

1. Interpretation

1.1 Definitions

Unless the context dictates otherwise:

Buyer means anyone who purchases or orders Goods or applies for credit from Opal.

CGA means the *Consumer Guarantees Act 1993* of New Zealand as amended from time to time.

Confidential Information means any information that is disclosed by or on behalf of Opal to the Buyer that is by its nature confidential, is designated by Opal as confidential or that the Buyer knows or ought reasonably to know is confidential, but does not include any information that is in the public domain (other than through a breach of confidence).

Confidential Information includes the Purchase Price, the Order and quotation details.

Control means the power of a person to secure that the affairs of a Party are conducted in accordance with the wishes of that person by means of the holding of shares or the possession of voting power in or in relation to that Party or any other body corporate or by virtue of any powers conferred by the articles of association or any other document regulating that Party or any other body corporate. Controlled has a corresponding meaning.

Contract has the meaning given in clause 3.2.

Goods means products supplied or to be supplied by Opal to the Buyer.

GST has the meaning given in the *Goods and Services Tax Act 1985*.

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.

Opal means Opal Packaging New Zealand Limited (NZBN 9429047752900).

Order means an order submitted by the Buyer and accepted by Opal in accordance with clause 3 of these Terms including, where applicable, as varied by any written confirmation of Order provided by Opal.

Party means each of Opal and the Buyer, and together the Parties.

PPSA means the *Personal Property Securities Act 1999*.

Purchase Price means the purchase price of the Goods as set out in an Order,

subject to any variation in accordance with clause 5.

Material means any materials, data information or other work product, including drawings pictures, graphic representations, specifications, designs, photographs and manuals, in any format.

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.

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 Terms, but does not include GST.

Terms means the terms and conditions of sale for the supply of Goods by Opal as set out in this document and as amended from time to time in writing by Opal and made available to the Buyer.

1.2 Construction

In these Terms:

- (a) headings are for convenience only and do not affect interpretation and, 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) reference to the words "include" and "including" are not to be interpreted as words of limitation.

2. Application of these Terms

The Buyer will be deemed to have accepted the application of these Terms upon accepting an Order from Opal in accordance with the process set out in clause 3.

3. Orders

- 3.1 The Buyer may at any time place an order with Opal, specifying the quantity of Goods required together with the requested date for delivery and any applicable specifications.
- 3.2 Once Opal has notified the Buyer that it has accepted an Order (which may include revisions to the original order as required by Opal), this will constitute a binding contract between the Parties for the delivery of Goods to the Buyer at the price given in the relevant quotation and invoice issued by Opal and in accordance with these Terms (**Contract**).
- 3.3 The Buyer may request changes to the Order, subject to approval by Opal at its sole discretion.
- 3.4 If a dispute arises in connection with any Order (including any question of identity or authority for any telephone, facsimile, email, e-commerce or computer generated Order), the internal records of Opal will be conclusive evidence of what was ordered.
- 3.5 Opal agrees to supply the Goods on these Terms and the terms of the relevant Contract.

4. Entire Agreement

- 4.1 These Terms supersede and cancel all other documentation (including any terms and conditions issued by the Buyer on any previous or subsequent order or any other documentation of the Buyer) representations, arrangements and understandings between the Parties which relate to the provision of the Goods set out in the Order and other matters, representations or circumstances covered by these Terms.
- 4.2 Without limiting clause 4.1, for the purposes of section 5D of the *Fair Trading Act 1986 (FTA)*, the Parties are contracting out of sections 9, 12A, 13 and 14(1) of the FTA in respect of the matters, representations or circumstances covered by these Terms.

5. Price

- 5.1 The Purchase Price contained in a Contract is based upon rates and costs as at the date of the Contract or where the Contract arises from a quotation given by Opal, as at the date of quotation and may change without notice.
- 5.2 To the extent permitted by law, Opal will only be responsible to comply with the regulations, bylaws, codes and standards specified in these Terms and Opal will be under no liability whatsoever for any failure to meet any other regulations, bylaws, codes and standards.
- 5.3 In the event of any changes in any regulations, bylaws, codes or standards

with which Opal is obliged to comply after:

- (a) the date of these Terms; or
- (b) where these Terms form a quotation given by Opal, after the date of quotation,

then any additional costs in meeting any such changes will be borne by the Buyer.

