

1. Interpretation

1.1 Definitions

Adjustment Note has the meaning given in the GST Law.

CGA means the *Consumer Guarantees Act 1993*.

Conditions of Purchase means the terms and conditions set out in this document for the procurement of Products by Opal as amended from time to time by Opal and made available to the Supplier.

Consideration has the meaning given in the GST Law.

Chain of Responsibility Legislation means Part 6C of the *Land Transport Act 1998*.

Defective Product(s) means any Product that fails in any way whatsoever to conform to the Product Specifications. In the event that a delivery contains one or more Defective Products, all Products in that delivery will be deemed Defective Products.

GST has the meaning given in the GST Law.

GST Law means the *Goods and Services Tax Act 1985*.

Input Tax Credit has the meaning given in the GST Law.

IP Rights means any rights normally covered by this term and includes existing and future copyright, rights in designs, patents, trademarks all rights in any applications or registrations of those rights whether registered or unregistered (and whether registrable or not) and existing anywhere in the world.

Material means any materials whatsoever including but not limited to data, information, goods or products, drawings, pictures, graphic representations, specifications, designs, photographs, manuals, in any format.

Opal means Opal Packaging New Zealand Limited (NZBN 9429047752900) (and where applicable its subsidiaries).

Opal Sites means the delivery locations specified in the Purchase Order or as otherwise notified by Opal to the Supplier from time to time.

Products means all goods, products and services (including but not limited to consultancies and maintenance) covered by the Purchase Order, including new materials, processed materials or fabricated products.

Product Recall means a request by Opal, the Supplier or a third party to return particular Products for repair or replacement due to defects or safety

concerns.

Product Specifications means the specifications set out in the Purchase Order or as otherwise agreed between the parties in writing from time to time.

Purchase Order means any purchase order lodged by Opal with the Supplier for the purchase of Products.

Related Company means a 'related company' as that term is defined in the *Companies Act 1993*, provided that, for this purpose, references to "company" in that section extend to any body corporate wherever incorporated or registered.

Supplier means the person, firm, partnership, company or other legal entity to which the Purchase Order is issued and includes its servants, agents and sub-contractors.

Tax Invoice has the meaning given in the GST Law.

Taxable Supply has the meaning given in the GST Law, but excludes a supply to which section 8(4B) of the GST Law applies.

Taxes means any present or future tax, withholding tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) imposed by any government or other taxing authority in respect of any payment under these Conditions of Purchase, but does not include GST.

1.2 Construction

In these Conditions of Purchase:

- (a) headings are for convenience only and do not affect interpretation unless the contrary intention appears;
- (b) a reference to any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation;
- (c) a word importing the singular includes the plural and vice versa;
- (d) a reference to a party includes that party's successors and permitted assigns and substitutes;
- (e) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (f) references to the words "include" and "including" are not to be interpreted as words of limitation.

2. Application

- 2.1 Subject to clause 3 of these Conditions of Purchase, the Supplier will be deemed to have accepted the application of these Conditions of Purchase upon accepting a Purchase Order from Opal.

3. Entire Agreement

- 3.1 These Conditions of Purchase, the Purchase Order and any applicable Product Specifications, and any other requirements expressly agreed by the parties in writing, represent the entire agreement between the parties (in order of precedence) to which the Supplier will, by accepting the Purchase Order, be bound.
- 3.2 These Conditions of Purchase will apply to the exclusion of all other terms and conditions, whether contained in the Supplier's invoice or conditions of sale or otherwise.

4. Pricing and costs

- 4.1 The purchase price of the Products payable by Opal will be that specified in the Purchase Order and will be fixed firm, and cannot be varied without the prior written agreement of Opal.
- 4.2 The purchase price specified in the Purchase Order will be on a DDP basis (as defined in Incoterms 2010) unless otherwise agreed by the parties in writing.
- 4.3 If Opal notifies the Supplier that it is able to buy any Products at a lower delivered cost than similar Products supplied by the Supplier, then either the Supplier must agree to meet the lower cost for those Products or Opal may cancel any outstanding Purchase Order for those Products from the Supplier and acquire the Products from the alternative source.
- 4.4 Without limiting any of Opal's rights under these Conditions of Purchase or under any applicable Law, in respect of any amounts due and payable by Opal to the Supplier for the Products, Opal is entitled to deduct from or set off against those amounts any bona fide claim which Opal may have against the Supplier or any of its related bodies corporate, whether as a result of a breach of these Conditions of Purchase or otherwise.

5. Terms of payment

- 5.1 The terms of payment unless otherwise stated on the Purchase Order are 62 days from the completion of the month of invoice.

