property offices. Copies of my Fixed Fee schedules can be provided on request.

NB: Please be aware that any work I carry out which is not specifically mentioned on my Fixed Fee schedules is charged on an hourly basis. This includes, but is not limited to, work in handling substantive official objections and/or acting on your instructions in relation to oppositions, cancellation, and invalidation actions.

If you want an estimate of my fees, **it is vitally important** that you ask me in advance of work I undertake for you. This should avoid any future misunderstanding regarding my firm's invoices.

Where applicable, I will add Value Added Tax (VAT) at the rate that applies when the work is done. At present, the Irish Government VAT rate is 23%. TIERNEY IP's VAT No is IE3432053LH.

As an alternative to being billed on an hourly basis, you may wish to consider my Alternative Fee Arrangements, details of which can be provided on request.

NB: Please note that, unless you work with me based on my Alternative Fee Arrangements or under a previously agreed fee arrangement, you will be charged an hourly rate for non-fixed fee work.

NB: I may ask for a retainer (**'Money on Account'**) in advance for contentious disputes involving other parties, e.g., Trade mark oppositions, Trade mark cancellations, invalidation actions and invalidation actions against Registered Designs. I reserve the right to ask for a top-up retainer fee for matters that become protracted and/or where significant preparation and filing of evidence is required.

My fees may have to be reviewed periodically to reflect increases in overhead costs and inflation. Normally the rates are reviewed with effect from 1 January each year. If a review is carried out before a pending matter has been concluded, I will inform you of any variation in the rate before it takes effect.

My charges will also include payments which involve the firm in providing facilities or administration, for instance bank transfers, multi-party conference calls and interactive based products for online reporting and file, document/deed storage.

If, for any reason, a matter does not proceed to completion, I will be entitled to charge you for work done and expenses incurred.

Payment arrangements

It is my practice to ask clients to pay interim bills and sums of money from time to time on account of the charges and expenses which are expected in the following weeks or months. I find

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that this helps clients in budgeting for costs as well as keeping them informed of the legal expenses which are being incurred. If such requests are not met with prompt payment, delay in the progress of a case may result. In the unlikely event of any bill or request for payment not being met, I reserve the right to stop acting for you further.

It is also my practice to ask clients to pay interim bills of charges and expenses where a client matter is likely to become protracted.

Payment of all invoices is due on receipt and no later than 28 days from the date of issue.

By virtue of European Directive 2011/7/EC, a statutory late payment interest of 8 percentage points above the European Central Bank reference rate may be added to the amount on an invoice if it remains outstanding 60 calendar days after its issuance. Failure to pay accrued interest, even if the principal sum is paid, will still result in an outstanding balance on your account with me.

Interest will also be charged daily at the Irish Courts Acts Interest judgment debt rate prevailing from time to time (currently 8%) from the date of a court judgement in my favour.

If any invoice issued to you by TIERNEY IP is outstanding for more than 180 days, I will immediately cease acting for you until the outstanding invoice is settled in full. Ceasing to act for you includes applying to remove myself as your representative before the Intellectual Property Offices where I am accredited. This could potentially result in you losing your registered IP rights due to lack of an appointed representative.

In addition to standard wiring of payments to our bank, TIERNEY IP can also accept payment via PayPal®. If you wish to pay our invoices via PayPal®, please let me know in advance so that TIERNEY IP can email you a PayPal® generated invoice/link. Please be aware that if you choose to pay via PayPal®, an additional charge of €15 will be added to your invoice and marked 'Financial Outlays'.

Unless I agree to the contrary with you in advance, where disbursements and outlays are incurred by TIERNEY IP on your behalf, I may charge a 4% fee of the total invoice disbursement (with or without VAT as applicable) to cover exchange rate fluctuations, bank charges and other financial costs met by TIERNEY IP in settling same. Our charge will appear your invoice as 'Financial Outlays'.

The law entitles me to retain any money, papers or other property belonging to you which properly come into my possession pending payment of my costs, whether the property is acquired in connection with the matter for which the costs are incurred. This is known as a 'General Lien'. I am not entitled to sell property held under a lien, but am entitled to hold property, other than money, even if the value of it greatly exceeds the amount due to me in respect of costs.

