



BlueTwist Terms and Conditions

1. General

This Agreement details the terms and conditions governing your use of the services made available to you by Jack Pivac trading as BlueTwist, hereinafter called "BlueTwist" or "We". Use of this website, or of products or services offered in this website, or by BlueTwist represents that you have read and understood these terms and conditions. This represents the whole agreement and understanding between BlueTwist and the individual, corporation or organisation who subscribes to the Service hereinafter called "Member" or "Members" or "You" or "you". This document is referred to as the "Agreement".

PLEASE READ THIS AGREEMENT CAREFULLY. BlueTwist reserves the right to terminate any transaction, service, account or product, should you be found to be in violation of these terms and conditions.

Personal Guarantee

If the customer is a company or trust, the director(s) or trustee(s) signing this contract grant in consideration for BlueTwist agreeing to supply services and grant credit, also sign in their personal capacity and jointly and severally personally undertake as principal debtors to BlueTwist the payment of any and all monies hereafter owed by the customer to BlueTwist and indemnify BlueTwist against non-payment by the customer. Any personal liability of a signatory hereto shall not exclude the customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereafter.

BlueTwist reserves the right to modify this Agreement at any time, effective upon posting of the modified Agreement to this URL: <http://www.bluetwist.co.nz/terms>. Your use or order of any of BlueTwist's services demonstrates your unconditional acceptance to this Agreement.

2. BlueTwist's Commitment and Services

BlueTwist provides a wide range of web-based services, including web site hosting, solutions for business, maintenance service and consultancy services. When you register or sign up for any service, it is your responsibility to ensure that you know what the product or service is, and what you are receiving, and are aware of charges, limitations, additional charges that may be relevant, and specific limitations which may apply. BlueTwist endeavours to provide reliable, continuous services at all times, however the service is not totally fault-free and relies on factors outside the control of BlueTwist. BlueTwist's services are provided at such times and means to the customer as is practical.

We retain the right to refuse service to anyone at any time. We reserve the right to change the nature of a plan (speed, data, price) with one month's written notice.

3. Charges & Payment

Subscription and development services are payable in advance. The customer agrees to pay for any charges incurred by the customer or its users, or by any use of the customer's account (whether authorised or not). The customer agrees that they will pay for all goods and services prior to the due date.

If payment is not received by the due date BlueTwist shall be entitled to exercise the following:

- Charge interest of 3% per month or part thereof calculated on a daily basis from the due date on any outstanding balance.
- Withhold any deliveries, services or cancel undelivered orders.
- Cancel or halt production of any order or service.
- Refer the overdue account to a debt collection agency.
- File suit for damages.
- The customer shall, upon demand, reimburse BlueTwist for any costs associated with recovery of payment.

All BlueTwist charges are in NZD (New Zealand Dollars) unless otherwise stated.

GST: All prices quoted on the BlueTwist website and quotations are GST exclusive unless otherwise stated.

Quotations are valid for 30 days and are subject to variation.

Credit accounts are available to approved purchasers via completion of a credit application form. Payment for credit accounts is due on the 20th of the month following invoice.

Title in all goods does not pass until payment has been received in full. BlueTwist has the right to recover possession in the event of payment default.

The customer undertakes to advise BlueTwist of any change of ownership of the customer while payment is outstanding.

Confirmation of Orders

We reserve the right to require signed order confirmation. Such confirmation, along with these terms and conditions, will form the basis of the contract between BlueTwist and the customer.

Delivery

While BlueTwist will endeavour to supply by agreed times no guarantee is made unless done so expressly in writing.

Returns

Because goods and services are made specially to order they cannot be returned. In the event that, at BlueTwist's discretion, goods are accepted for return, such return will be subject to a handling fee.

Consumer Guarantees Act 1993

This section applies only to New Zealand consumers. Where services are provided for personal purposes the Consumer Guarantees Act 1993 applies. Where services are provided for business purposes the provisions of the Act are expressly excluded.

Default

Should the customer default or be placed in receivership, wound up, declared bankrupt, or otherwise become insolvent, then in addition to any other rights BlueTwist has, BlueTwist may demand immediate payment of all amounts then unpaid. Any expenses incurred by BlueTwist in recovering outstanding monies, including debt collection fees and legal fees shall be recoverable from the customer.

In the event of default the customer authorises BlueTwist and its agents to supply and disclose appropriate information relating to the customer in order to obtain payment. The customer may access and correct this information.

Refusal to Supply

We reserve the right to refuse to supply customers who have unacceptable payment habits, provide fraudulent information or frequently exceed their credit limit. We reserve the right to refuse to supply products which are objectionable in nature, obscene or derogatory. We will not develop products which breach copyrights or trademarks. The customer indemnifies BlueTwist in respect of any and all claims and/or expenses arising out of any illegal or defamatory matter or breach of statute or infringement of intellectual property.

