

# Omokoroa print & Copy

of 148 Prole Road, Omokoroa, RD2 Tauranga N.Z. 3172

## Account Application Form

Sole Trader  Partnership  Limited Company  Trust  Other  \_\_\_\_\_

Trade Name: \_\_\_\_\_

Legal Name: \_\_\_\_\_

### ADMINISTRATION CONTACT PERSON

Mr. / Mrs. / Miss / Ms First Name: \_\_\_\_\_ Surname: \_\_\_\_\_

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

Physical Address: \_\_\_\_\_ Postcode: \_\_\_\_\_

Postal Address: \_\_\_\_\_ Postcode: \_\_\_\_\_

City / Town: \_\_\_\_\_ Home Phone: (    ) \_\_\_\_\_

Bus. Phone: (    ) \_\_\_\_\_ Fax: (    ) \_\_\_\_\_

Mobile: (    ) \_\_\_\_\_ Email: \_\_\_\_\_

I certify that the above information is true and correct, and that I have the authority to open this account. In accordance with the Privacy Act (1993) I authorise any person or company to give information as may be required in response to credit inquiries. I have read and understood the GENERAL TERMS AND CONDITIONS OF TRADE (overleaf) of **Omokoroa print & Copy** which form part of, and are intended to be read in conjunction with any tax invoice from **Omokoroa print & Copy** and agree to be bound by these conditions.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Full Name: \_\_\_\_\_ Position: \_\_\_\_\_

# TERMS & CONDITIONS OF TRADE

## 1. DEFINITIONS

- 1.1 "O.P.C." shall mean "Omokoroa Print & Copy.", or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from O.P.C..
- 1.3 "Goods and services" shall mean:
- 1.3.1 all Goods and services supplied by O.P.C. to the Customer; and
  - 1.3.2 all inventory of the Customer that is supplied by O.P.C.; and
  - 1.3.3 all Goods and services supplied by O.P.C. and further identified in any invoice issued by O.P.C. to the Customer, which invoices are deemed to be incorporated into and form part of this agreement.
  - 1.3.4 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods" shall mean all goods and services, products, intellectual property and advice provided by O.P.C. to the Customer and shall include without limitation the manufacture, supply of publication, advertising, promotional or related products and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods and services by O.P.C. to the Customer.
- 1.5 "Price" shall mean the cost of the Goods and services as agreed between O.P.C. and the Customer and includes all disbursements e.g. charges O.P.C. pays to others on the Customer's behalf subject to clause 4 of this contract.

## 2. ACCEPTANCE

- 2.1 Any instructions, verbal or written, received by O.P.C. from the Customer for the supply of Goods and services or advice, shall constitute a binding contract and acceptance of the terms and conditions contained herein.

## 3. COLLECTION AND USE OF INFORMATION (Privacy Act 1993)

- 3.1 The Customer authorises O.P.C. to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods and services provided by O.P.C. to any other party.
- 3.2 The Customer authorises O.P.C. to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer 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 Goods and services shall be deemed to be sold at the current amount as such Goods and services are sold by O.P.C. 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 Goods and services that is beyond the control of O.P.C. between the date of the contract and delivery of the Goods and services.

## 5. PAYMENT

- 5.1 Unless otherwise agreed or stated payment for goods and 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 O.P.C. in the enforcement of any rights contained in this contract shall be paid by the Customer, 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 O.P.C. for Goods and services:
- 6.1.1 Unless otherwise agreed the quotation shall be valid for seven (07) 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 O.P.C. reserves the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods and services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods and services.

## 7. RISK

- 7.1 The Goods remain at O.P.C. risk until delivery to the Customer.
- 7.2 Delivery of Goods shall be deemed complete when O.P.C. gives possession of the Goods directly to the Customer or possession of the Goods is given to a carrier, courier, or other bailee for purposes of transmission / transportation to the Customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to O.P.C. making time of the essence.
- 7.4 Where O.P.C. delivers Goods to the Customer by instalments and O.P.C. fails to deliver or supply one or more instalments, the Customer shall not have the right to cancel the contract but shall have the right to claim compensation as a severable breach.

## 8. AGENCY

- 8.1 The Customer authorises O.P.C. to contract either as principal or agent for the provision of Goods that are the matter of this contract.
- 8.2 Where O.P.C. enters into a contract of the type referred to in clause 8.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

## 9. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 9.1 Title in any Goods and services supplied by O.P.C. passes to the Customer (except those excluded by clause 12) only when the Customer has made payment in full for all Goods and services provided by O.P.C. and of all other sums due to O.P.C. by the Customer on any account whatsoever. Until all sums due to O.P.C. by the Customer have been paid in full, O.P.C. has a security interest in all Goods and services.
- 9.2 If the Goods and services are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods and services shall remain with O.P.C. until the Customer has made payment for all Goods and services, and where those Goods and services are mixed with other property so as to be part of or a constituent of any new Goods and services, title to these new Goods and services shall be deemed to be assigned to O.P.C. as security for the full satisfaction by the Customer of the full amount owing between O.P.C. and Customer.
- 9.3 The Customer gives irrevocable authority to O.P.C. to enter any premises occupied by the Customer or on which Goods and services are situated at any reasonable time after default by the Customer or before default if O.P.C. believes a default is likely to remove and repossess any Goods and services and any other property to which Goods and services are attached or in which Goods and services are incorporated. O.P.C. shall not be liable for any costs, damages, expenses or losses incurred by the Customer 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. O.P.C. may either resell any repossessed Goods and services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and services and credit the Customer's account with the invoice value thereof less such sum as O.P.C. reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 9.4 Where Goods and services are retained by O.P.C. pursuant to clause 9.3 the Customer 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
- 9.5 The following shall constitute defaults by the Customer:
- 9.5.1 Non payment of any sum by the due date.
  - 9.5.2 The Customer intimates that it will not pay any sum by the due date.
  - 9.5.3 Any Goods and services are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize goods and services.
  - 9.5.4 Any Goods and services in the possession of the Customer are materially damaged while any sum due by the Customer to O.P.C. remains unpaid.
  - 9.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distrains against any of the Customer's assets.

