



BluWin Limited
Company Reg. No. 11430572
35 Westgate
Huddersfield
HD1 1PA
United Kingdom

General Conditions of Consultant Services of Bluwin Ltd.

1. General

The following General Conditions of Consultant Services of Bluwin Ltd. ("Bluwin") as Contractor shall become a constituent part of all consultant services and service/work contracts or mixed forms of these and of other contracts with service/work contract elements (hereafter called "Contract"). Conflicting or deviating conditions for services or other reservations made by the Customer shall not be effective unless Bluwin has expressly accepted them in writing for a particular order.

2. Offers without Engagement

Our offers and proposals are without engagement. The documents and data that accompany the offers, such as diagrams, drawings, weights or dimensions, are only approximate unless they are expressly described as binding. Cost estimates shall be reimbursed appropriately in cases of doubt.

The offers and all calculations, drafts, drawings etc prepared by us shall neither be copied nor made available to third parties without our written approval and remain the property of Bluwin.

The documents shall be used only within the framework of the Contract; in particular they shall not be used to reproduce identical or similar products. They shall be returned to us on request if the offers do not lead to an order being placed.

3. Order

Written orders from the Customer are binding on him. A Contract is created only upon written order confirmation by Bluwin or by countersigning a written proposal of Bluwin addressed to the Customer and signed by him. Subsequent amendments to the wording of the Contract can be made only by the agreement of the two parties and must be in writing.

4. Customer's Duties to Inform

Without being specifically requested to do so, the Customer shall ensure that Bluwin receives in good time all documents and information necessary for executing the order.

In executing the order Bluwin is entitled to assume the correctness and completeness of the facts mentioned by the other party to the Contract, especially figures and documents handed over; this shall not apply if scrutiny of these was agreed expressly in writing.

5. Scope of Performance

The subject of the contractual performances of Bluwin is the consultancy services defined in the written order confirmation or in the proposal signed by Bluwin and the Customer. No specific economic success or result is offered by Bluwin unless otherwise expressly agreed in writing.

Bluwin may delegate the performance of all or a portion of the Contract to an affiliate, agent or subcontractor and the Customer consents to such delegation.

In carrying out the order Bluwin shall take as a basis the recognized rules of technology and bring its own knowledge and experience to bear. Should it transpire during execution of the order that the contractual services cannot be performed at all or only with substantially different technical and/or manpower requirements, Bluwin shall inform the Customer without delay. The parties to the Contract shall decide whether, to what extent and at what cost the order shall continue to be carried out. If they are unable to agree, each party to the Contract shall have the right to cancel the Contract by means of a written declaration. In this case Bluwin shall have a claim to reimbursement of all expenditures incurred so far and to payment of compensation commensurate with the services actually rendered.

6. Remuneration

The remuneration shall be calculated in accordance with the written order confirmation or the proposal signed by Bluwin and the Customer and any written amendments to it.

Bluwin shall be entitled to submit interim invoices in accordance with the expenditure incurred so far in respect of order values in excess of €6000.00 or of orders whose execution is expected to take more than 6 months.

7. Payment

Unless otherwise agreed, the invoice sum shall be payable immediately on receipt of the invoice without deductions. If the Customer fails to make payment when payment is due, Bluwin shall be entitled to charge interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1988 but where the application of that Act is not available, interest shall accrue each day at 5% a year above the Bank of England's base rate from time to time, but at 5% a year for any period when that base rate is below 0%. The Customer shall not be entitled to retain any payment. The Customer may set off only claims that are recognized with legally binding effect.

8. Deadlines

Deadlines for executing the order shall not be binding unless binding deadlines are explicitly stated in the written order confirmation or the proposal signed by Bluwin and the Customer.

Where binding deadlines are agreed, the Customer shall allow a reasonable extension of the deadline of normally four weeks in the event of delay in performance.