6. Taxes and Duties

The Buyer will pay any GST and any other Taxes assessed to or otherwise payable by Opal in connection with the supply of Goods under the Contract, in addition to the Purchase Price.

7. Payment

- 7.1 Payment is due in full on the 20th day of the month (unless other payment terms have been arranged) following the month that the Goods are dispatched by Opal.
 - 7.2 In the case of export sales, payment will be made by confirmed irrevocable letter of credit unless otherwise agreed. Letters of credit will, unless otherwise agreed, be established through a first class bank and be irrevocable, confirmed and without recourse available for Opal's draft at sight and otherwise in a form satisfactory to Opal.
 - 7.3 Any additional payments due by the Buyer pursuant to any provision of a Contract will be paid at the time provided in the Contract or, if no time is provided, within 7 days of payment being demanded in writing by Opal.
 - 7.4 If Opal shall at any time deem the credit of the Buyer to be unsatisfactory for any reason, it may require security for payment and may suspend performance of its obligations under a Contract until the provision of sufficient security. All costs and expenses of or incurred by Opal as a result of such suspension and any recommencement will be payable by the Buyer upon demand.
 - 7.5 The Buyer will not be entitled to withhold payment or to make any deductions from the Purchase Price without the prior written consent of Opal.
 - 7.6 Receipt of a cheque, bill of exchange, or other negotiable instrument by Opal will not constitute payment and the Buyer shall remain liable for the full Purchase Price until such cheque, bill of exchange, or negotiable instrument is paid in full.
 - 7.7 Opal may apportion payments made by the Buyer to outstanding accounts in such amounts and in such order as Opal may determine in its sole discretion.
- ### **8. Interest for Late Payment**
- If the Buyer fails to make payment on the due date, interest will accrue on the amount due from the due date until the

date of payment at a rate equal to 5% above the current overdraft rate which Opal has with its principal trading bank.

9. Delivery

9.1 Delivery will be made at the address indicated in Opal's quotation or acceptance or, if no address is indicated, delivery will be made at the Buyer's premises. Opal will use reasonable endeavours to deliver the Goods on the date, time and at the address specified by the Buyer in the Order. Despite this delivery will be deemed to have occurred when the Goods are actually delivered to the Buyer's premises, regardless of whether the Buyer fails or refuses to accept delivery.

9.2 In the case of export sales, unless otherwise stated in Opal's quotation or acceptance, delivery will be complete when the Goods effectively pass the ship's rail at the port of shipment or arrive at the airport for despatch or earlier leave Opal's custody for shipment to the Buyer. Trans-shipment will be allowed. Delivery may be effected by Opal at its election by one or more shipments.

9.3 Opal reserves the right to deliver the Goods by instalments and each instalment will be deemed to be a separate Contract, each governed by the same terms unless expressly agreed otherwise in writing. Should Opal fail to deliver or make defective delivery of one or more instalments this will not entitle the Buyer to repudiate any Contract.

9.4 Without prejudice to any other rights and remedies which it may have, Opal may charge storage and transportation expenses if the Buyer fails or refuses to take or accept delivery or indicates to Opal that he will fail or refuse to take or accept delivery at the time specified in Opal's quotation or acceptance or at any other times that Opal is able to deliver the Goods.

9.5 Delivery of within ten percent more or less in the quantity of the Goods set out in the Order will constitute performance of the Contract. The amount under or over supplied will be deducted or charged on a pro rata basis by Opal.

10. Risk

10.1 Risk of any loss, damage or deterioration of or to the Goods will be borne by the Buyer from the date of delivery of the Goods.

10.2 Until property in the Goods passes to the Buyer, the Buyer will keep the Goods insured in the names of Opal and the Buyer for their respective rights and interests and will produce to Opal upon demand such evidence as Opal may

require to confirm the existence of such insurance. If the Buyer defaults in the performance of its obligations under this clause, Opal will be entitled to insure the Goods and the cost of effecting such insurance will be payable by the Buyer to Opal upon demand.

