

CREDIT APPLICATION and CREDIT AGREEMENT

Agreement between REMEDIATION (NZ) Limited

AND _____ [the Customer]

Section 1 CUSTOMER DETAILS

Sole Trader
 Partnership
 Company
 Other
 Re-Open

Registered Company Name		Company Number	
Sole Trader Name			
Other			
Trading As			
Type of Business			
Commencement Date of Business			
Estimated Monthly Purchases			
Delivery Address			
Postal Address			
Residential Address			
Business Phone		Fax Number	
Mobile Phone		Email Address	
Sales Contact		Accounts Contact	

NB. We prefer to email ALL invoices. If you wish to receive your invoices by post, please tick here

Section 2 ACCEPTANCE OF TERMS OF TRADE

On behalf of the Customer, I/We agree to REMEDIATION (NZ) Limited's Terms of Trade – attached to this Credit Application. Unless otherwise agreed in writing by REMEDIATION (NZ) Limited, I/We agree that all Goods and Services provided by REMEDIATION (NZ) Limited to the Customer, are supplied on REMEDIATION (NZ) Limited's Terms of Trade and that the Customers' own terms of trade, do not apply.

Directors / Owners Full Name	Signature	Date of Birth	Date

Form Approved	D. GIBSON	Designation	General Manager	Date	21/09/2017	Form Title	Credit Application/Agreement
REMEDICATION (NZ) Limited				F-720-008-A			

Directors / Owners Full Name	Signature	Date of Birth	Date

Directors / Owners Full Name	Signature	Date of Birth	Date

Directors / Owner Full Name	Signature	Date of Birth	Date

Section 3 TRADE REFERENCES

Please submit the names of THREE suppliers [Referees] with whom the Customer currently holds credit accounts [DO NOT include financial institutions, credit card companies, HP's, service stations, phone companies or utility companies]. By submitting these names, the Customer authorises REMEDIATION (NZ) Limited to request and receive information from the Customers' Referees and from any other third party regarding the credit worthiness and business practices of the Customer.

1.

Name of Referee	Account Number or Contact Name	Telephone Number

2.

Name Referee	Account Number or Contact Name	Telephone Number

3.

Name of Referee	Account Number or Contact Name	Telephone Number

Section 4 PERSONAL GUARANTEE

In consideration of REMEDIATION (NZ) Limited supplying and continuing to supply Goods and/or Services to the Customer, I/We _____ personally guarantee jointly and severally the due and punctual payment of all amounts outstanding to REMEDIATION (NZ) Limited on the terms set out in Clause 17 of the Terms of Trade attached.

I/We acknowledge receipt of a copy of this Credit Application and Terms of Trade. I/We agree that REMEDIATION (NZ) Limited may contact Veda Advantage or any other credit reference agency for credit information about me. I/We understand that legal advice should be obtained as to the effect of the above guarantee and the potential liability of me/us as Guarantor. I/We confirm that I/We have obtained or elected not to obtain such advice and have agreed to provide this guarantee.

Guarantor

Guarantor

Signature of Guarantor

Signature of Guarantor

Name of Guarantor

Name of Guarantor

Address of Guarantor

Address of Guarantor

Dated _____

Dated _____

Witness in the Presence of –

Signature of Witness _____ Date _____

Name of Witness _____

Address of Witness _____

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Section 5 REMEDIATION (NZ) Limited OFFICE USE ONLY

Trade Reference Comments:

1.

Name of Referee	Length of Trading	Small/Medium/Large	Payment Record

Comments _____

2.

Name of Referee	Length of Trading	Small/Medium/Large	Payment Record

Comments _____

3.