4. Customer Costs

The Customer must provide and pay for any other equipment needed to access the Service at their own cost, and agrees that BlueTwist will not provide software or advice as to how to use the service without payment, for any consultancy service. The customer will be liable for all fees and expenses incurred by any security breach, attack or customer error that involves the customer's hardware, software, or network configuration.

5. Term / Termination

Any subscription service you register for will be treated as a fixed, on-going contract. Should you wish to cancel your service, you are required to give at least 30 days notice subject to the end of any term contract. Your account will be suspended at the end of the service period which you have paid up for. No refund for unused subscription is available.

6. Copyright

You guarantee to us that any elements of text, graphics, photos, designs, trademarks or other artwork that you provide us for inclusion in the web site are either owned by yourself, or that you have permission to use them.

When we receive your final payment, copyright is automatically assigned as follows:

You own the graphics and other visual elements that we create for you for this project. We'll give you a copy of all files and you should store them safely as we are not required to keep them or provide any native source files we used to make them.

You also own text content, photographs and other data you provided, unless someone else owns them. We own the markup, CSS and other code and we license it to you for use on this project only.

We love to show off our work and share what we have learned with other people, so we reserve the right to display and link to your completed project as part of our portfolio and to write about the project on web sites, in magazine articles and in books about web design.

All instructions must be made in writing. BlueTwist will not accept liability for errors or omissions arising as a result of misinterpretation or miscommunication of verbal instructions.

It is the customer's responsibility to check proofs for errors and omissions. It is recommended that customers check spelling and wording carefully.

BlueTwist is not responsible for the retention of original electronic files. It is recommended that customers backup all artwork files. BlueTwist reserves the right to charge for any additional work required to translate, edit or utilise customer supplied files.

7. Prohibited Conduct

BlueTwist does not allow the use of unsolicited commercial email, "Spam" to promote products or services. Any Member engaging in the sending of Spam through the BlueTwist network or promoting information on websites hosted by BlueTwist will be considered in breach of this Agreement and Suspended from the Service immediately. Your use of the Service must be in compliance with New Zealand laws and laws of your country at all times. You are responsible for ensuring that your use of the Service does not consume excessive system or network resources that disrupts the normal use of the Service through, but not limited to, spawning multiple processes, consuming excessive amounts of memory, CPU or bandwidth usage. The following is a non-exclusive list of content and behaviour prohibited by the Service:

- Content that contains or contains links to: child pornography or other illegal content under applicable law.
- Content that condones, promotes, contains, or links to "warez", cracks, hacks, their associated utilities, or other piracy related information, whether for educational purposes or not.
- Content that has been promoted through the sending of unsolicited email (SPAM) or mail fraud schemes, or pages that promote or condone the sending of unsolicited email. The sending of bulk email originating from our servers mass distributed to unknown recipients soliciting products or services and/or bulk email NOT originating from our servers mass distributed to

unknown recipients soliciting products or services relating to a BlueTwist account will result in immediate account suspension.

- Content that is grossly offensive to the community, including blatant expressions for bigotry, prejudice, racism, hatred or excessive profanity, or to post any obscene, filthy, excessively violent, harassing, or otherwise objectionable material.
- Content or otherwise that exploits children under 18 years of age.
- Content that sells or promotes any products or services that are unlawful in the location at which the content is posted or received.
- Content that infringes or violates any copyright, patent, trademark, service mark, trade name, trade secret, or other intellectual property right of any third party.
- Content that promotes mail fraud, multi-level marketing (pyramid) schemes or other illegal or fraudulent activities.
- Content that posts or discloses any personally identifying information or private information about any third parties without their express consent.
- Reverse engineering, reverse compiling or otherwise deriving the underlying source code or structure or sequence of any BlueTwist service, solution or technology.
- Reverse engineering, reverse compiling or otherwise deriving the underlying source code or structure or sequence of individual passwords of Member Sites (or pages contained therein).

8. Limitation of Liability

BlueTwist makes no representation and gives no assurance, condition or warranty of any kind to the customer in relation to any goods or services supplied to the customer and accepts no liability for any assurance, condition, warranty, representation, statement or term not expressly set out in these terms of trade or other writing given by BlueTwist to the Customer (including any assurance, condition or warranty implied by law except to the extent that such cannot be excluded). Where the Customer is acquiring the goods or services for business purposes, the Consumers Guarantee Act 1993 shall not apply. BlueTwist will not be liable for any indirect or consequential loss or damage of any kind occasioned by errors in the work or delay in delivery. BlueTwist shall not be responsible for any delay, default, loss or damage due to industrial disputes, accidents, acts of God, equipment failure or mischievous damage or other cause beyond BlueTwist's reasonable control.