10.3 If any of the Goods are damaged or destroyed prior to the property passing to the Buyer, Opal will be entitled, without prejudice to any of its other rights or remedies under the Contract to receive all insurance proceeds which are payable (whether or not the Purchase Price of such Goods has become payable under the Contract) and the production of the Contract by Opal will be sufficient evidence of Opal's right to receive payment of such insurance proceeds without the need for further enquiry by any person dealing with Opal. Any such insurance proceeds will be applied by Opal as follows:

- (a) first, in payment of the Purchase Price of the Goods which are damaged or destroyed, if unpaid;
- (b) secondly, in payment of the outstanding Purchase Price of any other Goods supplied to the Buyer by Opal, whether under the Contract or otherwise;
- (c) thirdly, in payment of any other sums payable to Opal by the Buyer whether under the Contract or otherwise; and
- (d) thereafter any balance will be paid to the Buyer.

11. Property

11.1 Property in the Goods will be retained by Opal until the Goods are resold by the Buyer pursuant to the authority granted by clause 11.2 of these Terms provided, however, that if the Goods are being purchased by the Buyer otherwise than for the purpose of resale, property in the Goods will pass from Opal to the Buyer when the Purchase Price and all other amounts payable to Opal by the Buyer (whether under the Contract or otherwise) have been paid in full.

11.2 Notwithstanding that property in the Goods is retained by Opal, the Buyer is hereby authorised to sell the Goods in the ordinary course of business provided that such authority may be revoked by Opal at any time if;

- (a) Opal deems the credit of the Buyer to be unsatisfactory;
- (b) the Buyer is in default in the performance of its obligations under the Contract or any other agreement between Opal and the Buyer; or
- (c) to the extent permitted by law:
 - (A) the Buyer is declared bankrupt;

- or
 - (B) the Buyer enters into any composition or arrangement with its creditors; or
 - (C) a resolution is passed or an application is filed for the winding up of the Buyer; or
 - (D) a receiver is appointed in respect of all or any assets of the Buyer.
- 11.3 The proceeds of any Goods sold in accordance with clause 11.2 of these Terms will be held upon trust by the Buyer for Opal in a separate bank account. These proceeds will be first applied toward the satisfaction of any debts owing from the Buyer to Opal and will be retained by the Buyer. Notwithstanding anything in this clause 11, Opal authorises the Buyer to deal with any such proceeds of sale received by the Buyer as if such proceeds of sale were the absolute property of the Buyer provided that such authority may be revoked by Opal at any time if any one of the events referred to in clause 11.2 occurs.

12. Delay

- 12.1 If any time for delivery of the Goods or completion of a Contract is stated in a Contract, such time will be approximate only and will not be deemed to be of the essence of any Contract.
- 12.2 If the manufacture, supply or delivery of the Goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Buyer, Opal may, without prejudice to its other rights and remedies, require payment by the Buyer of such portion of the Contract Purchase Price as represents Opal's obligations that have been performed up to the date such payment is required. Buyer will also reimburse Opal for any expenses or additional costs incurred by Opal as a result of such delay. In the event of such delay continuing beyond a reasonable time, Opal may, without prejudice to its other remedies, terminate the Contract.

13. New Zealand Product Number Symbol

- 13.1 When applying the New Zealand product number symbol (the **Symbol**) to the Goods, Opal will exercise reasonable care and skill in accordance with the relevant recommended procedures as published from time to time by the New Zealand Institute of Paperboard Packaging Association Incorporated and in accordance with the Buyer's specifications as set out in the applicable Order, provided that the Buyer's specifications are consistent with the recommendations of the operation manual for product numbering and symbol marking as

published from time to time by the New Zealand Product Number Associated Limited.

14. Confidential Information

The Buyer must keep all Confidential Information confidential and must not disclose any Confidential Information without the written consent of Opal.

