

TERMS OF ENGAGEMENT FOR SERVICES

1. Definitions

In these Terms the following terms have the meanings indicated:

- 1.1 'Applidyne' means van de Loo Family Trust trading as Applidyne Australia Pty Ltd (ACN 131 827 382, ABN 56 529 544 181)
- 1.2 'Applidyne Personnel' means Applidyne's officers, employees, secondees and contractors;
- 1.3 'Agreement' means the agreement that arises between Applidyne Australia Pty Ltd and the Client based upon and including the Quotation and these Terms of Engagement;
- 1.4 'Quotation' means the outline of the program of work and the agreed 'Outputs' between Applidyne Australia Pty Ltd as formally defined and agreed by the Applidyne Quotation.
- 1.5 'Project' means the activities to be carried out by Applidyne Australia Pty Ltd as specified in the Quotation (as varied or extended in any way by agreement in writing from time to time);
- 1.6 'Client' means the client identified in the Quotation.
- 1.7 'Parties' means the Client and Applidyne Australia Pty Ltd. 'Party' means either the Client or Applidyne Australia Pty Ltd.
- 1.8 'Outputs' means the outputs from the Project as described in the section of the Quotation entitled "The Project."
- 1.9 'Services' means any provision made from Applidyne Australia Pty Ltd to the Client as part of the Agreement which includes, but is not limited to reports, results, recommendations, product and process designs, system requirements and design, design documentation, products, prototypes, test beds, equipment, or other deliverables developed for the Client.
- 1.10 'Product' means products derived from Services provided to the Client under the terms of the Agreement.
- 1.11 'Project Intellectual Property' (IP) is as defined in clause 12.2;

2. Introduction

- 2.1 Applidyne has set out in this document our basic terms of business (the 'Terms'), which together with our Quotation (together called "the Agreement"), will apply to all work Applidyne undertakes for the client with respect to the Agreement. If there is any conflict between these Terms of Engagement and our Quotation then the Quotation shall prevail.
- 2.2 For the purposes of these terms and conditions, Applidyne includes Applidyne Australia Pty Ltd, its officers, employees, agents, contractors and all related entities.

3. Our Services

- 3.1 Applidyne will provide the Services as set out in our Quotation and will use all reasonable commercial efforts to provide the Services in an efficient and timely manner, using the necessary skill and expertise to an appropriate professional standard.
- 3.2 The Services do not include the provision of legal, accounting, taxation or financial product advice.

4. Client Obligations

- 4.1 The Client agrees to pay the Services in accordance with the Agreement.
- 4.2 The Client will provide Applidyne promptly with such information and assistance as any reasonably be required for the proper performance of the Services, including:
 - (a) Access to appropriate members of the Client's staff, records, information, technology, systems and premises;
 - (b) Arranging access to third parties where applicable;
 - (c) Where necessary, providing reasonable working facilities on the Client's site for Applidyne;
 - (d) Making decisions promptly, to facilitate performance of the Services; and
 - (e) Providing any other information or assistance set out in the Agreement.
- 4.3 Applidyne shall be entitled to rely upon the accuracy of all information provided by the Client, or by Third Parties on the Client's behalf, without having to independently verify it.
- 4.4 The Client acknowledges that if the Client fails to comply with its obligations under this clause that failure may cause or contribute to an increase in any estimated fee advised by Applidyne to the Client, Applidyne incurring additional costs, charges and expenses and delays in Applidyne carrying out the Agreement.
- 4.5 The Client shall retain responsibility for the use of, or reliance on, services provided by Applidyne.
- 4.6 The Client shall not be obliged to disclose information that is not reasonably relevant to the Assignment.

5. Confidentiality

- 5.1 Both parties acknowledge that they may, during the course of the Project, be exposed to or acquire information that is proprietary or confidential to the other party. The Client agrees to make reasonable endeavours to inform Applidyne when information which is shared is confidential. Applidyne will use reasonable endeavours to preserve the confidentiality of information supplied to Applidyne by the Client that the Client designates as confidential information. Exceptions to this are disclosures to legal advisors, disclosures required by law and disclosures necessary for the proper performance of the Services.
- 5.2 The Client agrees that confidential information may be disclosed to Applidyne Personnel that those Applidyne Personnel provided that those Applidyne Personnel are subject to appropriate confidentiality obligations. Nothing in these Terms of Engagement shall impose on Applidyne the obligation not to disclose or use information already known to Applidyne to its disclosure to Applidyne by the Client, or lawfully received by Applidyne from a third party, or information published at the date of such disclosure, or information which is in or enters the public domain through no fault of Applidyne (including but not limited to Project IP which ceases to be confidential information of the Client through no fault of Applidyne).
- 5.3 Subject to clause 5.1 and clause 17, and once the Agreement to which the Services relate is no longer confidential, we may cite the performance of the Services to our clients and potential clients as an indication of our experience.