For clients based in Ireland (Republic of Ireland), you agree that the District Court of Tuam, County Galway shall have jurisdiction in respect of any claim up to €15,000.00 made against you for non-payment of our invoices.

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Please note that I may also seek a Levy of Execution against any European Union Intellectual Property rights you may own. A Levy of Execution may make it difficult for you to subsequently transfer or licence affected Intellectual Property Rights.

TIERNEY IP does not accept payments in cash more than €500. Monies due to you from TIERNEY IP will be paid by electronic bank transfer, but not in cash, and will not be made payable to a third party.

Other parties' charges and expenses

In some cases, and transactions, a client may be entitled to payment of costs by some other person. It is important that you understand that, in such circumstances, the other person may not be required to pay all the charges and expenses which you incur with me. It is your responsibility to pay my charges and expenses in the first place and any amounts which can be recovered will be a contribution towards them. If the other party is in receipt of legal aid, no costs are likely to be recovered.

If you are successful and a court/tribunal orders another party to pay some or all your charges and expenses, interest can be claimed on them from the other party from the date of the court order. I will account to you for such interest to the extent that you have paid my charges or expenses on account but am entitled to the rest of that interest.

It is rare for a successful litigant to obtain an order from a court/tribunal recovering all their legal costs. Usually, a successful litigant will be left with a residual liability for costs. You should not assume that if you are successful, you will have no costs liability.

You will also be responsible for paying my charges and expenses of seeking to recover any costs that the court orders the other party to pay to you.

A client who is unsuccessful in a court case may be ordered to pay the other party's legal charges and expenses. That money would be payable in addition to my charges and expenses. Arrangements can be made to take out insurance to cover liability for such legal expenses. Please discuss this with me if you are interested in this possibility.

If you have legal expenses insurance, you must claim against your insurer immediately because insurers will not usually cover my fees until they have accepted your claim and agreed to nominate me as their lawyer. You are responsible for my costs in any event and if your insurer refuses to pay my costs, I will look to you for settlement. Insurers rarely pay bills before completion of a matter. I will try to agree interim payments with your insurer, but if they refuse, I reserve the right to send interim invoices to you.

Storage of papers and documents

After completing the work, I am entitled to keep all your papers and documents while there is money owing to me for my charges and expenses. In addition, I will keep your file of papers for you in storage for not less than one year. After that, storage is on the clear understanding that I have the right to destroy it after such period as I consider reasonable or to make a charge for storage if I ask you to collect your papers and you fail to do so. I will not of course destroy any documents such as deeds and other securities, which you ask me to hold in safe custody. No

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charge will be made to you for such storage unless prior notice in writing is given to you of a charge to be made from a future date which may be specified in that notice.

If I retrieve papers or documents from storage in relation to continuing or new instructions to act in connection with your affairs, I will not normally charge for such retrieval. However, I may make a charge based on time spent at the junior executive hourly rate for producing stored papers or documents to you or another at your request. I may also charge for reading, correspondence, or other work necessary to comply with your instructions.

Financial services and insurance contracts

If, while I am acting for you, you need advice on investments, I may have to refer you to someone who is authorised by the Central Bank of Ireland. I am not authorised by the Central Bank of Ireland.

Termination

You may terminate your instructions to me in writing at any time, but I will be entitled to keep all your papers and documents while there is money owing to me for my charges and expenses. If at any stage you do not wish me to continue doing work and/or incurring charges and expenses on your behalf, you must tell me this clearly in writing.

Where I am instructed to act as representative on record for Trade Marks and Designs before the Intellectual Property Office of Ireland; the European Union Intellectual Property Office or the United Kingdom Intellectual Property Office, you agree to instruct me to handle the future renewals and other maintenance fees relating to same. If you choose not to appoint me to handle the renewal of the relevant registered Trade Mark or Design, or if such fees are paid through a third party, I will immediately cease acting as representative on record¹.

If I decide to stop acting for you, for example if you do not pay an interim bill or comply with a request for a payment on account, or if there is a conflict of interest, I will tell you the reason and give you notice in writing.

If you or I decide that I should stop acting for you, you will pay my charges up until that point. These are calculated on as set out in these terms and conditions.