6. GST and Taxes

- 6.1 All prices for the Products and other amounts specified in these Conditions of

Purchase or any Purchase Order, (other than in the calculation of Consideration) are exclusive of GST but inclusive of all other Taxes unless otherwise stated.

- 6.2 If GST is payable on a Taxable Supply made in connection with these Conditions of Purchase, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause 6.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed by the parties in writing to be GST inclusive.

- 6.3 Opal will not pay:

- (a) any amount pursuant to clause 6.2 of these Conditions of Purchase; or
- (b) any GST Amount where the Consideration for a Taxable Supply is expressly agreed to be GST inclusive,

until the Supplier has provided a Tax Invoice or Adjustment Note as the case may be to Opal.

- 6.4 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

7. Purchase orders and delivery

- 7.1 To obtain supplies of the Products, Opal will issue a Purchase Order to the Supplier, setting out the Product Specifications, the quantity of the Products required, the time and date of delivery of the Products, and the Opal Site(s) to which the Products are to be delivered. The Products must be delivered by the Supplier in accordance with the applicable Purchase Order.

- 7.2 Opal will not be responsible for any order unless it is issued as a Purchase Order by an authorised representative of Opal. No variation of a Purchase Order will be effective unless approved in writing by Opal. The identification number appearing on the Purchase Order must be quoted on all invoices, delivery dockets and parcels.

- 7.3 Opal may vary the time, date or place of delivery specified in a Purchase Order by notice in writing to the Supplier any time prior to delivery. Opal may cancel or vary a Purchase Order for Products, other than Customised Products, or any part of it without any liability at any time prior to dispatch of the Products from the Supplier's premises. Where the Supplier receives a notice of variation from Opal, the Supplier must vary the Purchase Order

- accordingly and must provide to Opal an adjusted price for the Products within thirty (30) days of the date of variation.
- 7.4 Time is of the essence under these Conditions of Purchase. Without prejudice to any other rights which Opal may have pursuant to these Conditions of Purchase, if any Products are not, or are expected to not be delivered within the time specified in the relevant Purchase Order (or as otherwise notified by Opal), then Opal may:
- (a) refuse to accept such Products and terminate the Purchase Order;
 - (b) require the Supplier to deliver the Products by the most expeditious means, whereupon any additional delivery charges must be borne by the Supplier; or
 - (c) extend the time for completion and/or delivery of the Products.
- 7.5 If any Products are not delivered to the Opal Sites specified by Opal, the Supplier will be responsible for any additional expense incurred in delivering them to their correct destination.
- 7.6 Opal is entitled at any time to reject any Defective Products. The Supplier must (at its own cost):
- (a) collect the Defective Products from Opal and, at Opal's sole option, either:
 - (i) immediately replace them with Products that conform with the requirements of these Conditions of Purchase; or
 - (ii) reimburse Opal the full purchase price for the Products and any costs incurred by Opal in connection with the rejection of such Defective Products; and
 - (b) reimburse Opal for any expenses Opal incurs in making good any Defective Products or having any services re-supplied.
- 7.7 Without prejudice to Opal's rights under these Conditions of Purchase, Opal may, in its absolute discretion, accept delivery of the Defective Products at a discounted price (as agreed between the parties).
- 7.8 If Opal specifies a time for delivery, the Supplier must promptly advise in writing whether it considers that complying with that time would involve a breach of the Chain of Responsibility Legislation and, if so, the time for delivery that would not breach that law.
- 7.9 Nothing in this clause 7 is deemed to affect in any way the liability of the Supplier to Opal under any other provisions of these Conditions of Purchase in respect of the supply of Defective Products.
- 8. Inspections prior to dispatch**
- 8.1 The Supplier must permit Opal to enter any premises at which it manufactures the Products, upon reasonable notice and during normal business hours, to inspect the Products prior to their dispatch. Opal will have the power to reject any work performed or Products that do not conform to a Purchase Order and require that such Products be reproduced or works re-performed at no additional cost to Opal. Any such inspection does not relieve the Supplier of any obligations contained in a Purchase Order, these Conditions of Purchase or at Law.
- 9. Title and risk**
- 9.1 Without prejudice to any right of rejection or other rights which Opal has under these Conditions of Purchase, title to and risk of loss in the Products will pass to Opal on delivery by the Supplier to the relevant Opal Site.
- 10. Sub-contracting and assignment**
- 10.1 The Supplier must not assign or subcontract any of its rights or obligations under these Conditions of Purchase or a Purchase Order without the prior written consent of Opal.
- 10.2 Opal's consent to the Supplier subcontracting any work to be performed pursuant to the Purchase Order will not relieve the Supplier of its responsibility for the whole of the work to be performed pursuant to the Purchase Order or of any obligations contained in the Purchase Order or at law. The Supplier will remain liable to Opal for all obligations under these Conditions of Purchase and any Purchase Order.
- 11. Packaging, Storage and Hazardous products**
- 11.1 The Products must be properly packed to avoid being damaged during delivery of loading and unloading. All packages must be clearly marked with the Purchase Order number and the location of delivery.
- 11.2 All Products which are hazardous must be marked by the Supplier with international danger symbol(s) and display the name of the material in English. Delivery and other documents must include disclosure of the hazard(s) and name the material in English. Products must be accompanied by emergency material in English in the form of written instructions, labels or markings and Material Safety Data Sheets, as well as