15. Warranty

- 15.1 Opal warrants that it will repair or make good (by way of repair or replacement at Opal's option) any defects in materials or workmanship in respect of Goods where such defects are brought to its notice by the Buyer in writing within 30 days of delivery.
- 15.2 To the extent permitted by law, no warranty claim will be accepted in relation to the Goods if:
- (a) the claim is not made in strict compliance with clause 15.1 of these terms;
 - (b) any attempt to repair the Goods is made by any person or persons not authorised by Opal to effect such repairs;
 - (c) in Opal's reasonable opinion, the Goods have been modified or incorrectly stored, maintained, installed or operated; or
 - (d) the Buyer disposes of such Goods or any part of the Goods before Opal can discharge its obligations under this clause 15.
- 15.3 Opal will have the right at any time within 30 days after receipt of the complaint to inspect the Goods.
- 15.4 Should Opal elect to repair any defective Goods, such repair will be effected at such place as Opal may specify and the Buyer will be responsible for shipment of the defective Goods to the place or places so specified.
- 15.5 No warranty will apply to the extent that such Goods or any component(s) of the Goods are manufactured or supplied by a Party other than Opal. Where such third Party manufacturer or supplier provides a warranty, Opal will endeavour to make such warranty available to the Buyer.
- 15.6 In the event that Opal is unable to perform all or part of its warranty obligations in relation to the Goods, Opal's liability for such failure shall be limited in all cases to a refund for such defective Goods.
- 15.7 No agent or representative of Opal is authorised to make any representations, warranties, conditions or agreement not expressly confirmed by Opal in writing and Opal is not in any way bound by any such unauthorised statements nor can any such statements be taken to form a Contract or

part of any Contract.

16. Liability

- 16.1 Opal will not be liable under or in connection with these Terms and/or a Contract for any: (a) indirect or consequential loss; (b) loss of profit, loss of goodwill, loss of opportunity, loss of revenue or loss of reputation; or (c) any other loss not arising naturally from the relevant breach, whether or not that loss may be reasonably considered as having been in the contemplation of both Parties, at the time they entered into the Contract.
- 16.2 Opal will not be liable under or in connection with these Terms and/or a Contract for any exemplary, punitive, or special loss, damage or injury of any kind howsoever suffered.
- 16.3 Subject to clause 16.5, but notwithstanding any other provision of these Terms and/or a Contract, in no event will the total aggregate liability of Opal exceed the Purchase Price under the applicable Contract.
- 16.4 The limitations and exclusions of liability in this clause 16 will apply irrespective of how liability arises, whether in contract, equity, tort (including negligence), breach of statutory duty or otherwise.
- 16.5 Nothing in this clause 16 is intended to limit or exclude any liability that Opal is not permitted to limit or exclude at law.
- ## **17. Default, Termination and Indemnity**
- 17.1 If the Buyer defaults in the due payment of any amounts payable to Opal, whether under the Contract or otherwise, or if the Buyer is in default in the performance of its obligations under the Contract or any other agreement or any of the events referred to in clause 11.2 have occurred, Opal, without prejudice to any other right it has at law or in equity, may, at its option, suspend or terminate the Contract, and payment for the Goods delivered and work performed up to the date of such suspension or termination any other amounts payable will immediately become due and payable.
- 17.2 The Buyer appoints Opal as its agent to enter upon the premises where the Goods are situated, despite section 109 of the PPSA and in addition to the rights contained in that section, take possession of and remove the same without being responsible for any damage thereby caused, and Opal may resell any or all of the Goods and apply the proceeds in or towards payment of the Purchase Price and all other amounts owing to Opal by the Buyer. The Buyer shall indemnify Opal against all costs and expenses (including legal fees, transportation and storage

charges) incurred by Opal in connection with any default made by the Buyer under a Contract. Any suspension of a Contract by Opal shall not prevent it terminating the Contract during the period of suspension.

- 17.3 Opal may appoint a receiver in respect of the Goods (including the proceeds of the same) supplied to the Buyer, under a Contract. Any receiver so appointed may take possession of the Goods and resell them and otherwise exercise all rights and powers conferred on a receiver by law.

18. Intellectual Property

- 18.1 Subject to clause 18.2 of these Terms, no change in IP Rights is affected by these Terms, including in the event that Opal provides to the Buyer or makes available any Material in connection with a Contract.
- 18.2 If any Material is provided by or on behalf of the Buyer to Opal or its agents (**Buyer Material**), the Buyer must grant to Opal (and its contractors and suppliers) an irrevocable, royalty-free, fully paid up, worldwide, non-exclusive licence to use the Material as it sees fit for the purpose of fulfilling its obligations under the Contract and as contemplated by the Contract (including where applicable the manufacture and supply of Goods).
- 18.3 The Buyer hereby warrants that Opal's use of the Buyer Material for the purpose of fulfilling its obligations under the Contract (including the manufacture and supply of Goods) will not infringe any IP Rights of any other person.
- 18.4 The Buyer hereby indemnifies Opal (and its directors, employees, agents, contractors and suppliers) against any liability, cost, expense or other outgoing incurred by Opal in the event of any claim being made that Opal's use of the Buyer Material in accordance with these Terms infringes any IP Rights of any other person.