Name of Referee	Length of Trading	Small/Medium/Large	Payment Record

Comments _____

Sales Managers Approval	
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Sales Person	
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Account Number		Date Account Opened	
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Company Code [please tick]

<input type="checkbox"/> 0 - Corporate	<input type="checkbox"/> 1 - Brixton	<input type="checkbox"/> 2 - Uruti
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<input type="checkbox"/> 3 - Tauranga	<input type="checkbox"/> 4 -	<input type="checkbox"/> 5 - Mulcher
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<input type="checkbox"/> 6 - Cambridge	<input type="checkbox"/> 7 -	<input type="checkbox"/> 8 - Showscape
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<input type="checkbox"/> 9 - Research & Development	<input type="checkbox"/> 10 - Aggregates	
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Approved Credit Limit	
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Notes:

TERMS AND CONDITIONS OF TRADE

Form Approved	D. GIBSON	Designation	General Manager	Date	21/09/2017	Form Title	Credit Application/Agreement
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Effective from 01 January 2018**1 TERMS OF TRADE.**

1.1 The terms and conditions set out below, apply to every supply of Goods and/or services made by REMEDIATION (NZ) Limited, to the Customer. By placing an Order with REMEDIATION (NZ) Limited, the Customer agrees that it is bound by these Terms of Trade and that the Customers' own Terms and Conditions, do not apply.

1.2 Where the Customer has entered into a separate written supply agreement with REMEDIATION (NZ) Limited, these terms shall also apply except to the extent that there is any inconsistency between these Terms and Conditions and the separate supply agreement shall prevail.

2 DEFINITIONS

Credit Account means the account for purchasing goods on credit held by the Customer with REMEDIATION (NZ) Limited.

Customer means the person who purchases Goods and/or Services on credit from REMEDIATION (NZ) Limited and includes the Customers' employees, contractors, subcontractors and agents. Where the Customer comprises of two or more persons, means those persons jointly and severally.

Goods mean any goods provided and/or manufactured by REMEDIATION (NZ) Limited.

PPSA means the Personal Property Securities Act 1999.

Order means an agreement between REMEDIATION (NZ) Limited and the Customer for REMEDIATION (NZ) Limited and all their legal trading subsidiary companies.

REMEDICATION means REMEDIATION (NZ) Limited and all their legal trading subsidiary companies.

QUOTE means a written offer from REMEDIATION (NZ) Limited to the Customer to supply Goods and/or Services for a specified price subject to the terms and conditions of such offer.

Services means any Services performed by REMEDIATION (NZ) Limited.

Terms mean the Terms and Conditions of the supply set out in this document. Including the variation to these Terms.

3 TERMS OF SALE

3.1 REMEDIATION (NZ) Limited will supply Goods and/or Services to you, the Customer, on these terms only unless REMEDIATION (NZ) Limited agrees otherwise in writing.

3.2 REMEDIATION (NZ) Limited may however amend these terms from time to time.

3.3 REMEDIATION (NZ) Limited is under no obligation to accept all or any of the Customers orders.

4 ORDERS, QUOTES, ESTIMATES

4.1 These Terms apply to all Goods and Services supplied by REMEDIATION. These Terms may be modified or added to by specific terms defined by REMEDIATION in a Quote or other Order. A Customer's acceptance of a Quote constitutes an agreement to purchase Goods or Services on the terms of that Quote and these Terms.

4.2 All Quotes are based on rates and charges in effect at the date of the Quote. Any increase in rates or charges will result in the equivalent increase in the quoted price. A quote may be withdrawn at any time. A Quote will be valid for the term specified on the Quote. If no term is specified, the Quote is valid for 30 days.

4.3 Quotes are prepared in accordance with information provided to REMEDIATION by the Customer. REMEDIATION will not be liable, nor will it be bound by the Quote where:

- Such information is inaccurate or any information is omitted;
- The Customer makes variations to the work quoted for.

4.4 REMEDIATION may decline any Order at its sole discretion.

4.5 Once the Customer has accepted a Quote, the Customer may not cancel it without REMEDIATION's written consent. If REMEDIATION does provide their written consent to cancel, The Customer will be liable to refund to REMEDIATION, all costs and expenses incurred by REMEDIATION in filling the order up to the date of cancellation.

4.6 Once our Quote has been accepted, no variation to the scope of work or to these Terms and Conditions, shall be valid unless agreed to in writing.

