

Registered Name: \_\_\_\_\_

Company Registration Number: \_\_\_\_\_ Date Established: \_\_\_\_\_

Trading or School Name: \_\_\_\_\_

Statement/Invoice Postal Address: \_\_\_\_\_ Post Code: \_\_\_\_\_

Email Address: \_\_\_\_\_

Please indicate if you would prefer to receive Statements and Invoices by post or by email:  Post  Email (Note: All statements and invoices will be automatically sent to the nominated e-mail address above)

Accounts Department Contact Name: \_\_\_\_\_

Landline Phone: (0 ) \_\_\_\_\_ Fax: (0 ) \_\_\_\_\_

Delivery Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Delivery Instructions: \_\_\_\_\_

Business Status:  Limited Company  Sole Proprietor  Partnership/Trust  School  
 Government Funded Educational Institution  Other \_\_\_\_\_

Business Activity: \_\_\_\_\_ No. of Employees: \_\_\_\_\_

Directors'/Proprietors' Names:	Address:	Date of Birth: (required for credit check)
1. _____	_____	____/____/____
2. _____	_____	____/____/____

Estimated Monthly Credit You Require? \$ \_\_\_\_\_ Registered for GST:  Yes  No

### Acceptance of Terms and Conditions of Trade

I hereby apply to open a credit account with OfficeMax. I have read and fully understand OfficeMax's Terms and Conditions of Trade (**see over**) and agree to abide by them.

Name of the person signing the application: \_\_\_\_\_

Position held: \_\_\_\_\_

Signature: \_\_\_\_\_ (Authorised Signatory Only) Date: \_\_\_\_\_

### Guarantee

In consideration of OfficeMax agreeing to supply \_\_\_\_\_ (the Customer) with goods on credit, I hereby jointly and severally agree with OfficeMax as follows:

- I hereby guarantee the due performance by the Customer of the terms and conditions attached hereto and I hereby guarantee to you the payment of any moneys advanced by way of credit to the Customer.
- This agreement shall be a continuing guarantee to OfficeMax for all debts whatsoever and whensoever contracted by the Customer with OfficeMax, in respect of goods to be supplied to it.
- OfficeMax shall be at liberty without notice to me at any time and without in any way discharging me from liability hereunder to grant time or other indulgence to the said Customer and to accept payment from it in cash or by other means of negotiable instruments and to treat me in all respects as though I were jointly liable with it to OfficeMax instead of being merely surety for it.

Dated \_\_\_\_\_

Guarantor's Name \_\_\_\_\_ Witness's Name \_\_\_\_\_

Guarantor's Occupation \_\_\_\_\_ Witness's Occupation \_\_\_\_\_

Guarantor's Date of Birth (required for credit check) \_\_\_\_/\_\_\_\_/\_\_\_\_ Witness's Address \_\_\_\_\_

Guarantor's Address \_\_\_\_\_

Guarantor's Signature \_\_\_\_\_ Witness's Signature \_\_\_\_\_

### Please complete and return to:

OfficeMax New Zealand Ltd, Private Bag 92831, Penrose, Auckland 1642. Freephone 0800 729 967 Facsimile 09 250 3760

OfficeMax Use Only

Customer Number

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Account Manager Code

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# Terms and Conditions of Trade

OfficeMax and School Supplies are trading names of OfficeMax New Zealand Limited.

These terms and conditions of trade apply to all our Sale of Goods Contracts. Any order placed with OfficeMax New Zealand Limited ("OfficeMax") constitutes your agreement to be bound by these terms. Any additional or different terms you stipulate or state in any communication with OfficeMax (including an order) are hereby objected to and will not bind OfficeMax unless OfficeMax agrees in writing. No sales person, representative or agent is authorised by OfficeMax to give any guarantee, warranty or representation in addition to, or contrary to these terms. In any event, receipt of goods by you (or another as you direct) upon delivery constitutes your agreement to be bound by these terms.