6. Benefit of advice

- 6.1 Unless otherwise specifically stated in the Quotation documentation, any advice or opinion relating to the Services is provided solely for the client's benefit and may not be disclosed in any way, to any other party and is not to be relied upon by any other party.
- 6.2 Applidyne will not be under any obligation in any circumstance to update any advice or report, oral or written, for events occurring after the advice or report has been issued in final form.

7. Electronic Mail

- 7.1 The electronic transmission of information cannot be guaranteed to be secure or virus or error free and consequently such information could be intercepted, corrupted, lost, destroyed, be sent to an incorrect address, arrive late or incomplete or otherwise be adversely affected or unsafe to use.
- 7.2 The Client confirms that they accept these risks and authorise electronic communication between the Client and Applidyne, and agree to release Applidyne from any claim the Client may have as a result of any error, damage, loss or omission arising from or in connection with the electronic communication of information between the Parties or reliance on such information. The Client agrees to advise Applidyne in writing if they do not wish to communicate electronically with Applidyne.

8. Invoicing and Payment

- 8.1 The Quotation specifies a fee and payment schedule. An up-front authorisation fee will be invoiced to the Client upon receipt of the Client's authorisation to proceed with the Agreement. Further invoices will then be issued at intervals of 14 days for fees and expenses incurred or as otherwise specified in the Quotation.
- 8.2 The Client must pay the initial invoice immediately upon receipt. All subsequent invoices must be paid by the Client within 14 days of the invoice date. If the Client fails to pay on invoice when due Applidyne reserves the right to charge interest on any outstanding balance at a rate of 2% over the current Official Cash Rate as set by the Reserve Bank and the Client shall pay such interest on demand. Each invoice shall be sufficient evidence of the details therein including the amount owed to Applidyne.
- 8.3 The Client must pay, in addition to Applidyne charges as state in the Quotation, any taxes, duties, excise or other government charges that are applicable to the provision, delivery or use of the Services.
- 8.4 Unless stated in the Quotation that the Agreement is a Fixed-Fee Agreement, any fee estimate given by Applidyne will be given in good faith but is not contractually binding. Fee estimates will be subject to the stated qualifications and assumptions and to any factors outside our control. Applidyne will notify the Client if it becomes reasonably apparent that an estimate is likely to be materially exceeded and will seek approval from the Client for fees in excess of the limits specified in the Quotation.
- 8.5 If we are required by law to produce documents or attend court in relation to the Services for judicial or administrative proceedings to which Applidyne is not a party, the Client shall reimburse Applidyne at standard billing rates for our professional time and expenses, including reasonable legal fees, incurred in responding to such requests.
- 8.6 Applidyne may at its discretion engage debt recovery services to recover debts when one or more invoices remain unpaid after 60 days from date of issue, and 7 days notice has been given in writing. All reasonable costs incurred in debt recovery shall be borne by the client.
- 8.7 Applidyne may from time to time discount its fees. Such a reduction in fees will be listed on the invoice for the relevant periods. Applidyne reserves the right to subsequently invoice these fee reductions if the client is in breach of this Agreement, including a breach of payment terms.
- 8.8 No deduction to the Fee shall be allowed by way of set-off, counterclaim to otherwise without Applidyne's prior written consent.
- 8.9 If the Client defaults on payment, Applidyne may withhold any services until payment in full by the Client.

9. Materials and Expenses

- 9.1 The Client agrees to pay Applidyne an amount in respect of materials, the services of third parties, the use of third parties' equipment and other expenses unless they are provided by the Client free of charge or are directly invoiced to the Client by the supplier or third party. Subject to clause 8.3 of these Terms of Engagement, the amount payable by the Client will be cost plus a mark-up of 15%.

10. Validity of Quotation

- 10.1 Quotations are valid for acceptance within 60 days from the date they bear and unless otherwise agreed by Applidyne in writing shall lapse if not accepted within that period.