9. Force Majeure, Impediments to Performance

Any circumstances or causes beyond a party's reasonable control including but not limited to unforeseeable production, traffic or shipping disturbances, fire, floods, unforeseeable shortages of labour, utilities or raw materials and suppliers, strikes, lockouts, acts of government, and any other hindrances beyond the control of the party obliged to perform which diminish, delay or prevent delivery of services or production, shipment, acceptance or use of any goods, or make it an unreasonable proposition, shall relieve the party from its obligation to supply or take delivery, as the case may be, as long as and to the extent that the hindrance prevails. If, as a result of the hindrance, supply and/or acceptance is delayed by more than eight weeks, either party shall have the right to cancel the contract.

10. Shipment

In the case of shipments the contract performance shall be "ex works" (Incoterms 2010) unless otherwise agreed in the written order confirmation.

11. Retention of Title

- Where a delivery item (conditional item) is owed by Bluwin, title to this shall not pass to the Customer until the Customer has fulfilled all liabilities arising from its business connection with DyStar, which shall include settling ancillary claims and claims for damages and honoring payments and any other commitments. Title to the goods shall also remain with Bluwin if individual claims of Bluwin have been included in a current account and the balance of this account has been struck and acknowledged. If any goods are delivered before title passes, the Customer shall: (a) store the goods separately from all other goods held by the Customer so that they remain readily identifiable as Bluwin's property; and (b) keep them insured against all risks for their full price from the date of delivery.
- If the Customer defaults on its obligations to Bluwin, Bluwin shall have the right, without granting a respite and without canceling the contract, to demand the return of the goods to which Bluwin retains title or to enter any premises where the goods may be in order to recover them.

Acceptance of the returned goods shall not constitute cancellation of the contract unless Bluwin has expressly declared this in writing. If Bluwin cancels the Contract, Bluwin shall have the right to demand appropriate compensation for having permitted the Customer to use the item for a certain period.

- The Customer shall be under obligation to provide, on behalf of Bluwin, adequate storage of the item to which Bluwin retains title, to service and repair this item at the Customer's expense and to insure the same at the Customer's expense against loss and damage up to an extent which may reasonably be expected of a prudent businessman. By accepting these Conditions the Customer assigns in advance to Bluwin any claims which may accrue to the Customer under the insurance policies.

12. Damages

- No claims for compensation may be lodged by the Customer - including those of a non-contractual nature - for any minor negligent breach of duty by Bluwin, its executive staff or other agents, unless such breach concerns a duty that is crucial for the object of the contract.

- Nothing in the Contract limits any liability which cannot legally be limited, including liability for: (a) death or personal injury caused by negligence; (b) fraud or fraudulent misrepresentation; and (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

13. Notifications of Defects

- Where no formal acceptance by the Customer takes place, defects in any delivery item shall be notified in writing immediately but not later than ten working days after receipt of the delivery item by the Customer with a precise description of the defect.

- Hidden defects must be notified to Bluwin immediately upon discovery, but not later than five months after receipt of the goods. This shall not affect the periods of limitation. The burden of proving that a defect is a hidden defect shall rest with the Customer.

14. Customer's Rights in the Event of Defects, Limited Liabilities and Limited Warranties

- Warranty claims made by the Customer shall only entitle the Customer to be supplied with a replacement. If Bluwin waives its right to subsequent fulfillment or if this is not performed within a reasonable period of time or if the services performed for the purpose of subsequent fulfillment are still defective after being rectified twice, the Customer shall be able either to cancel the Contract or to reduce the amount to be paid. The Customer's right to rectify the defect himself and to demand reimbursement of the necessary expenditure is excluded.

- Unless expressly stated otherwise herein, in no circumstances shall Bluwin be liable, in contract, tort (including negligence or breach of statutory duty), or otherwise howsoever, and whatever the cause thereof, for: (i) loss of profits; (ii) loss of sales or business; (iii) loss of agreements or contracts; (iv) loss of anticipated savings; (v) loss of use or corruption of software, data or information; (vi) loss of or damage to goodwill; and (vii) special, indirect or consequential loss. Bluwin's total liability to the Customer whether in contract, tort (including negligence), misrepresentation, restitution or otherwise shall not exceed the amount of GBP 500,000.