## 1 PRICE AND PRICE VARIATION

- 1.1 Prices quoted are excluding GST unless otherwise stated. Unless otherwise agreed in writing, the price of the goods will be the current price on the day of delivery of the goods. Prices do not include any delivery surcharges.
- 1.2 OfficeMax shall be entitled to adjust any price quoted from time to time and the Customer agrees to pay any such adjusted price to take account of variations in the cost to OfficeMax of carrying out the whole or any part of the contract arising from any of the following:
  - (a) Delays in delivery or installation of the goods or any of them as a result of instructions or lack of instructions from the Customer, the Customer's failure or inability to fulfill the obligations under the contract or any action or inaction by the Customer or other circumstances beyond OfficeMax's control;
  - (b) Variation in the cost of OfficeMax acquiring the goods directly or indirectly, on account of changes in rates of freight and transport costs, insurance, customs duties, taxes, existing tariff classifications or any variation in currency exchange rates;
  - (c) Variations in the cost of rates of all statutory, government or local government or governmental authority charges and obligations; or
  - (d) Any correction of errors or omissions on the part of OfficeMax or any of its representatives.

## 2 GST

- 2.1 All goods and services sold are subject to Goods and Services Tax.

## 3 PAYMENT

- 3.1 Unless otherwise agreed, the purchase price shall be paid to OfficeMax at its address by the 20th of the month following the month in which the invoice was dated. Payment will not be accepted by any means other than cash, cheque or direct credit.
- 3.2 If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment as provided in 3.1. Payment of the disputed portion may be withheld provided the matter is brought to OfficeMax's attention immediately it is discovered and a letter of explanation setting out the particulars of the dispute is sent to OfficeMax within seven days of the dispute arising.
- 3.3 OfficeMax reserves the right to suspend delivery of further goods if the terms of payment are not strictly adhered to by the Customer.
- 3.4 Interest may be charged on overdue accounts at such rate as may be charged by OfficeMax from time to time.
- 3.5 Any expenses, costs or disbursements incurred by OfficeMax in recovering any outstanding monies including debt collection agency fees or solicitor's costs shall be paid by the Customer.

## 4 NEW ACCOUNT

- 4.1 Use of this account shall constitute acceptance of these terms and conditions.
- 4.2 The Customer shall not be liable for any indebtedness arising from the fraudulent use of the account provided that the Customer must on discovering the fraudulent use of the account immediately notify OfficeMax of such fraudulent use. The burden of proving such use was fraudulent shall lie with the Customer.
- 4.3 The Customer shall endeavour to return all goods acquired by fraudulent use.

## 5 DELIVERY

- 5.1 OfficeMax shall deliver the goods to the address stated on the order or as agreed by OfficeMax in writing.
- 5.2 OfficeMax shall deliver the goods by such carrier and such form of transport OfficeMax consider to be appropriate.
- 5.3 Where you specify the carrier and the means of carriage, OfficeMax shall deliver the goods in the way specified, the cost of such carriage being an additional charge to the invoiced price of the goods.
- 5.4 OfficeMax will not be responsible for any part delivery or delay in delivery of the goods as a result of events occurring beyond OfficeMax's control. OfficeMax shall not be in any way responsible for any consequences (direct or indirect) arising from such delay or non-delivery.
- 5.5 The Customer agrees to inform OfficeMax within 30 days of the date of invoice if proof of delivery is required. After this period, no liability will lie with OfficeMax for proof of delivery.

## 6 PRIVACY ACT 1993

- 6.1 The Customer authorises OfficeMax to collect, retain, and use personal information about the Customer (including the information collected in this document) for the following purposes only:
  - (a) assessing the Customer's creditworthiness.
  - (b) disclosing to a third party details of this application and any subsequent dealings it may have with OfficeMax for the purpose of recovering amounts payable by the Customer and providing credit references.
  - (c) marketing goods and services provided by OfficeMax to the Customer.
- 6.2 The Customer, if an individual, has a right of access to information about the Customer held by OfficeMax. The Customer may request correction of that information and may require that the request be stored with that information. OfficeMax may charge reasonable costs for providing access to that information.