4.7 When Goods and/or Services are required in addition to the Quotation, the Customer agrees to pay the additional cost of such Goods.

4.8 REMEDIATION may charge any increased cost from the date of the Quote caused by any alteration or modification requested by the Customer after the date of the Quote or any increase in cartage rates as advised by the NZRT Association.

5 PRICE

5.1 The price of goods and Services shall be as agreed between REMEDIATION and the Customer, as specified REMEDIATION's price list [as amended from time to time] or in an Order or accepted Quote, as applicable. Unless otherwise stated, prices specified do not include GST, other taxes or levies, transport or insurance charges.

6 DELIVERY

6.1 Where REMEDIATION does not undertake delivery, risk of the Goods passes to the Customer at the time possession is given to the Customer or the Customers' nominated carrier.

6.2 Where REMEDIATION does undertake delivery, REMEDIATION are not a common carrier and do not undertake the obligations or liabilities of a common carrier.

6.3 Where REMEDIATION has agreed to leave a public road or street to deliver the Goods to the Customer then; the Customer is responsible for providing suitable means of access and the Customer will be liable for all costs, damages and expenses incurred [including consequential loss] if the Customer fails to provide suitable means of access.

6.4 REMEDIATION reserves the right to refuse to deliver Goods to the Customer if in REMEDIATION's opinion or that of REMEDIATION's representative that there is no suitable access.

6.5 REMEDIATION may charge the Customer normal, hourly truck hire rates for delays caused by the Customer or the Customers' agents or contractors.

6.6 The Customer must pay all delivery and insurance charges [if any].

7 PAYMENTS, DISCOUNTS AND REBATES

We accept Direct Credit, Cash, Cleared Cheque, Visa and Mastercard payments [3% surcharge for Credit Card payments applies]

7.1 The price of Goods and Services charges to a Credit Account must be made in accordance with this clause 7. If the Customer does not have a Credit Account with REMEDIATION, payment must be made by placing an Order.

7.2 Where the Customer receives a volume-based discount on Goods and the Customer failed to purchase the total volume of such Goods, REMEDIATION reserves the right to withdraw such discount and charge the Customer for the full price of the Goods without applying the discount.

7.3 Unless requested otherwise, invoices will be sent electronically. ALL accounts must be paid by the 20th of the month following invoice. If any item or part of any item in an invoice is disputed, the Customer shall notify REMEDIATION prior to the last day of business the month in which the invoice is submitted specifying the item disputed. Payment of a disputed invoice may be deferred only in the respect of the disputed part of the invoice.

7.4 REMEDIATION reserves the right to suspend any discount or rebate and to restrict or withhold the supply of further Goods and Services to the Customer if these payment Terms are not strictly adhered to. If the Customer defaults in making payment, REMEDIATION may:

- Charge Interest. Overdue payments shall attract interest in addition to the original invoiced amount at up to 5% compound per 30 days or part thereof, upon so much of the original amount remains due until full payment is made.
- Charge the Customer ALL costs, including legal fees [as between solicitor and client], debt collection charges and court costs incurred by REMEDIATION in recovering outstanding monies; and
- Cancel this agreement and/or the Customer's right to hold a Credit Account.

7.5 If a Default Event occurs then:

- REMEDICATION will be entitled to cancel all or part of the Customer's orders which have not been delivered in full; and
- All amounts the Customer owes REMEDIATION, whether due for payment or not, will be immediately due

and payable; and REMEDIATION may reclaim goods in the Customers' possession or control and dispose of them for REMEDIATION's own benefit, as they deem fit.

7.6 For the purposes of this clause, a 'Default Event' occurs if:

- A payment by the Customer is overdue; or
- In REMEDIATION opinion, the Customer is unlikely to pay monies owed in a timely manner.

8 SECURITY INTEREST, RETENTION OF TITLE

8.1 The Customer grants to REMEDIATION a security interest in the Goods as security for all the amounts owing to REMEDIATION and the performance of the Customer's obligations under these Terms.