Tax advice

Any work that I do for you may involve tax implications or necessitate the consideration of tax planning strategies. I may not be qualified to advise you on the tax implications of a transaction that you instruct me to carry out, or the likelihood of them arising. If you have any concerns in this respect, please raise them with me immediately. If I can undertake the research necessary to resolve the issue, I will do so and advise you accordingly. If I cannot, I may be able to identify a source of assistance for you.

¹ Please be aware that owners of EUTMs and RCDs who are not domiciled in the European Economic Area (EEA) or who have no real and commercial establishment within same are required to appoint an EEA based representative. For firms and their clients who are based outside of the United Kingdom, failure to have an address for service runs a serious risk of not being made aware of any challenges against your/your clients' UK Trade marks or Designs.

Identity, disclosure, and confidentiality requirements

I am entitled to refuse to act for you if you fail to supply appropriate proof of identity for yourself or for any principal whom you may represent. I may arrange to carry out an electronic verification of your identity if I consider that a saving of time and cost will be achieved by doing so. The cost of any such search will be charged to you. If the amount is more than €10 including VAT, I will seek your prior agreement.

I am under a professional and legal obligation to keep the affairs of a client confidential. This obligation, however, is subject to a statutory exception: legislation on money laundering and terrorist financing has placed lawyers under a legal duty in certain circumstances to disclose information to the relevant crime prevention agencies. Where a practitioner knows or suspects that a transaction on behalf of a client involves money laundering, he may be required to make a disclosure. If, while I am acting for you, it becomes necessary to make such a disclosure, I may not be able to inform you that it has been made, or of the reasons for it, because the law prohibits ‘tipping-off’. Where the law permits me, I will tell you about any potential money laundering problem and explain what action I may need to take.

I may be subject to audit or quality checks by external firms or organisations. I may also outsource work. This might be for example data processing, typing, or photocopying or costings, or research and preparation to assist with your matter. Information from your file may therefore be made available in such circumstances. I will always aim to obtain a confidentiality agreement with the third party.

External firms or organisations may conduct audit or quality checks on my practice. These external firms or organisations are required to maintain confidentiality in relation to your files.

To comply with court and tribunal rules, all documentation relevant to any issues in litigation, however potentially damaging to your case, may have to be preserved and may be required to be made available to the other side. This aspect of proceedings is known as ‘Disclosure’. Subject to this, I will not reveal confidential information about your case except as provided by these terms of business and where, for example, your opponent is ordered to pay my costs, I must meet obligations to reveal details of the case to them and to the court.

Mediation

I actively encourage clients to consider mediation as means to resolve any dispute which may arise involving your Intellectual Property rights. I am a signatory to the [WIPO Mediation Pledge for IP and Technology Disputes](#).

Copyright

TIERNEY IP retains copyright in all documentation prepared by me for you. However, where I have prepared documents for your use, TIERNEY IP grants you a royalty free licence to use those documents for the purpose for which they are prepared.

TIERNEY IP retains the right to revoke the royalty free licence if I believe you are using documentation prepared for you in a manner which is in contravention of these Terms & Conditions of Business.

References and testimonials

I may ask you whether you are willing to provide a reference for potential clients or to speak to directory researchers or give testimonials relating to the firm or individuals working at the firm. I will not reveal your name without speaking to you first and obtaining your approval.

Insurance

I maintain professional indemnity insurance. That insurance covers the professional services provided by me worldwide. My insurance is obtained through PAMIA Limited of 90 Fenchurch Street, London EC3M 4ST, England.

I am insured by UK P&I Club N.V., which is a Dutch insurance company regulated by De Nederlandsche Bank (DNB) and Autoriteit Financiële Markten (AFM).

You agree that liability in the event of a successful claim of negligence is limited to GB£500,000 for successful claims arising in the jurisdictions of the United States of America and Canada and GB£1 million for each and every successful claim elsewhere.

Governing Law and Jurisdiction

These Terms and Conditions shall be governed by the law of Ireland. The High Court of Ireland shall have exclusive jurisdiction to determine and settle all disputes arising out of, or in connection with, these present Terms and Conditions.

Terms and Conditions of Business – Future instructions

Unless otherwise agreed, and subject to the application of then current daily rates, these Terms and Conditions of Business shall apply to any future instructions given by you to me. I would encourage you to confirm your acceptance of these Terms and Conditions of Business by signing and dating below. You should retain these Terms and Conditions for future reference.