11. Information and Applidyne Statements

- 11.1 In addition to clause 6.1 and 6.2, all information contained, and all surveys, forecasts and recommendations made in the Quotation and other report or letter to the Client are supplied and prepared by Applidyne in good faith upon the basis of information, statements, assumptions and representations provided or made to Applidyne by or on behalf of the Client or otherwise available to Applidyne. Applidyne honestly believes (but has made no inquiry nor undertaken any due diligence) that all information supplied or to be supplied by Applidyne in relation to the Project will be of commercial value to the Client but Applidyne does not warrant or represent that any of its accurate, fully comprehensive in its field or suitable to the Client's purposes; nor does Applidyne warrant or represent that surveys or forecasts made by Applidyne in relation to the Project are accurate or will be realized, since the accuracy of surveys and the achievement of results forecast must depend upon matters outside Applidyne's control.
- 11.2 For the avoidance of doubt, no statement of fact made by Applidyne whether in the Quotation or in any report or letter to the client or whether made orally, is to be constructed as a representation, undertaking or warranty.

12. Intellectual Property Rights

- 12.1 The Client or its licensors shall retain ownership of any intellectual property rights in materials and information provided by the Client to Applidyne for use by Applidyne for the purposes of undertaking the Project. The Client grants a non-exclusive free licence to Applidyne for use by Applidyne for the purposes of undertaking the Project. The Client grants a non-exclusive free licence to Applidyne and Applidyne Personnel to use such intellectual property of the Client for the purposes of undertaking the Project. Applidyne or its licensors shall retain ownership of any intellectual property rights in materials, information, tools and methodologies provided by Applidyne or Applidyne Personnel for the purposes of undertaking the Project (and any improvements to them) and unless stated otherwise in the Quotation Applidyne shall with effect from the Termination Date, and provided the Client has paid to Applidyne all outstanding fees and charges due to Applidyne, give the Client a non-exclusive free licence to use such Applidyne intellectual property as may be embodied in the Outputs.
- 12.2 Subject to clause 12.1, with effect from the termination Date and provided that the Client has paid to Applidyne all outstanding fees and charges due to Applidyne, Applidyne assigns to the Client all patent, trademarks and design registration:
- (a) That are embodied in the Outputs;
 - (b) That are created by Applidyne staff as a direct result of Applidyne undertaking the Project; and
 - (c) For which the Client provides Applidyne a copy of any application for registration within 12 months of the Termination Date,
- For such rights (comprising the Project IP) Applidyne will (at the Client's request and cost) do those things that may be reasonably necessary to effect the registration of such intellectual property.
- 12.3 Patents and the registration of design may each confer on the holder thereof substantial protection, including rights to damages in the case of subsequent infringement by others whether intentional or not. The Client is responsible for conducting searches and otherwise deterring whether the Outputs to be developed or the services to be provided by Applidyne under this Agreement infringe or potentially infringe the prior patents or design registrations or any third party. Applidyne will, upon written request from the Client, to the extent defined in relevant Quotations prepared by Applidyne jointly with the Client and at the Client's expense, provide assistance with searches in relation to the Project in order to identify potential infringements of prior patents or design registration.
- 12.4 The Client indemnifies Applidyne against any claims of infringement of any intellectual property rights or misuse of a third party's confidential information brought against Applidyne as a result of the provision of Applidyne's services in relation to the Project or arising directly or indirectly from the use of any materials or information provided to Applidyne by the Client.

13. Copyright

- 13.1 Applidyne has copyright in all documents supplied to the Client in providing the Services and the Client shall not use or deal with such documents other than for the purposes of the project in respect of which the Services are provided. If Applidyne terminates the Agreement by reason of breach of Agreement by the Client, the Client shall forthwith return all documents to Applidyne and shall cease to have any rights to use or otherwise deal with the documents.

14. Liability and Client Indemnity

- 14.1 The Client shall indemnify, keep indemnified and save harmless Applidyne from and against all losses, claims, proceedings, damages, costs and expenses in respect of or arising directly or indirectly from:
- (a) The Products or its use or operation by any person;
 - (b) Any breach by the Client of any of its obligations under the Agreement
- 14.2 The Client is responsible for ensuring that the Product complies in all respects with the provisions of all legislation, Acts, regulations, rules and by-laws for the time being in force and all orders or directions which may be made or given by any statutory or any other competent authority in respect of or affecting the Product in any jurisdiction in which it may be manufactured, used or sold.
- 14.3 The Client acknowledges that Applidyne is not responsible to obtain any independent verification of any information whether provided by or on behalf of the Client or obtained from any other source whatsoever, nor to obtain any searches of any intellectual property registrations or other matters of public record unless it is specifically required to do so in the Quotation. The Client agrees that it is responsible for verifying the suitability and safety for implementation or use of the Product/s
- 14.4 Where the Product includes physical models, test beds, prototypes, tools, equipment or other working hardware, or software that may be used to control hardware, the Client agrees to use such Product only for the purposes expressly described in the Quotation.