- any information that may be required under the *Hazardous Substances and New Organisms Act 1996* and any regulations made pursuant to that Act.
- 11.3 All information held by or reasonably available to the Supplier regarding any potential hazards or special requirements known or believed to assist in the transport, packaging, storage, handling or use of the Products will be immediately communicated to Opal.
- 12. Compliance with laws and policies**
- 12.1 All employees, agents or sub-contractors of the Supplier required to attend an Opal Site must comply with all policies or procedures, including the terms of any safety manuals that are implemented by Opal from time to time and comply with any reasonable written or oral instructions given by Opal Site management while attending an Opal Site.
- 12.2 The Supplier must comply with all applicable Laws including Federal, State and Local Government Laws, rules, statutory and legal requirements and regulations relating to the safety, manufacture, production, importation, packaging, labelling, transportation, delivery, unloading, and sale of the Products and the nature, substance, quality, weight and measurement of the Products.
- 12.3 The Supplier is responsible for obtaining, at its own cost, any licence, concession, permit, approval, authority or consent required in relation to the safety, manufacture, production, importation, packaging, labelling, transportation, delivery, unloading, and sale of the Products.
- 13. Insurance**
- 13.1 For the duration of these Conditions of Purchase, the Supplier must arrange and maintain at its own expense Public and Product liability insurance for an amount not less than \$10 million for the Supplier's own risk and that of its own employees, agents and subcontractors including without limitation, workers' compensation with the interest of Opal noted as principle and including a cross liability clause.
- 13.2 Confirmation consisting of a certificate of currency must be provided, on request, to Opal. The Supplier must not at any time do or suffer anything to be done whereby such insurance may be rendered void or voidable.
- 14. Warranties**
- 14.1 The Supplier warrants that all Products which it supplies to Opal under these Conditions of Purchase will:
- (a) meet the Product Specifications and all other requirements set out in these Conditions of Purchase, in a relevant Purchase Order and as otherwise agreed in writing between the parties;
 - (b) strictly conform to any description or sample of the Products provided to Opal by the Supplier;
 - (c) be of merchantable quality and fit for any purpose which Opal makes known to the Supplier (expressly or impliedly) or for which the Products are commonly supplied;
 - (d) be performed with due care and skill and by appropriately qualified and trained personnel;
 - (e) be safe and free from defects in design, material and workmanship;
 - (f) be free from all security interests of third persons (and that the Supplier has good title in) and will not be subject to any security interests in favour of the Supplier (or any Related Company of the Supplier) arising under these Conditions of Purchase, any Purchase Order or otherwise;
 - (g) it has not granted any security interest over the Product or will immediately release or procure the release of any security interests that are granted and/or registered over the Product; or
 - (h) not infringe any IP Rights of any third person, and the Supplier further warrants that the sale or use of the Products by Opal or any other person will not amount to such an infringement., agents and subcontractors including without limitation, workers' compensation with the interest of Opal noted as principle and including a cross liability clause.
- 14.2 The Supplier warrants that it understands and has been compliant with, and will continue to act in compliance with, the Chain of Responsibility Legislation.
- 14.3 Notwithstanding any other rights which Opal may have under these Conditions of Purchase or at law (including the CGA), if the Supplier breaches any of the warranties set out in this clause 14, Opal may at its option:
- (a) require the Supplier to resupply the Products at the Supplier's cost (including all transport, delivery and other costs which may be incurred by Opal in storing and returning unsatisfactory Product to

- the Supplier) within a reasonable time; or
- (b) terminate the relevant Purchase Order and require the repayment by the Supplier of any amounts and any other obligations which it may have made and any other obligations the Supplier may have in connection with these Conditions of Purchase and/or any Purchase Order.

14.4 These representations and warranties are in addition to any representation, warranty or guarantee given by the Supplier in respect of the Products or any representation, warranty, guarantee or term set out in a Purchase Order or implied or imposed by law (including the CGA). Any inspection of the Products exercised under Clause 8 does not affect the representations and warranties provided in this Clause 14.