8.2 Legal ownership in ALL Goods is retained by REMEDIATION until full payment has been received. The Customer acknowledges receipt of these Terms of Trade and agrees that it will execute all documents required by REMEDIATION to maintain, register and enforce REMEDIATION's security interest in respect of the Goods.

8.3 The Customer will be responsible for risk of any loss or damage to the Goods when and however caused following delivery notwithstanding that title to the Goods may not have been passed to the Customer.

8.4 The Customer agrees that:

- If any payment is overdue in whole or part, REMEDIATION may [without prejudice to its other rights] recover or sell any Goods and without further notice, may enter upon the Customer's premise whether itself or by its agents to take possession of any and remove such goods.
- The Customer will indemnify REMEDIATION or its employees or agents against any loss or damage occasioned to third parties in or arising from the repossession of the Goods.
- REMEDICATION may sell all or any of the Goods without giving prior notice of the sale to the Customer;
- The Customer shall immediately notify REMEDIATION of any change in the Customer's name, address or contact person's details.

9 WARRANTIES

9.1 To the extent permitted by law, all statutory, express or implied warranty by REMEDIATION including, without limitation, implied warranty or merchantability and fitness for any purpose are expressly excluded.

9.2 Colour and texture variations may occur in Goods due to:

- The use of natural materials in the manufacturing process; and
- Normal manufacturing tolerances and processes.

9.3 The Customer agrees that such variations do not constitute a product defect and REMEDIATION shall not be liable for any such loss or damage suffered by the Customer because of such variations.

10 LIMITATIONS OF LIABILITY

10.1 The liability of REMEDIATION in respect of all claims for loss, damage or injury arising from a breach of any of REMEDIATION's obligations under these Terms or from any act or omission of REMEDIATION is limited, in each case, to the lesser of:

- Replacement or repair of the affected Goods;
- The price [excluding GST] of the affected Goods and/or Services.

10.2 REMEDIATION will not be liable to the Customer for failure to deliver by a specified date or for the loss caused by anything which is beyond REMEDIATION's reasonable control.

10.3 REMEDIATION will not accept responsibility for any defective goods, unless;

- The Customer must notify REMEDIATION of the defect, within 14 days of the Customer receiving the goods; and
- The Customer must allow REMEDIATION to fully investigate their claim.

11 INTELLECTUAL PROPERTY

11.1 Intellectual Property Rights means any patent, trade mark, service mark, copyright, moral right, right in a design, knowledge of or expertise and any other intellectual or industrial property rights, wherever in the world, whether registered.

11.2 All Intellectual Property Rights in the Goods or arising out of the performance of the Services are and shall remain, the property of REMEDIATION. The Customer warrants that any design or drawing provided by it, does not infringe any intellectual property rights of any other person.

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11.2 All Intellectual Property Rights on specific exhibition sign design remains the sole and complete property of REMEDIATION. Any infringement of our Intellectual Property Rights, will be fully enforced under New Zealand law.

12 RISK

12.1 Risk of the Goods shall pass to the Customer upon delivery.

12.2 Delivery of the Goods shall be deemed to occur at the point specified in the Order or Quote, or if no delivery point is specified, then;

- a) When the Goods arrive at the site address specified by the Customer [whether the Customer is present to acknowledge receipt]; or
- b) When the Customer takes possession of the Goods, whichever occurs first.

12.3 REMEDIATION may deliver Goods by instalments. If the Customer fails to pay for an instalment on the due date, REMEDIATION may suspend deliveries of future instalments.

12.4 Where REMEDIATION delivers the Goods, the Customer shall;

- a) Ensure that REMEDIATION has all-weather access to the site, to enable REMEDIATION to deliver the Goods safely;
- b) Obtain all the necessary consents from the relevant local authority and inform REMEDIATION of all matters relating to such consents;
- c) Locate, mark and advise REMEDIATION of all pipes, cabling and other utilities that are on, or near, or adjacent to the delivery point and of any actual or possible hazard on the land where the Goods are to be delivered; and
- d) Indemnify REMEDIATION against any costs, claims and damages incurred in the delivery of the Goods including any cleaning, repairing damage to the site or delivery equipment and returning the delivery vehicle to the road, provided REMEDIATION has acted with reasonable care and skill.

