



Carl Hindle Trading as **The Blue Wizard**  
**ABN:** 72 514 480 693  
738 Jenolan Caves Road  
Good Forest NSW 2790  
**Phone:** 0416 256 824  
**Email:** [enquire@bluewizard.com.au](mailto:enquire@bluewizard.com.au)  
**Web:** <http://bluewizard.com.au>

Our Reference:

Date: 21 March 2010

## Terms And Conditions of Trading

The following are the terms and conditions of trading between Carl Hindle trading as "The Blue Wizard" (hereinafter referred to as "The Blue Wizard") and any client of The Blue Wizard (hereinafter referred to as "the Client"), wherein The Blue Wizard agrees to undertake certain work for the Client (hereinafter referred to as "the Work") and the Client agrees to be bound by these terms and conditions of trading.

1. The Blue Wizard will perform the Work to the best of its ability and levels of professional skill, as ordered by the Client, and in a timely fashion;
2. The Client will pay the reasonable charges and fees of The Blue Wizard for the Work, and in this respect (unless otherwise agreed between the parties) the Client will pay a deposit of one half of the estimated cost of the Work upon placing their order, and the balance upon the completion of the Work;
3. The Client warrants to The Blue Wizard that they are duly authorised to order the Work, and indemnifies The Blue Wizard from any claims for damages or any other claims whatsoever connected with the Work from any third party claiming ownership or otherwise control of the goods subject to the Work;
4. The Client warrants to The Blue Wizard that any and all computerised data and any original software packages connected with the Work has been fully backed up or otherwise protected insofar as any such protection may be required in the event of loss of or damage to the Client's data for any reason during the Work, and it is hereby specifically agreed between the parties that in the event of any loss of or damage to the Client's data during any part or period of the Work the maximum liability falling upon The Blue Wizard in consequence thereof will be to restore the data and or software backups of the Client to the maximum extent possible from backup materials provided by the Client.
5. The Blue Wizard shall not be held liable (except as provided for in clause 4 hereof) for any loss of or damage to the Client's data caused by computer viruses and other inimical third party software products or engines, notwithstanding that such viruses or inimical software may be introduced to the Client's computer system(s) during the period of the Work;
6. The Client warrants that they hold full title or legal licence to any data or software provided by them in connection to the Work, and that any data or other material provided by the Client with the purpose of having said data or material published by The Blue Wizard on the Internet or elsewhere complies with all legal requirements or copyright and other laws regarding pornography or other offensive material, and in the event of any breach of this clause the Client indemnifies The Blue Wizard against any claims for damages or loss from any third parties flowing from any such breach;
7. Insofar as the Work may involve aspects of software authoring or supply or engineering, design of templates or other materials, or the creation of any other functioning product or utility, then title to any such will not pass to the Client unless the charges and fees of The Blue Wizard have been paid in full;

8. Insofar as the Work may consist of or include the supply of computer hardware and/or software products, then title of any such products will not pass to the Client until the charges and fees of The Blue Wizard have been paid in full;
9. The Blue Wizard warrants that the Work will be performed professionally and capably and, in the event of any errors or faults being discovered in any of the Work which could reasonably be said to be the fault of The Blue Wizard, its servants or agents, then the Client agrees that The Blue Wizard will be given a reasonable period of time to fix and make good any such faults or flaws, without diminution of The Blue Wizard's initial fees and charges in the matter PROVIDING ALWAYS THAT
  - i. the alleged faults or flaws are specified in writing by the Client within thirty (30) days of the completion of the Work;
  - ii. the alleged faults or flaws can reasonably be held to be actual faults and/or omissions in performing the Work as originally specified, and are not connected with any apparent or actual clash with other third party software products which did not form part of the Work;
  - iii. the alleged faults or flaws cannot reasonably be held to flow from any lack of information by the Client to The Blue Wizard relating to the Work or the Client's computer system(s) connected with or the subject of the Work, to any extent to which it could reasonably be said that the alleged faults or flaws would likely not have occurred or been made if the said information had been provided prior to commencement of the Work;
10. The Blue Wizard will take all reasonable care of any goods and materials left with it by the Client in connection with the Work and will compensate the Client up to a maximum of \$1,500 (One Thousand Five Hundred Dollars) for any item or group of items of hardware lost, stolen, destroyed by fire or other Act of God, or damaged by virtue of the demonstrable negligence of The Blue Wizard or its servants or agents, and the Client agrees that in the event of them leaving an item or group of items with The Blue Wizard which exceeds in value this maximum liability sum the Client will take out their own insurance to cover any excess or will wear the entire risk of any excess, and The Blue Wizard will not be held liable for any amount in excess of this agreed maximum liability sum regardless of the cause or reason of any damage or loss;
11. Notwithstanding clause 10 hereof, The Blue Wizard will under no circumstances be held liable over and above the media replacement costs of CDs and the like for any software or client data lost, stolen or otherwise destroyed or missing or damaged, nor for any consequential damages claims for loss of business, costs of restoring data and the like flowing from any loss of or damage to any of the Client's data or software for whatever reason during the period of the Work;
12. The Blue Wizard may, at its sole discretion, advise the Client that the Work cannot be completed by it, or in its opinion, at all, notwithstanding that The Blue Wizard may have earlier expressed to the Client that the scope of the Work WAS feasible and, in this event, the sole liability of The Blue Wizard will be to return to the Client any deposits or other monies paid by the Client in relation to the Work, and the Client indemnifies The Blue Wizard against any claims from it or any third party for any claims or loss or damage flowing from the inability of The Blue Wizard to complete the Work either on time, or at all;
13. The law governing this agreement shall be that of New South Wales, Australia.