## 7 INTELLECTUAL PROPERTY

- 7.1 Where OfficeMax has followed a design or instruction furnished by or given by the Customer, the Customer shall indemnify OfficeMax against all damages, penalties, costs and expenses of OfficeMax or in respect of which OfficeMax may become liable through any work required to be done in accordance with these instructions involving an infringement of a patent, trademark, registered design or common law right.
- 7.2 Should OfficeMax be required to match any shade or colour, a light and dark tolerance shall be allowed to such an extent as shall be agreed by OfficeMax and the Customer at the time the standard colour is specified and in the absence of any agreement a reasonable tolerance shall be allowed.
- 7.3 Where the Customer supplies a mould, die, tool, printing plate or any other item used in the manufacturing process the Customer shall reimburse OfficeMax for all maintenance expenses. OfficeMax shall not be liable for any loss or damage to moulds, dies, tools or materials supplied by the Customer to OfficeMax for the purposes of fulfilling any contract.
- 7.4 Printing plates, stereotypes, film, artwork and all other equipment for specific use in the manufacture of the goods (other than those supplied by the Customer) remain the property of OfficeMax unless the cost thereof (including all development and costs relating thereto) shall have been fully recovered by OfficeMax from the Customer in the costing of the goods already paid for by the Customer.
- 7.5 All information prepared by OfficeMax including, without limitation, customised pricing, proposals, electronic catalogues, details of improvements and cost reductions, is the intellectual property of OfficeMax and cannot be copied, altered or distributed without OfficeMax's prior written consent. OfficeMax will not be liable for any alterations made by you.

## 8 RETURN OF GOODS

- 8.1 OfficeMax will not accept the return of goods for credit or any other purpose unless OfficeMax agrees to accept the return of the goods and advise the Customer a return advice number prior to the return of goods. Return of goods will only be accepted for credit within 14 days of delivery, unless due to OfficeMax's error. Return freight will be at OfficeMax's cost only when there has been an error on OfficeMax's part.
- 8.2 No returned goods shall be accepted by OfficeMax (even if OfficeMax agree to do so) if they have been tampered with by you or any other person, if they are goods expressly sold on a non-return basis, or if they are not accompanied by the return advice number referred to in clause 8.1. Where goods are returned to OfficeMax but not accepted as above, they shall be returned to you at your expense.
- 8.3 Receipt by OfficeMax or by any of our agents or representatives of any goods returned other than in accordance with clauses 8.1 and 8.2 shall not constitute nor be deemed to constitute OfficeMax's acceptance of the return of the goods for credit or any other purpose.

## 9 RISK

- 9.1 Risk in the goods shall pass to you at the time when our obligations under the contract are deemed under clause 5 to be completed.

## 10 PPSA SECURITY INTEREST

- 10.1 The Customer grants to OfficeMax a Security Interest in the goods and their Proceeds to secure the

obligation of the Customer to pay the purchase price of the goods and any other obligations of the Customer to OfficeMax under this contract (together "the Indebtedness") and, where the goods and/or Proceeds are not readily identifiable and/or traceable or their recoverable value is insufficient to pay the indebtedness, the security interest shall also extend to all the Customers present and after acquired office equipment, supplies and stationery, of which the goods form part, to the extent required to secure the Indebtedness.

- 10.2 As and when required by OfficeMax the Customer shall, at its own expense, provide all reasonable assistance and relevant information to enable OfficeMax to register a Financing Statement or Financing Change Statement and generally to obtain, maintain, register and enforce OfficeMax's Security Interest in respect of the goods supplied, in accordance with the Personal Property Securities Act 1999 ("PPSA").
- 10.3 The Customer shall not change its name without first notifying OfficeMax of the new name not less than 7 days before the change takes effect.
- 10.4 The Customer warrants that the goods are not purchased for use primarily for personal, domestic or household purposes.
- 10.5 Notwithstanding any reference to a particular invoice/order, where any sum remains outstanding by the Customer on more than one invoice/order, any payments received from the Customer shall be deemed to be made by the Customer and applied by OfficeMax in respect of each unpaid invoice/order on a pro rata basis PROVIDED THAT where OfficeMax applies payments in this manner it shall not charge interest on overdue balances that would have been cleared if the payments were not allocated pro rata.
- 10.6 Until the Customer has paid all money owing to OfficeMax the Customer shall at all times ensure that:
  - (a) the goods supplied by OfficeMax, while in the Customer's possession, can be readily identified and distinguished; and/or
  - (b) all Proceeds (in whatever form) that the Customer receives from the sale of any of the goods are readily identifiable and traceable.
- 10.7 Where the goods are purchased by the Customer as stock in trade for sale or lease in the ordinary course of the Customer's business, nothing in this clause shall prevent the Customer from selling or leasing and delivering the goods in the ordinary course of the Customer's business. Otherwise, until the Customer has paid all money owing to OfficeMax, the Customer shall not sell or grant a Security Interest in the goods without OfficeMax's written consent.
- 10.8 The parties agree to contract-out of the PPSA in accordance with Section 107 of the PPSA to the extent that Section 107 applies for the benefit of, and does not impose a burden on, OfficeMax. The Customer waives its right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement registered by or on behalf of OfficeMax in respect of the Security Interest created by these terms and conditions of trade.
- 10.9 For the purpose of this clause words and phrases starting with a capital letter shall have the respective meanings given to them under, or in the context of, the PPSA.