12.5 The final decision of entry onto any site will be at REMEDIATION's discretion. Failure to deliver pursuant to this clause will not be deemed to be a breach of contract by REMEDIATION.

12.6 If the Customer collects the Goods from REMEDIATION, the Customer agrees that it shall comply with REMEDIATION's rules applicable to the Health and Safety at Work Act at REMEDIATION's site, including ensuring that they are inducted to an appropriate induction standard at the site. The Customer shall also assist REMEDIATION to provide and maintain a safe and healthy workplace where all hazards, unsafe acts and/or conditions are identified and analysed before controlled by elimination/isolation or minimisation of the risk of harm.

12.7 The Customer must make any claims for a short or incomplete delivery, within 48 hours of delivery of goods by REMEDIATION and must state the delivery of the Goods and/or Services and the delivery docket number.

12.8 The despatch docket will set out the specifications of the Goods and/or Services orders by the Customer. The Customer shall be responsible for signing the despatch docket and for checking that such specifications are correct prior to the discharge of the Goods and/or Services from REMEDIATION's delivery vehicle.

12.9 If the Customer refuses all or part of any Order upon delivery at a Customer's site, the Customer shall be bound to make full payment for the Goods, together with all disposal costs in respect of the returned order.

13 RETURNS AND CANCELLATIONS

13.1 REMEDIATION is under no obligations to accept the cancellations of any Order or the return of Goods, which must be agreed to in writing by REMEDIATION. A failure or refusal to sign despatch dockets, shall not be evidence of rejection or cancellation of any Order. Such rejection or cancellation is to be notified in writing at least two hours prior to delivery.

13.2 Goods which are damaged before delivery to the Customer may be returned for the replacement or credit by quoting the date of delivery and the despatch docket numbers or the invoice number, provided that:

- a) The Goods are returned to REMEDIATION at REMEDIATION's cost or REMEDIATION is requested to uplift the Goods within two hours of delivery; and
- b) The Goods are in their original condition and packaging as supplied.

14 CONSUMER GUARANTEES ACT 1993

14.1 Where the Goods or Services are being supplied for the purposes of a business, the Customer agrees that the Consumer Guarantees Act 1993, will not apply.

14.2 Where the supply of Goods is to a Customer who is a supplier [as defined in the Consumer Guarantees Act] the Customer covenants with REMEDIATION that it will not make or allow to be made in respect of the Goods supplied any statements or representations as to the quality or description other than those made by REMEDIATION. The Customer hereby indemnifies and will keep REMEDIATION indemnified, against any claims, losses, damages and cost which may be made against REMEDIATION in respect of statements or representations, which are made to the contrary to the provisions of this clause.

15 FORCE MAJEURE

15.1 No claim or liability will arise against REMEDIATION under these Terms or any Order or Quote, if and to the extent that REMEDIATION's failure or omission to carry out or observe any provisions of these Terms or any Order or Quote arises because of Force Majeure. 'Force Majeure' means any event outside the reasonable control of REMEDIATION.

16 TERMINATION

16.1 All outstanding monies shall become immediately due and payable from the Customer and REMEDIATION reserves the right to immediately cancel any Order and/or the Customers right to hold a Credit Account, if the Customer;

- a) Ceases or threatens to cease carry on business;
- b) Becomes unable to pay its debts as they fall due or otherwise becomes insolvent or bankrupt;
- c) Has a receiver or a receiver and manager appointed in relation to all or part of its assets, commences liquidation or is placed in statutory management; or
- d) Breaches any of these Terms and fails to remedy the breach within ten days of written notice requiring the breach to be remedied.