Service is provided on an "as is" and "as available" basis and use of the Service is at your own risk. BlueTwist makes no representations or warranties, either expressed or implied, with respect to the Service or any service or information provided through the Service. BlueTwist is not responsible for any damages, injury or economic loss arising from the use of the content or Service provided by BlueTwist.

For greater certainty and without limitation to the generality of the following:

- in no event will BlueTwist be liable to you for any direct, indirect, incidental or consequential damages or economic loss arising out of the Service or in connection with your website or any other services or products provided to you;
- BlueTwist, its officers, directors, owners, agents and employees shall in no

way be liable to you or anyone else for any loss or injury resulting from use of the Service or the Site;

- in no event shall BlueTwist be held liable for any damages or economic loss, whatsoever, as a result of notifying any official of potentially illegal content on the Site, providing copies of your data files to the appropriate authorities or cooperating with law enforcement efforts to locate persons who have posted content that is illegal or promotes illegal conduct.

9. Indemnification

You agree to indemnify and hold BlueTwist harmless from and against, and to reimburse BlueTwist with respect to, any and all losses, damages, liabilities, claims, judgments, settlements, fines, costs and expenses (including reasonable related expenses, legal fees, costs of investigation) of every nature whatsoever incurred by BlueTwist by reason of or arising out of or in connection with:

- any breach of this Agreement by you or;
- any infringement of any copyright, trademark, patent, trade secret or any other intellectual propriety right of any party by content on your website or;
- illegal, pornographic, or discriminatory content on your website.

10. Force Majeure

Without limiting any other provisions of the contract, neither BlueTwist nor the Customer shall be liable for any delay or failure in the performance of any obligation or the exercise of any right under the contract or for any loss or damage (including indirect or consequential loss or damage) if such performance or exercise is prevented or hindered in whole or in part by reason of a force majeure event. Nothing in this clause shall excuse payment of any money due or which becomes due under the contract. BlueTwist will not be liable for any delay, interruption or failure in the provisioning of services if caused by acts of God, declared or undeclared war, fire, flood, storm, slide, earthquake, power failure, the inability to obtain equipment, supplies or other facilities that are not caused by a failure to pay, labor disputes, or other similar events beyond our control that may prevent or delay of service provisioning.

The rights and obligations of either party which are affected by a force majeure event shall be suspended during the continuance of the force majeure event, and either party claiming to be affected by the force majeure event shall give immediate notice to the other party containing full particulars of the force majeure event. The party giving notice under this clause shall take all reasonable steps to mitigate the effects of the force majeure event and remove such force majeure event provided that neither party shall be required to remove any such force majeure event if to do so would require it contrary to its judgement to settle a strike or labour dispute or otherwise submit to the demands of opposing parties.

11. Disputes

In the event of dispute the parties shall negotiate in good faith to settle the dispute. If the dispute is not resolved in 21 days from the commencement of negotiation then the parties may agree to refer the dispute to mediation. In the event that mediation is unsuccessful or the parties cannot agree to go to mediation then the dispute will go to arbitration. Arbitration is a precondition to any action at law. Nothing shall prevent either party obtaining an injunction or restraining order maintaining the status quo pending completion of arbitration.

12. Business Warranties and Claims

The Customer acknowledges that supply under this contract is a supply for business purposes or your intent was or is to use our services in part or in full for such purpose then you agree, to the extent legally permitted, in terms of sections 2 and 43 of the Consumer Guarantees Act 1993 ("Act") and accordingly, subject to clause 16 the provisions of the Act do not apply to any supply made pursuant to this agreement. The Customer agrees and acknowledges that in no event will BlueTwist be liable for any property damage, personal injury, direct or consequential loss or damage incurred by the Customer or a third party whether due to defective goods or services and/or as a result of negligence or otherwise by us or our servants or agents and in any event the liability of BlueTwist will not exceed the purchase price paid by the Customer for the goods or service. When the Customer on-sells the goods to customers who purchase the same for business purposes the Customer shall contract out of the Act in same manner as per above. Should the Customer fail to do this the Customer will indemnify BlueTwist against any claim expense or loss suffered by the Seller as a direct or indirect consequence of such failure. No claim shall entitle the Customer to withhold payment of any sum due to BlueTwist under this or any other contract nor shall a claim give any right to set off any payment due to the Customer by us.