- Except for the express warranties set out herein, Bluwin grants no other warranties relating to defects in the quality of the services or the work achievement, and all other conditions, warranties, stipulations or other statements whatsoever, whether express or implied, by statute, at common law or howsoever, relating to such defects in the services or work achievement, are hereby excluded; in particular (but without limitation of the foregoing) Bluwin grants no warranties (other than as set out herein) regarding the fitness for purpose, performance, use, quality or merchantability of the services or work achievement, whether express or implied, by statute, at common law or otherwise howsoever.

- Any guarantee agreement must be made in writing. A statement of guarantee shall only be effective if it describes the content of the guarantee and the duration and physical scope of guarantee protection in sufficient detail and is signed by or on behalf of Bluwin.

15. Third Party Rights

Unless otherwise expressly stated herein, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

16. Confidentiality

- Unless otherwise stated in a separate secrecy agreement between Bluwin and the Customer, the parties undertake, for a period of 5 years from conclusion of the Contract, to maintain confidentiality about all confidential information and know-how that has become known in connection with performing the Contract, and that one party has obtained from the other, not to disclose it to third parties and not to use it for commercial purposes unless otherwise agreed in writing. This obligation shall not be applicable to such information and know-how that demonstrably in its entirety:

- was already public knowledge at the time it was passed on to the recipient or has become public knowledge after it was passed on through no fault of the recipient;
- was already known to the recipient at the time it was passed on;
- has been made accessible to the recipient after being passed on by a third party.

- The Customer shall regard the offer without engagement from Bluwin as a business secret and shall keep it confidential.

17. Intellectual Property and Trademarks

- The names, service marks, trademarks and copyrights ("Bluwin IP") of Bluwin and any affiliated DyStar group companies are the sole property and shall remain the sole property of Bluwin and affiliated DyStar group companies and shall not be used by the Customer without prior written approval from Bluwin and only to the extent defined by Bluwin. The Customer shall not contest the validity of the Bluwin IP or take any action that might impair the value or goodwill of the Bluwin IP or Bluwin or DyStar's reputation.

- All intellectual property rights of any nature in or arising out of or in connection with the Consultant Services (other than intellectual property rights in any materials provided by the Customer) shall be owned by Bluwin or any Bluwin group company.

- Bluwin grants to the Customer or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, perpetual, royalty-free licence to copy the deliverables provided by Bluwin for the purpose of the Customer receiving and using the Consultant Services and the deliverables within its business. The Customer shall not sub-license, assign or otherwise transfer the rights so granted by this clause.

- The Customer grants Bluwin a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to Bluwin for the term of the contract for the purpose of providing the Consultant Services to the Customer.

18. Governing Law and Jurisdiction, Interpretation of Trade Terms, etc.

- These Conditions of Consultant Services and any disputes arising hereunder shall be governed by the laws of England.

2. Save as set out in clause 10, customary trade terms shall be interpreted in accordance with the Incoterms in force at the time, having regard to any particular Incoterm so designated.

19. Invalidity of Individual Clauses

Should any clause in these General Conditions of Consultant Services be or become invalid in full or in part, this shall not affect the validity of the remaining clauses or remaining parts of the clause concerned. The parties shall replace any invalid arrangement by an effective one which conforms as far as possible to the economic purpose of the invalid clause.

20. Arbitration

The parties shall attempt to resolve any dispute arising out of this Agreement by negotiation, conciliation and mediation, in accordance with the mediation rules of the London Court of International Arbitration. In the event that resolution by mediation is not achieved, the dispute shall be referred to and finally resolved by arbitration in London in accordance with the arbitration rules of the London Court of International Arbitration ("**LCIA**"), for the time being in force, which arbitration rules are deemed to be incorporated by reference. The decision of the LCIA arbitration shall be final and binding and judgement upon the award may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and order of enforcement, as the case may be.

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