15. Restricted Liability

- 15.1 To the extent permitted by law, Applidyne excludes all warranties and conditions that are implied into this Agreement by law. Where implied warranties and conditions cannot be excluded, to the extent permitted by law Applidyne limits its liability under or in relation to any warranty or condition implied by law to (at Applidyne's discretion) either;
- (a) In the case of services; supplying the services again or paying the cost of having the services supplied again; or
 - (b) In the case of goods; replacing the goods, supplying equivalent goods, paying the cost of replacing the goods or paying the cost of acquiring equivalent goods.
- 15.2 To the extent permitted by law, Applidyne's total aggregate liability under or in any way related to the Agreement and any related agreements of confidentiality between the parties (including, without limitation, liability for any negligence or carelessness of Applidyne or any of its employees, servants or agents) is limited to the aggregate sum total of fees paid by the Client under this Agreement.
- 15.3 Applidyne excludes any liability in relation to use of the Product other than for the purposes expressly described or recommended in the Quotation. For the avoidance of doubt and without limiting other provisions in this clause 14, Applidyne has no liability
- (a) In relation to a design defect where Applidyne has identified and notified in writing to the Client the existence and nature of that design defect;
 - (b) In relation to a design defect or operating condition which was not the subject of a specific test program that formed part of the Project;
 - (c) In relation to a design effect that was not detectable or likely to be detected within the scope or duration of testing undertaken as part of the Project;
 - (d) In relation to the claim or allegation that the Product infringes the intellectual property rights or misuses the confidential information of any third party.
- 15.4 To the extent permitted by law, Applidyne excludes liability (including, without limitation, liability for negligence) for, loss of profit or goodwill or similar financial loss, any payment made or due to any third party, any loss or damage caused by delay in the supply of services or goods in relation to the Project or any indirect or consequential damages however arising.
- 15.5 The limitations and exclusions of liability set out in this clause 15 do not apply to any liability arising out of;
- (a) Applidyne's fraud or wilfully wrongful or illegal acts; or
 - (b) Applidyne's deliberate and knowing infringement of third party intellectual property rights.

16. Non-Solicitation

- 16.1 During the course of the Project and for 12 months after the Termination Date, neither party will solicit or offer to employ any member of the other party's professional staff. A party's liability to the other party for any breach of this provision will equate to a year's gross salary for the individual concerned, this amount being a genuine pre-estimate of the other party's loss in this event.

17. Publicity

- 17.1 Applidyne will not use the identity of the Client, images of the Product or references to the Project or to Applidyne's role in it in its publicity material during the Project without the prior written consent of the client not to be unreasonably withheld.
- 17.2 Applidyne reserves the right to use images of Products, references to the Project and Applidyne's role in it in its publicity material after the end of the Project or after the Termination Date unless the Client notifies Applidyne in writing of its request not to do so. Applidyne consents to comply with the Client's wish unless the request is unreasonably withheld consent.

18. Termination

- 18.1 Unless otherwise provided in the Quotation, the Agreement or the Project and Applidyne's further Services in relation to the Agreement or the Project may be terminated either by authorised representatives of Applidyne or the Client giving two months prior notice in writing to the other (the day following that two month notice period being the "Termination Date").
- 18.2 If the Client becomes insolvent, goes into liquidation, receivership, voluntary or other administration or some similar legal process, fails to make a payment to Applidyne when due or as otherwise in breach of any of these Terms of Engagement or the Agreement in a material way then at any time thereafter (unless Applidyne expressly waives that failure, breach or circumstance in writing) Applidyne may be written notice to the Client immediately terminate the Agreement or the Assignment and Applidyne's further services in relation to the Project (the date of such notice being the "Termination Date").
- 18.3 Subject to earlier termination under clauses 18.1 and 18.2, and unless otherwise provided in the Quotation, when the Project is completed Applidyne will send to the Client a letter confirming this fact, the date of issue of the letter being the "Termination Date".
- 18.4 If the Agreement or the Project is terminated either under this clause or otherwise, the Client must immediately pay all moneys due or payable in relation to all work done by Applidyne under the Quotation to the Termination Date and, where termination is not due materially to default by Applidyne, the Client must also pay or reimburse to Applidyne all costs, expenses and charges paid or incurred by Applidyne including any arising from the cancellation, provided however that the amount due under this clause shall not exceed the full payments due as defined in the Quotation payment schedule.
- 18.5 Clauses 5, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 21, 23 will survive any termination of the Agreement or the Assignment.