17 PRIVACY ACT 1993

17.1 The Customer authorises REMEDIATION to collect, retain and use personal information about the Customer for the following purposes:

- a) Assessing the Customer's credit worthiness;
- b) Administrating the Customer's Orders;
- c) Receiving information from one or more credit reference agencies, concerning the credit history of the Customer;
- d) Disclosing credit-related information to and using the credit services of one or more credit reference agencies, on a continuing basis at any time and entirely at its discretion concerning the Customer's credit worthiness.

17.2 For the avoidance of doubt, all authorities given above are continuing authorities, to apply throughout the trading relationship.

17.3 The Customer, if an individual, has the right to access their personal information about the Customer held by REMEDIATION and may request correction of such information held.

18 DISPUTES

18.1 The parties agree to use their best endeavours to promptly resolve any dispute or difference between them. If a dispute arises [Dispute] the party claiming that a Dispute has arisen, shall serve notice on the other party stating the subject matter and the details of the Dispute. After receipt of the notice, senior management of both parties shall meet within ten working days and shall attempt, in good faith, to resolve the dispute.

18.2 If senior management fail to resolve the Dispute within twenty working days of the notice of the Dispute, either party may take such legal action including the commencement of legal proceedings as deemed appropriate or necessary to resolve or determine the Dispute.

19 GUARANTEE AND INDEMNITY

19.1 The Guarantor/s of the Customer jointly and severally, unconditionally guarantee to REMEDIATION the due and punctual payment by the Customer of all outstanding monies and agree to keep REMEDIATION fully indemnified against all damages, losses, costs and expenses arising from any failure of the Customer to pay the monies hereby guaranteed.

19.2 As between the Guarantor/s and REMEDIATION, the liability of the Guarantor/s shall be deemed to be that of

principal debtor. This guarantee is in addition to and not in substitution for any other security or right which REMEDIATION may have in respect to the Customer's indebtedness and may be enforced against the Guarantor/s without first having recourse to any such securities or rights and without taking steps or proceedings against the Customer.

19.3 The liability of the Guarantor/s shall not be affected by the granting of time, credit or any indulgence or other concession to the Customer or to any person giving any similar guarantee.

19.4 The guarantee and indemnity in this clause 19 is an irrevocable and continuing guarantee and indemnity and shall remain in full force until all obligations under the Customers' credit account have been fully paid, satisfied or performed.

20 GENERAL

20.1 **Waiver:** REMEDIATION's failure or delay exercising or to enforce any right it has under these Terms shall not operate as a waiver of REMEDIATION's right to exercise or enforce such right or any other right in the future.

20.2 **Severance:** Should any part of these Terms be unenforceable, such part shall be severed and the remainder of these Terms shall remain binding.

20.3 **Confidentiality:** Except as required by law, both parties shall preserve as confidential any information of a confidential nature that they acquire, in relation to the other.

20.4 **Variation:** REMEDIATION may at any time and at its sole discretion, vary these Terms with immediate effect by posting the revised Terms of Trade on REMEDIATION's website at www.revital.co.nz provided that REMEDIATION shall not make any variation to the nature or extent of the security interest granted by the Customer under clause 8, without the written agreement of the Customer by delivering the Customer of these Terms as amended.

20.5 **No Partnership:** Notwithstanding any provision of these Terms, the parties agree that this relationship between them is not and shall not be construed to be a partnership.

20.6 **Further Acts:** The Customer shall execute all documents and do all the acts and things required by REMEDIATION to carry into effect the matters contemplated by these Terms.

20.7 **Entire Agreement:** Except as otherwise agreed in writing, including and in accordance with clause 1.2, these Terms constitute the entire agreement between the parties.

20.8 **Notice:** Any letter or notice given under these Terms will be validly and sufficiently given, if sent by pre-paid post, facsimile or electronic email to the address details notified by one party to the other, from time to time. A notice sent by post shall be deemed to be received on the fifth working day following the day of posting. A notice sent by facsimile or electronic email, shall be deemed to be received on the day specified on the facsimile transmission receipt or electronic email receipt.

20.9 **Jurisdiction:** These Terms are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand Courts.

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