15. Release and indemnity

15.1 The Supplier hereby indemnifies, releases and holds Opal, its directors, officers, employees, Related Companies and agents harmless from and against all actions, claims, charges, costs (including those incurred by Opal in connection with a Product Recall), expenses (including legal fees), losses, damages and other liabilities whatsoever arising directly, indirectly or consequentially out of or otherwise in connection with:

- (a) a breach of these Conditions of Purchase by the Supplier;
- (b) a breach of the terms of any Purchase Order by the Supplier;
- (c) a breach of any written agreement between the Supplier and Opal;
- (d) a breach of any of the warranties set out in clause 14;
- (e) the Supplier's negligent act or omission;
- (f) any other conduct, act or omission by the Supplier in connection with:
 - (i) the manufacture, production, importation, packaging, labelling, transportation, delivery, unloading, or sale of the Products by the Supplier; or
 - (ii) the use, sale or supply of the Products by Opal or any customer of Opal.

15.2 The Supplier hereby releases and forever discharges Opal and its officers, directors, employees, Related Companies and agents from all actions, claims, charges, costs, expenses, losses, damages and other

liabilities for which the Supplier is required to indemnify Opal pursuant to this clause 15.

16. Confidentiality

Suppliers are to keep confidential any information (other than information in the public domain) relating to, or contained in, these Conditions of Purchase, volumes, prices and specifications developed specifically for Opal or disclosed by Opal or its Related Companies or made available to the Supplier in accordance with or as a result of the supply of Products under these Conditions of Purchase, a Purchase Order or a written agreement between Opal and the Supplier.

17. Force majeure

17.1 Neither the Supplier nor Opal shall be liable to the other for default or delay in performing its obligations under a Purchase Order caused by any occurrence beyond its reasonable control, including, without limitation, fire, strike, pandemic, lock-out, industrial disturbance, riot, war, act of God and governmental order or regulation, provided that the party affected by such occurrence gives written notice thereof to the other party within 7 days of the commencement of that occurrence.

18. Intellectual Property

18.1 The Supplier shall indemnify Opal in respect of any loss, damage, expense, claim or liability suffered or incurred by Opal in connection with any claim by a third party alleging infringement of any IP Rights in relation to the Products or any work to be performed in connection with these Conditions of Purchase or a Purchase Order. All IP Rights subsisting in any Material developed by either Supplier or Opal or on behalf of Opal in connection with the Products or in connection with any work to be performed pursuant to these Conditions of Purchase or a Purchase Order vest immediately upon creation in Opal.

18.2 The Supplier shall be licensed to use any Material provided by Opal solely to the extent required and for the purpose of fulfilling its obligations under a Purchase Order and these Conditions of Purchase.

19. General

19.1 The Supplier must not assign, novate or otherwise deal with any of its rights or obligations under these Conditions of Purchase or a Purchase Order without the prior written consent of Opal. Opal may assign or novate any of its rights or obligations under these Conditions of Purchase or a Purchase Order upon prior written notice to the Supplier.

19.2 Nothing in these Conditions of Purchase is

intended to create an employment, partnership, joint venture or agency relationship between the parties.

- 19.3 For the purposes of the *Contract and Commercial Law Act 2017*, Part 2, Subpart 1 (Contractual Privity):
- (a) any express reference to a third party in these Conditions of Purchase (including to a Related Company of Opal) is intended for the benefit of, and to be enforceable by that third party; and
 - (b) the parties do not intend these Conditions of Purchase to be enforceable by any other third party.
- 19.4 No variation to these Conditions of Purchase will be binding upon Opal or the Supplier unless the variation has been signed by Opal's authorised representative.
- 19.5 No failure to exercise, or any delay in exercising any right, power or remedy by a party under these Conditions of Purchase operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 19.6 These Conditions of Purchase are governed by the laws of New Zealand and each party will submit to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with all matters concerning these Conditions of Purchase.
- 19.7 No clause in these Conditions of Purchase is to be construed as requiring any person to act in a manner, or to direct another person to act in a manner that is contrary to the Chain of Responsibility Legislation.
- 19.8 Nothing in these Conditions of Purchase is intended to exclude, restrict or modify rights which Opal may have under common law, legislation (including the CGA) or otherwise which may not be excluded, restricted or modified by agreement.
- 19.9 Any provision of these Conditions of Purchase that is deemed illegal or unenforceable in the circumstances is to be interpreted in such a manner that allows it to be read as enforceable. Where there is no such interpretation, the parts of the clause(s) that are deemed illegal are unenforceable and are to be severed from these Conditions of Purchase and all other provisions will remain unchanged.