13. Privacy

The BlueTwist Privacy Policy sets out our obligations with respect to the safeguarding, collection and use of Members' personal information and is subject to modification from time to time. Changes are effective upon posting of the modified Agreement to this URL: <http://www.BlueTwist.co.nz/terms>. Email newsletters will only be sent directly from BlueTwist and Member information is not disclosed or sold to any third parties.

14. Reservation of Rights

BlueTwist reserves the right and sole discretion to:

- Censor any website hosted on its servers that is deemed inappropriate;
- Review any account for excessive space or bandwidth utilisation and to suspend Service to those accounts that exceeds allowed levels;
- Terminate an account for non-payment of Web Hosting fees or providing fraudulent account information or fraudulent payment information;
- Terminate any account if the contents of account website results in, or are the subject of, legal action or threatened legal action, against BlueTwist or any of its affiliates or partners, without consideration for whether such legal action or threatened legal action is eventually determined to be with or without merit;

- Terminate any account for unsolicited, commercial e-mailing (i.e., SPAM); illegal access to other computers or networks (i.e., hacking); distribution of Internet viruses or similar destructive activities; and other activities whether lawful or unlawful that BlueTwist determines to be harmful to its other customers, operations or reputation; or for any breach of this agreement;
- Suspend Service(s) at any time for any duration of time when necessary, without penalty or liability to ourselves.
- You agree that it may be necessary for us to temporarily suspend the Service for technical reasons or to maintain network equipment or facilities.

15.Unenforceable Provisions

If any part of these Terms and Conditions are found to be invalid or unenforceable under applicable law, such part will be ineffective to the extent of such invalid or unenforceable part only, without in any way affecting the remaining parts of these Terms and Conditions.

16.Waiver

No waiver of any of the provisions of these Terms and Conditions will be deemed to constitute a waiver of any other provision nor shall such a waiver constitute a continuing waiver unless otherwise expressly provided in writing duly executed by the party to be bound thereby.

17.Resale of our Services

If you are a reseller of any of our services or act as such in on-selling or otherwise providing to another the services we provide for you, you agree:

- there is no direct relationship between us and your client;
- you will not refer your customer to us for support services;
- you will make it clear to your client that you are the contact for all purposes; and
- this agreement also applies to your clients.

18.Assignment

The Customer cannot assign its rights under any agreement with BlueTwist without the prior written consent of BlueTwist.

19.Additional Agreements

Where you have entered into a separate written service agreement with us, the terms of a service agreement will take precedence over any one of these terms and conditions in the event of a conflict. Any such clauses from these terms and conditions would then be severable, while all other remaining clauses not covered by a separate service agreement will remain enforceable.

20. This Agreement

These Terms and Conditions, as may be updated from time to time and posted at <http://www.bluetwist.co.nz/terms>, represent the complete agreement and understanding between us with respect to the Service.

Changes to this agreement will be posted on our website. Changes are effective as at the date of publication on the website and all orders placed after that event will be subject to the revised terms and conditions.

These terms and conditions form the basis of all contracts involving the supply of services by BlueTwist. These terms and conditions prevail over the customers own. In the event that any part of this contract is invalid or void or illegal or unenforceable then it is severed from the contract insofar as it is invalid or void or illegal or unenforceable and the remainder remains intact without prejudice or impairment.

Privacy Policy

We respect the privacy of our mailing list subscribers, and those who answer our surveys.

It is our policy:

1. To respect the purpose for which our site visitors gave us information. We give users choice and consent over how their personal information is used, and remove names immediately upon request.
2. To not sell, rent, or loan our lists to third parties for e-mail marketing.
3. To send our periodicals only to those who request them, and immediately unsubscribe those who request it.
4. Sometimes people subscribe for their friends, and while we cannot prevent that, we welcome any new subscribers.
5. We keep our subscription lists as clean as possible to prevent obsolete e-mails to take unnecessary bandwidth. To use cookies in a responsible manner, if at all, to help our visitors, not snoop on them.
6. To store subscriber and password files with personal information in a secure manner. We store such files in areas not accessible to Web browsers, behind password protection, or off-line. If you have any questions about this policy, please email us at support@bluetwist.co.nz and we'll answer all your questions.

The Privacy Act 1993

We take your privacy seriously. Your information gathered may be used or disclosed for the purpose of administering contracts and enforcing BlueTwist's rights, marketing goods and services offered by BlueTwist, ascertaining suitability for credit of the customer, notifying debt collection agencies or similar organisations of default by the customer and enabling contact with the customer. The customer has the right to obtain access to personal information held by BlueTwist. The customer authorises BlueTwist to obtain all and any information considered relevant in determining the suitability of the customer for credit or in order to perform any purpose for which the customer has provided personal information to BlueTwist. The customer authorises such third parties to release relevant personal information held by them.