19. Dimensions and Specifications

- 19.1 Dimensions and specifications contained or referred to in the Contract or in any catalogues or other publications maintained or issued by Opal are estimates only. Unless otherwise expressly agreed in writing, it is not a condition of the Contract that the Goods will correspond precisely with such dimensions and specifications, and customary tolerances, or in the absence of customary tolerances, reasonable tolerances shall be allowed.

20. Colour

Should Opal be obliged to match any shade or colour, a light and dark tolerance shall be allowed to such extent as shall be

agreed upon by Opal and the Buyer and in the absence of any agreement, a reasonable tolerance shall be allowed.

21. Quotations

- 21.1 Unless otherwise stipulated by Opal any quotation may be withdrawn at any time by Opal. If not withdrawn it remains open for acceptance for a maximum period of 30 days from the date of quotation and thereafter shall be deemed to be withdrawn.
- 21.2 The Goods described in any quotation by Opal, or Order shall form part of the Contract and such Goods will be supplied in accordance with these Terms. All other conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise are expressly excluded.

22. PPSA

- 22.1 The Buyer grants to Opal a security interest in all present and subsequently acquired Goods and their proceeds as security for all amounts payable to Opal (whether under a Contract or otherwise).
- 22.2 On Opal's request, the Buyer will promptly execute any documents and do anything else required by Opal to ensure that the security interest created under the Contract constitutes a first ranking perfected security interest over the Goods. The Buyer will also provide Opal with any information Opal may reasonably require to complete a financing statement or financing change statement.
- 22.3 The Buyer will immediately notify Opal in writing of any change in the Buyer's name.
- 22.4 The Buyer waives any right to receive a copy of a verification statement under the PPSA.
- 22.5 The Buyer will pay all costs incurred by Opal in protection or preservation of its security interest or its registration, recovery or attempted recovery of outstanding amounts and the enforcement of these Terms or the security interest contained in the Contract.
- 22.6 The Buyer agrees that nothing in sections 114(1) (a), 117(1) (c), 133 and 134 of the PPSA will apply to a Contract.
- 22.7 The Buyer agrees that its rights as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA will not apply to a Contract.
- 22.8 The Buyer will not allow a security interest to be created or registered over the Goods in priority to the security interest held by Opal.

23. Force majeure

- 23.1 Neither Opal nor the Buyer will be liable to the other for default or delay in performing its obligations under a Contract or these Terms 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.

24. Waiver

- 24.1 All the original rights, powers, exemptions and remedies of Opal will remain in full force notwithstanding any neglect, forbearance or delay in enforcement. Opal will not be deemed to have waived any condition unless such waiver is in writing and executed by an authorised officer of Opal and any such waiver, unless the contrary shall be expressly stated, shall apply to and operate only in a particular transaction, dealing or matter.

25. No Assignment

- 25.1 The Buyer may not novate, assign or subcontract all or any of its rights or obligations under a Contract without the prior written consent of Opal. In the event that such consent is granted by Opal, the Buyer will remain liable to Opal for all obligations under the Contract.

26. Law and Jurisdiction

- 26.1 Any Contract will in all respects be deemed to be a Contract made in New Zealand and the construction, validity and performance of the Contract will be governed by New Zealand law.
- 26.2 The exclusive jurisdiction of the New Zealand courts to entertain all claims and actions arising out of the Contract is accepted and acknowledged by the Buyer provided, however, that Opal will be entitled to commence any action arising out of or in respect of a Contract in any other court.

