

General/ Conclusion of contract

CETMOS is a Community-based industrial property information product created by the national authorities listed below (hereinafter referred to as "CETMOS parties" only).

Only the web form on this website may be used to commission a CETMOS similarity search. In confirming acceptance by email, the principal shall conclude a contract with the national offices participating in CETMOS.

This will mean that individual reports will be drawn up on the basis of the quality criteria established by the CETMOS parties and that the said parties will themselves be responsible for their production and for any omissions or delays. For reasons of cost efficiency, the Austrian Patent Office shall attend to the logistical processing of payment transactions and the submission and immediate referral of the order to the Hungarian Patent Office for further processing.

The Hungarian Patent Office shall in its turn be responsible for both executing the order and compiling individual reports and forwarding them to the principal.

Language of the contract:

English shall be the expressly agreed language of the contract.

Prices:

All services used by the principal shall be charged on the basis of the current price list and provided in accordance with the service description available on this website. Price errors shall be expressly excepted.

Unless otherwise stated, all prices shall be understood as gross amounts, including legal turnover tax and excluding any dispatch costs.

Any duties or taxes falling due in the course of dispatch which are beyond the control of the CETMOS parties shall also be for the principal's account.

Delivery:

All CETMOS parties shall, in the interests of their principal, endeavour to complete the similarity search within a reasonable period of time. Delivery shall normally be completed within 6 weeks of formal validation of the contract. It is hereby agreed that the preparation of individual reports will commence no later than three working days following validation.

Delivery shall be by email to the address indicated by the principal.

Any costs arising from incorrect, incomplete or unclear information provided by the principal shall be for the latter's account.

Scope of service:

The service shall be provided on the basis of data currently available in certified data banks.

Individual reports shall therefore include a search of the CETMOS parties' trademark portfolio, covering both filed and registered national marks as well as international marks with respective country designation.

The Austrian Patent Office shall also check filed and registered Community trademarks and international marks with European Community designation.

The CETMOS similarity search shall include no legal advice. While the sorting of trademarks according to their similarity to the search names keyed in is an aid, it may not replace an individual legal ruling where there is a conflict with older established trademark rights.

Payment terms:

Unless otherwise agreed, payment shall be due free of any charges or taxes upon receipt of invoice. The amount owed shall be paid into the Austrian Patent Office's account and the invoice shall quote "CETMOS" as the reason for payment.

In the event of late payment, the principal shall settle both legally established late interest and all resultant dunning and collection costs for legal proceedings. Any assertion of higher damage claims shall be expressly excepted.

Reservation of title:

It should be clearly stated that, pending payment in full by the principal, the search results supplied shall remain the property of the CETMOS parties.

Data protection:

The CETMOS parties hereby declare that they will pay due heed to principal privacy and will comply strictly with any applicable data protection provisions.

The principal shall note, however, that the use in the contract of data concerning him will be stored and processed for accounting and principal record purposes. The data shall be used to complete any legal requirements and for order processing - including forwarding to the Hungarian Patent Office - and payment purposes.

Intellectual property rights:

Intellectual property rights concerning the CETMOS similarity search shall be reserved. The search shall be intended solely for the principal's own or, in the case of an information transfer, the third party's needs. Reproduction, distribution and reprinting for commercial purposes shall be prohibited.

National industrial property authorities involved in the CETMOS trademark similarity search:

Austrian Patent Office
Patent Office of the Republic of Bulgaria
State Intellectual Property Office of the Republic of Croatia
Industrial Property Office of the Czech Republic
Hungarian Patent Office
Patent Office of the Republic of Poland
State Office for Inventions and
Trademarks of Romania
Industrial Property Office of the Slovak Republic
Slovenian Intellectual Property Office

CETMOS - Administrative conditions concerning the services delivered by Austria

Scope

(1) The following "General Terms and Conditions of Business" (GTCB) shall apply to business relations between the principal and the Austrian Patent Office (agent) in the case of all orders concerning the Austrian part of the CETMOS similarity search (hereinafter referred to as CETMOS - Austria).

CETMOS-Austria shall cover the search of the trademark portfolio of both the Austrian Patent Office and the Office for Harmonization in the Internal Market. Scrutiny shall cover filed and registered national trademarks as well as international trademarks with Austrian and European Community designation and filed and registered Community trademarks.

Any agreements derogating from the above shall require written form.

The principal shall, in submitting an order, declare his agreement with these GTCB and shall be bound by them.

(2) Should individual provisions of the GTCB be wholly or partly ineffective on the basis of mandatory legal requirements (in particular, the provisions of the Consumer Protection Act), the effectiveness of the remaining provisions thereof shall remain unaltered.

(3) It should be expressly stated that the CETMOS-Austria similarity search shall include no legal advice. While the sorting of trademarks according to their similarity to the search names keyed in is an aid, it may not replace an individual legal ruling where there is a conflict with older established trademark rights.

Conclusion of contract:

Our website offers shall be without obligation and should be seen as an invitation to the principal to submit an offer himself. The contract shall be concluded with confirmation of acceptance of the order by the Austrian Patent Office in the form of a confirmation email.

Language of the contract:

English shall be the expressly agreed language of the contract.

Right of withdrawal in the case of distance selling

1) Inasmuch as the principal is a consumer within the meaning of the Consumer Protection Act, it may withdraw, pursuant to Article 5e thereof, from a distance selling contract concluded by it or a distance selling contract declaration submitted by it up to the expiry date for the periods stated in paragraphs 2 and 3. It shall suffice for the withdrawal declaration to be sent before such date.