## 11 GUARANTEES

- 11.1 Where the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption in accordance with the Consumer Guarantees Act 1993 and the Consumer Guarantees Act 1993 applies to this contract:
  - (a) if any of the goods fail to comply with any guarantee in the Consumer Guarantees Act, OfficeMax will repair or replace those goods;
  - (b) without excluding OfficeMax's obligations under the Consumer Guarantees Act 1993, the Customer acknowledges that OfficeMax does not provide any Express Guarantees (as defined in that Act) other than those expressly confirmed by OfficeMax in writing;
  - (c) if the goods are acquired by the Customer for business purposes, the Customer agrees that the Consumer Guarantees Act 1993 does not apply;
  - (d) if the Customer supplies the goods in trade to a person acquiring them for business purposes, it must be a term of the Customer's contract that the Consumer Guarantees Act 1993 does not apply in respect of the goods; and
  - (e) if the Customer supplies the goods to any person, the Customer must not give or make any undertaking assertion or representation in relation to the goods without OfficeMax's prior approval in writing, and the Customer must give the person buying the goods such product information relating to the goods as OfficeMax requires, and the Customer agrees to indemnify OfficeMax against any liability or cost incurred by OfficeMax under the Consumer Guarantees Act 1993 as a result of any breach by the Customer of these obligations.
- 11.2 The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to this contract, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:
  - (a) Defective goods or goods which do not comply with the contract may at OfficeMax's discretion be repaired or replaced, or the price refunded.
  - (b) Any right which the Customer may have to reject non-conforming or defective goods will only be effective if:
    - (i) the Customer notifies OfficeMax in writing within fourteen days following delivery and OfficeMax is given the opportunity to inspect the goods; and
    - (ii) the goods are returned unused, re-saleable and/or in the condition the Customer received them.
  - (c) OfficeMax will not repair or replace, or refund the price of any goods for so long as the Customer is in default in relation to any amount owing.
  - (d) OfficeMax accepts no liability for any claim by the Customer or any other person, including without limitation any claim relating to or arising from:
    - (i) Any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade custom or otherwise; or
    - (ii) Any representations, warranties, conditions or agreement made by any agent or representative which are not expressly confirmed by OfficeMax in writing; or
    - (iii) Any services forming part of the supply of the goods which have been performed by any third party; and the Customer agrees to indemnify OfficeMax against any such claim.
  - (e) In any event, OfficeMax's liability under any claim shall not exceed the price of the goods.
- 11.3 Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms are to be modified to the extent necessary to give effect to that intention.

## 12 CUSTOMER'S LIABILITY & DEFAULT

- 12.1 If the Customer shall:
  - (a) fail to make any payment due under the contract or commit any other breach of any of the Customer's obligations under the contract; or
  - (b) suffer execution under any judgment; or
  - (c) commit an act of bankruptcy; or
  - (d) make any composition or arrangement with any creditor; or
  - (e) being a company, pass a resolution for winding up or have a receiver appointed over any of its property or have a winding up petition presented against it,OfficeMax (in addition to any other remedies hereby or by statute conferred) may treat the contract as terminated and any part of the purchase price then unpaid, together with any other monies owing hereunder, whether or not due under the terms of the contract shall forthwith become due and payable. Any such termination shall be without prejudice to any claim or right OfficeMax may otherwise possess.

## 13 VARIATIONS TO TERMS AND CONDITIONS OF TRADE

- 13.1 OfficeMax may from time to time and in its sole discretion amend, add to or delete any of the terms of these terms and conditions of trade with immediate effect by giving notice to the Customer PROVIDED THAT OfficeMax shall not make any variation to the nature or extent of the Security Interest granted by the Customer in clause 10.1 without the written agreement of the Customer. OfficeMax may notify the Customer by delivering to the Customer an invoice with a notice of amendment and receipt of the invoice by the Customer will be deemed to be acceptance by the Customer of the terms and conditions of trade.

## 14 GOVERNING LAW

- 14.1 These terms of trade are governed by the laws of New Zealand.
- 14.2 OfficeMax and the Customer shall submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of these terms and conditions of trade.