



ACCOUNT APPLICATION FORM

REDSARK CREATIVE LIMITED

P O Box 99254, Newmarket, Auckland 1149.
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Email: rmurray@redspark.co.nz

Please read, complete and sign both sides

ENTITY DETAILS

APPLICANT'S FULL LEGAL NAME (i.e. not trading name): ("the Client")

(Please tick) Sole Trader Individual Partnership Ltd Company Other (please state):

Trading as: Postal Address:

Physical Address: Email:

Nature of Business: Years in Business:

Telephone: Fax: Date of Birth:

Contact Name & Position:

OWNERSHIP please insert Owner(s) / Directors Name(s) in full

1: Address:

2: Address:

IF LIMITED LIABILITY COMPANY - Address of Registered Office:

Date of Incorporation: Incorporation No:

FINANCIAL & PROFESSIONAL ADVISORS

Shareholders Funds: Paid Up:

Name of Accountant: Solicitor:

Bank: Branch: Acct No:

TRADE REFERENCES

Company Contact Name Phone Number Account open since

Company Contact Name Phone Number Account open since

Company Contact Name Phone Number Account open since

General Description of Goods/Products/Services to be Provided:

I/We have read and agree to be bound by the terms and conditions of trade as printed overleaf or attached. I/We warrant to Redspark Creative Limited that the above information is to the best of my/our knowledge, information and belief true and correct and that I/we am/are duly authorised to enter into this application and future contracts on behalf of the Client. I/we also acknowledge that pursuant to the personal guarantee contained in the terms and conditions of trade that, where relevant, I/we am/are also signing this application form in my/our personal capacity.

Signed Print Name Designation

Dated this day of 20

If the applicant is a company then this application form must be signed by a company director of the company.

1. DEFINITIONS

- 1.1 "Redspark Creative" shall mean Redspark Creative Limited, or any agents or employees thereof.
- 1.2 "Client" shall mean the Client, any person acting on behalf of and with the authority of the Client, or any person purchasing products and services from Redspark Creative.
- 1.3 "marketing and design services" shall mean all products, goods, services and advice provided by Redspark Creative to the Client and shall include without limitation all marketing and design services, products, goods and advice provided by Redspark Creative to the Client and shall include without limitation all marketing, graphic design, branding, product management and the supply of all associated arts and creative marketing and design materials and all charges for time and attendances, hire charges, insurance charges, or any fee or charge associated with the supply of marketing and design services by Redspark Creative to the Client.
- 1.4 "Price" shall mean the cost of the marketing and design services as agreed between Redspark Creative and the Client and includes all disbursements eg charges Redspark Creative pay to others on the Client's behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by Redspark Creative from the Client for the supply of marketing and design services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Client authorises Redspark Creative to collect, retain and use any information about the Client, for the purpose of assessing the Client's credit worthiness, enforcing any rights under this contract, or marketing any marketing and design services provided by Redspark Creative to any other party.
- 3.2 The Client authorises Redspark Creative to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Client is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the marketing and design services shall be deemed to be sold at the current amount as such marketing and design services are sold by Redspark Creative at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the marketing and design services that is beyond the control of Redspark Creative between the date of the contract and delivery of the marketing and design services.

5. PAYMENT

- 5.1 Payment for marketing and design services shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Redspark Creative in the enforcement of any rights contained in this contract shall be paid by the Client, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.

6. QUOTATION

- 6.1 Where a quotation is given by Redspark Creative for marketing and design services:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 Redspark Creative reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where marketing and design services are required in addition to the quotation the Client agrees to pay for the additional cost of such marketing and design services.

7. AGENCY

- 7.1 The Client authorises Redspark Creative to contract either as principal or agent for the provision of marketing and design services that are the matter of this contract.
- 7.2 Where Redspark Creative enters into a contract of the type referred to in clause 7.1 it shall be read with and form part of this agreement and the Client agrees to pay any amounts due under that contract.