2) The withdrawal period shall amount to seven working days, excluding Saturday, which shall not count. In the case of goods delivery contracts, it shall commence on the day of receipt by the consumer and in that of service provision contracts on the day of the contract's conclusion.

3) If the Austrian Patent Office fails to honour its information obligations under Article 5d(1) and (2) of the Consumer Protection Act, the withdrawal period shall amount to three months from the dates referred to in paragraph 2. If it fails to honour its information obligations within this latter period, the period for exercising right of withdrawal as referred to in paragraph 2 shall commence on the date of forwarding of the information.

The consumer shall have no right of withdrawal where service provision commences within seven working days of the contract's conclusion by agreement with the consumer.

Prices:

All services used by the principal shall be charged on the basis of the current price list and provided in accordance with the service description available on this website. Price errors shall be expressly excepted.

Unless otherwise stated, all prices shall be understood as gross amounts, including legal turnover tax and excluding any dispatch costs.

Any duties or taxes falling due in the course of dispatch which are chargeable to the principal and on which the Austrian Patent Office or the office responsible for dispatch of the CETMOS search has no bearing shall also be for the principal's account.

Delivery:

The Austrian Patent Office and all CETMOS parties shall, in the interests of their principals, endeavour to complete the similarity search within a reasonable period of time. Delivery shall normally be completed within 6 weeks of formal validation of the contract. It is hereby agreed that the preparation of individual reports will commence no later than three working days following validation.

Delivery shall be by email to the address indicated by the principal and is only carried out after our account has been credited.

Any costs arising from incorrect, incomplete or unclear information provided by the principal shall be for the latter's account.

Payment terms:

Unless otherwise agreed, payment shall be due free of any charges or taxes upon receipt of invoice.

In the event of late payment, the principal shall settle both legally established late interest and all resultant dunning and collection costs for legal proceedings. Any assertion of higher damage claims shall be expressly excepted.

Guarantee and compensation

(1) The guarantee shall be governed by the statutory legal provisions.

(2) Omissions or shortcomings occurring shall, where possible, be notified at the time of delivery; no adverse legal consequences shall attach to the principal, who shall be the consumer within the meaning of the Consumer Protection Act, in the event of the failure to notify.

(3) Where an objection is justified, the Austrian Patent Office shall be entitled to rectify such omission or shortcoming at its own option, in particular to provide a replacement. Should rectification prove abortive or should the Austrian Patent Office be unable to provide a replacement, the principal shall be entitled to demand a price reduction or, where the omission or shortcoming is not a minor one, redhibitory action. The legal guarantee provisions shall be valid in respect of customers who are consumers within the meaning of the Consumer Protection Act.

(4) The Austrian Patent Office shall provide information services with the customary commercial care and attention on the basis of the principal's instructions and the stored data made available by the industrial property institutions at the time of order processing. Although the stored data will be updated in line with the latest technical openings, the Austrian Patent Office shall not guarantee their uninterrupted availability.

The liability of the Austrian Patent Office for technical breakdowns, interruptions, the insecurity of external networks, failed or faulty data transmission, accuracy, topicality, completeness of data queries conducted in available databanks or other problems in this connection, together with the consequences thereof, shall be excluded where such occurrences are not intentional or not due to gross negligence on the part of the Austrian Patent Office.

Even if deadlines are contractually binding, the Austrian Patent Office shall not justify delays in delivery and service provision occurring beyond its control as a result of events making it fundamentally difficult or impossible for it to provide the services, in particular the breakdown or disruption of communications networks, etc., even if they involve its agents and are not foreseeable at the time of the contract's conclusion. They shall entitle the Austrian Patent Office to defer delivery or service provision by the duration of any such impediment.

It is hereby agreed that, in providing its services, the Austrian Patent Office shall, except in the case of losses incurred by persons through intention or gross negligence, be liable for late provision or non-provision of services only where it has to cover for such losses. Liability for minor negligence shall be expressly excluded. This shall be the case also with any compensation for consequent loss(es), purely financial loss(es), unearned profits, savings, loss of interest and loss or damage arising from third party claims against the principal.

The above provisions shall apply to privity of contract in respect of consumers within the meaning of the Consumer Protection Act only insofar as no conflicting mandatory provisions of the latter obtain.

Data protection:

(1) The Austrian Patent Office shall pay due heed to the principal's privacy and shall comply strictly with any applicable data protection provisions.

(2) The principal shall note, however, that the use in the contract of data concerning him will be stored and processed for accounting and record purposes. The data shall be used to complete any legal requirements and for order processing and payment purposes.

Intellectual property rights:

All intellectual property rights in the part of the CETMOS similarity search established by the Austrian Patent Office shall remain reserved. The search shall be intended solely for the principal's own or, in the case of an information transfer, the third party's needs. Reproduction, distribution and reprinting for commercial purposes shall be prohibited.

Venue and applicable law:

(1) This contract shall be subject to the application of substantive Austrian law. If the principal is a consumer, the mandatory provisions of the law of the state in which he is normally domiciled shall also apply.

(2) The competent court at the headquarters of the Austrian Patent Office shall have exclusive jurisdiction in disputes. If the principal is a consumer within the meaning of the Consumer Protection Act, the court in the parish in which the principal has its place of domicile, usual residence or employment shall have jurisdiction.

As at:

August 2007