- 9.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 9.5.7 Any material adverse change in the financial position of the Customer.
- 9.6 If the Credit Repossession Act applies to any transaction between the Customer and O.P.C., the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

## 10. SECURITY INTEREST FOR SERVICE PROVIDERS

- 10.1 The Customer gives O.P.C. a security interest in all of the Customer's present and after-acquired property that O.P.C. has performed services on or to or in which goods and services or materials supplied or financed by O.P.C. have been attached or incorporated.

## 11. PAYMENT ALLOCATION

- 11.1 O.P.C. may in its discretion allocate any payment received from the Customer towards any invoice that O.P.C. determines and may do so at the time of receipt or at any time afterwards and on any default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by O.P.C., payment shall be deemed to be allocated in such manner as preserves the maximum value of O.P.C. purchase money security interest in the products.

## 12. INTELLECTUAL PROPERTY

- 12.1 Any intellectual property rights contained in the design or manufacture of any Goods or Services remains with O.P.C..
- 12.2 The Customer warrants that they hold all necessary intellectual property rights in any document or material, (including, but not limited to, terms and conditions of trade), that are supplied to O.P.C. for its provision of Goods and Services and that there is or will be no infringement of any rights or entitlements held by any third party.
- 12.3 The Customer indemnifies and holds harmless O.P.C. for any claims made against it arising from O.P.C. use of any document, material or information supplied by the Customer.
- 12.4 Until such time as O.P.C. has received or been tendered the whole of the price the property right in any Goods or Service remains with O.P.C..

## 12. GENERAL LIEN

- 12.1 The Customer agrees that O.P.C. may exercise a general lien against any Goods and services or property belonging to the Customer that is in the possession of O.P.C. for all sums outstanding under this contract and any other contract to which the Customer and O.P.C. are parties.
- 12.2 If the lien is not satisfied within seven (7) days of the due date O.P.C. may, having given notice of the lien at its option either:
- 12.2.1 Remove such Goods and services and store them in such a place and in such a manner as O.P.C. shall think fit and proper and at the risk and expense of the Customer; or
  - 12.2.2 Sell such Goods and services or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

## 4. LIABILITY

- 14.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon O.P.C. 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 O.P.C., O.P.C.'s liability shall, where it is allowed, be excluded or it not able to be excluded only apply to the minimum extent required by the relevant statute.
- 14.2 Except as otherwise provided by clause 14.1 O.P.C. shall not be liable for:
- 14.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer 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 Goods and services provided by O.P.C. to the Customer; and
  - 14.2.2 The Customer shall indemnify O.P.C. 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 O.P.C. or otherwise, brought by any person in connection with any matter, act, omission, or error by O.P.C. its agents or employees in connection with the Goods and services.

## 15. CONSUMER GUARANTEES ACT

- 15.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and services from O.P.C. for the purposes of a business in terms of section 2 and 43 of that Act.

## 16. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 16.1 If the Customer is a company or trust, the director(s) or trustee(s) in consideration for O.P.C. agrees to supply Goods and services and grant credit to the Customer at their request, also in their personal capacity and jointly and severally personally undertake as principal debtors to O.P.C. the payment of any and all monies now or hereafter owed by the Customer to O.P.C. and indemnify O.P.C. 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 hereunder.

## 17. CANCELLATION

- 17.1 O.P.C. shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part any contract for the supply of Goods and services to the Customer if the Customer fails to pay any money owing after the due date or the Customer commits an act of bankruptcy as defined in section 19 of the Insolvency Act 1967.
- 17.2 Any cancellation or suspension of this agreement shall not affect O.P.C.'s claim for money due at the time of cancellation or suspension or for damages for any breach of any part of this contract or the Customer's obligations to O.P.C. under this contract.

## 18. WARRANTY

- 18.1 Manufacturer's warranties may apply.
- 18.2 O.P.C. warrants that its products are free from defects in material and workmanship. Subject to the conditions and limitations set out below, O.P.C. will, at its option, either repair or replace any part of its products that prove defective by reason of improper workmanship or materials. Repaired parts or replacement products will be provided by O.P.C. on an exchange basis, and will be either new or refurbished to be functionally equivalent to new. This warranty does not cover any damage to its product that results from accident, abuse, misuse, inadequate packaging, natural or personal disaster, or any unauthorised disassembly, repair, or modification.
- 18.3 Any new product will have a warranty period of not more than 12 months from the invoice date.
- 18.4 The Customer is responsible for returning product to us or the manufacturer (as provided by the warranty) and the Customer may be responsible for additional costs including (but not limited to) freight.

## 19. MISCELLANEOUS

- 19.1 O.P.C. shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 19.2 Failure by O.P.C. 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 O.P.C. has under this contract.
- 19.3 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.
- 19.4 The Customer shall not assign all or any of its rights or obligations under this contract without the written consent of O.P.C.
- 19.5 Where these terms and conditions of trade are at variance with the order or instructions from the Customer these terms and conditions of trade shall prevail.
- 19.6 The Law of New Zealand applies to this contract.
- 19.7 O.P.C. reserves the right to change these terms of trade from time to time.