8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any marketing and design services supplied by Redspark Creative passes to the Client only when the Client has made payment in full for all marketing and design services provided by Redspark Creative and of all other sums due to Redspark Creative by the Client on any account whatsoever. Until all sums due to Redspark Creative by the Client have been paid in full, Redspark Creative has a security interest in all marketing and design services.
- 8.2 If the marketing and design services are attached, fixed, or incorporated into any property of the Client, by way of any manufacturing or assembly process by the Client or any third party, title in the marketing and design services shall remain with Redspark Creative until the Client has made payment for all marketing and design services, and where those marketing and design services are mixed with other property so as to be part of or a constituent of any new marketing and design services, title to these new marketing and design services shall be deemed to be assigned to Redspark Creative as security for the full satisfaction by the Client of the full amount owing between Redspark Creative and Client.
- 8.3 The Client gives irrevocable authority to Redspark Creative to enter any premises occupied by the Client or on which marketing and design services are situated at any reasonable time after default by the Client or before default if Redspark Creative believes a default is likely and to remove and repossess any marketing and design services and any other property to which are attached or in which are incorporated. Redspark Creative shall not be liable for any costs, damages,

expenses or losses incurred by the Client or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Redspark Creative may either resell any repossessed marketing and design services and credit the Client's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed marketing and design services and credit the Client's account with the invoice value thereof less such sum as Redspark Creative reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

- 8.4 Where marketing and design services are retained by Redspark Creative pursuant to clause 8.3 the Client waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 8.5 The following shall constitute defaults by the Client:
 - 8.5.1 Non payment of any sum by the due date.
 - 8.5.2 The Client intimates that it will not pay any sum by the due date.
 - 8.5.3 Any marketing and design services are seized by any other creditor of the Client or any other creditor intimates that it intends to seize marketing and design services.
 - 8.5.4 Any marketing and design services in the possession of the Client are materially damaged while any sum due from the Client to Redspark Creative remains unpaid.
 - 8.5.5 The Client is bankrupted or put into liquidation or a receiver is appointed to any of the Client's assets or a landlord distains against any of the Client's assets.
 - 8.5.6 A Court judgment is entered against the Client and remains unsatisfied for seven (7) days.
 - 8.5.7 Any material adverse change in the financial position of the Client.

9. DISPUTES

- 9.1 No claim relating to marketing and design services will be considered unless made within fourteen (14) days of supply.

10. LIABILITY

- 10.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Redspark Creative which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Redspark Creative, Redspark Creative's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 10.2 Except as otherwise provided by clause 10.1 Redspark Creative shall not be liable for:
 - 10.2.1 Any loss or damage of any kind whatsoever, arising from the supply of marketing and design services by Redspark Creative to the Client, including consequential loss whether suffered or incurred by the Client or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from marketing and design services provided by Redspark Creative to the Client; and
 - 10.2.2 The Client shall indemnify Redspark Creative against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Redspark Creative or otherwise, brought by any person in connection with any matter, act, omission, or error by Redspark Creative its agents or employees in connection with the marketing and design services.
 - 10.2.3 If contrary to the disclaimer of liability contained in these terms and conditions of trade Redspark Creative is deemed liable to the Client, following and arising from the supply of marketing and design services by Redspark Creative and the Client then such liability is limited in its aggregate to \$500.00.

11. COPYRIGHT AND INTELLECTUAL PROPERTY

- 11.1 Redspark Creative owns and has copyright in all designs, samples, artworks, software, drawings, specifications, and documentation produced by Redspark Creative in connection with the marketing and design services provided pursuant to this contract and the client may use the marketing and design services only if paid for in full and for the purpose for which they were intended and supplied by Redspark Creative.

12. CONSUMER GUARANTEES ACT

- 12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires marketing and design services from Redspark Creative for the purposes of a business in terms of section 2 and 43 of that Act.

13. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

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

14. MISCELLANEOUS

- 14.1 Redspark Creative shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 14.2 Failure by Redspark Creative to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Redspark Creative has under this contract.
- 14.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

15. PROOF APPROVAL

- 15.1 Redspark Creative is not liable for errors in the finished work where a proof has been submitted to and approved by the Client.

Signed