19. Severance

- 19.1 If for any reason any provision of these Terms of Engagement would render the Agreement ineffective, void, voidable, illegal or unenforceable, that provision or the relevant part thereof shall, without in any way affecting the validity of the remainder of the Agreement, be severable and the Agreement shall be read and construed and take effect for all purposes as if that provision or part were not contained herein.

20. Entire Agreement and Variations

- 20.1 These Terms of Engagement and the Quotation constitute the entire Agreement between Applidyne and the Client.
- 20.2 Any variation of the Quotation, these Terms of Engagement or The Agreement will only be effective if it is in writing signed Applidyne and the Client.

21. Dispute

- 21.1 Any dispute concerning these Terms of Engagement of the Project that cannot be resolved by negotiation between Applidyne and the Client must be referred to an independent expert agreed upon by the Client and Applidyne before any other proceedings are commenced.
- 21.2 Failing agreement on the choice of expert within 30 days of the dispute arising, the dispute is to be referred to an independent expert nominated by the South Australian Chapter Chair for the time being of the Institute of Arbitrators and Mediators, Australia in Adelaide. The independent expert shall be regarded as an expert and not as an arbitrator and accordingly no legislation relating to arbitration shall apply. The terms of the appointment will require the independent expert to use his or her best endeavours to certify in writing to the Client and Applidyne the determination that has been made within 30 days of the appointment.
- 21.3 Any costs associated with any such referral and determination will ne paid by Applidyne and the Client equal shares unless the expert considers one party to have been vexatious or frivolous in which case that party shall pay all of those costs.

22. Client Authority

- 22.1 Any person who purports to enter into the Agreement constituted by the Quotation and these Terms of Engagement on behalf of the Client hereby warrants that for all purposes of the Agreement he or she is the duly authorised agent of the Client and if such person is not the duly authorised agent of the Client then in consideration of Applidyne entering into the Agreement he or she shall be deemed to be the Client and be bound by all the terms, covenants and conditions of the Agreement.

23. Law and Jurisdiction

- 23.1 The Agreement is subject to the laws of South Australia and the Commonwealth of Australia and the Client submits to the jurisdiction of the Courts of South Australia and the Commonwealth of Australia.

24. No Assignment

- 24.1 Applidyne will carry out the Project for the Client only and prior to completion or termination of the Project the Client, may not assign any of its rights arising under the Agreement to any other entity without Applidyne's prior written consent.

25. Notices

- 25.1 A notice to be given by either Applidyne or the Client to the other must be in writing and delivered by hand or by post (postage prepaid) or sent by facsimile to that party's address or facsimile number as shown in the Quotation.

26. Suspension

- 26.1 Applidyne's obligations in relation to the Project will be suspended during the time that Applidyne is prevented from fully complying with its obligations by causes beyond its reasonable control.

27. Sub-contracting

- 27.1 Applidyne may use contractors to undertake aspects of the Project provided that those contractors are subject to confidentiality and intellectual property obligations consistent with Applidyne's obligations under clause 5 and clause 12 given the nature of their involvement in the Project.

28. Privacy

- 28.1 Disclosure by the Client of personal information to Applidyne in the course of our engagement is subject to the Privacy Act 1988. As Applidyne relies on the Client to comply with their obligations under that Act, the Client will indemnify Applidyne against any claim, loss or expense resulting from the Client's failure to make any disclosures or obtain any consent required under the Privacy Act or otherwise to comply with, the Privacy Act.

29. Circumstances Outside Control

- 29.1 Neither Party will be liable to the other for any failure or delay to fulfil obligations caused by circumstances outside reasonable control, but the party affected will use their best efforts to avoid or remove the causes of non-performance and to cure and complete performance in a timely manner.