27. Artwork/Design and Barcodes

- 27.1 Opal will enable the Buyer to review and approve any artwork or designs prepared by Opal. If the Buyer declines to undertake such review, or fails to undertake such review within the period advised by Opal, the Buyer shall be deemed to have accepted the artwork and designs and authorised Opal to proceed with the production of the Goods.
- 27.2 If the Buyer requests to be present at any stage of the production process, then Opal will advise the Buyer of the time and place at which the Buyer should attend. Should the Buyer or its representative fail to

- attend within 30 minutes of the arranged time, then Opal may elect to either proceed or not proceed with the production of the Goods. If Opal elects to proceed with production, then the Buyer shall be deemed to have approved the Goods. If Opal elects not to proceed with production then Opal shall not be liable to the Buyer or any other party for any delay in providing the Goods.
- 27.3 Preparation by Opal of artwork and/or design (which terms include written text) whether printed upon any packaging material or separate label for use in conjunction with any packaging material or attachment to any Goods and sold to the Buyer, will not amount to nor be construed as a warranty, condition or representation expressly or by implication in any manner whatsoever that such labelling:
- (a) complies with any law or laws whether by statute, regulation or otherwise in force now or which at any time in the future may be in force in New Zealand or elsewhere; or
 - (b) contains any prescription as to the content, form, shape, size, words, letters, figures, symbols, colours, barcodes or any other labelling required upon any package or label for any Goods whatsoever.
- 27.4 The Buyer's specifications should be consistent with the requirements of EAN International and any relevant industry requirements for product numbering and barcode symbol marking (the **Authority**).
- 27.5 Opal will use all reasonable endeavours to comply with the Buyer's specifications as to the numbering or barcode symbol marking subject to and in accordance with the conditions to be fulfilled at each stage of the printing process as laid down by the Authority.
- 27.6 Opal will comply with industry print quality standards as to barcode reproduction.
- 27.7 Where a Buyer specifies a barcode symbol that does not conform to the specifications of the Authority, Opal supplies the barcode on the understanding that the Buyer is aware of the non-conformance and exempts Opal from any consequence of the non-conformance.
- 28. Plates, Dies, Blocks, Screens, Original Designs and Artwork**
- 28.1 Unless otherwise expressly agreed in writing by Opal and the Buyer, printing plates, moulds, blocks, rubber stereotypes, cutting dies artwork, screens and other preparatory work may be automatically destroyed if they have not been used for a period of 2 years.

29. CGA

- 29.1 The Buyer acknowledges that the:
- (a) Buyer is acquiring, or holding itself out as acquiring, the Goods from Opal for the purposes of trade, or resupply in trade; and
 - (b) the Parties are contracting out of the CGA (to the extent that the CGA would otherwise apply to the Goods).
- 29.2 If the Buyer is acquiring the Goods for the purpose of resupplying the Goods in trade, the Buyer undertakes that it will:
- (a) contract out of the CGA to the maximum extent permitted by law in its contracts with its own customers; and
 - (b) procure that its customers, and each other person in the distribution chain thereafter, contract out of the CGA to the maximum extent permitted by law in their contracts with customers.
- 29.3 The Buyer will indemnify and hold harmless Opal from and against any liability, damage, loss, cost or expense suffered or incurred as a direct or indirect result of the Buyer's failure to take the action required under clause 28.2.

30. Interpretation

- 30.1 The Contract is entered into on behalf of and is intended to bind the Parties' successors and assigns.
- 30.2 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 Terms (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 Terms or a Contract to be enforceable by any other third party.

31. Relationship of the Parties

Nothing in this Agreement is intended to create an employment, partnership, joint venture or agency relationship between the Parties.

32. Variation

The terms of a Contract may only be varied by written agreement of the Parties.

33. Privacy Act 1993

- 33.1 The Buyer authorises Opal to collect, use and disclose personal information in accordance with Opal's privacy policy located at www.opalanz.com/privacy, which may include contacting any credit reporter, referee or any other source (**Source**) in order to check, exchange or provide information in relation to the Buyer and, if applicable, representatives

of the Buyer. The Buyer acknowledges that this may include the disclosure of credit information (including information about default and repayment history) to a credit reporter, who may hold that information on their systems and use it to provide their credit reporting services.

33.2 The Buyer authorises each Source to provide to Opal any information about the Buyer and, if applicable, representatives of the Buyer.

33.3 The Buyer acknowledges that if it discloses any personal information about another person, it confirms that the individual concerned has authorised the collection, use and disclosure of their personal information by Opal in accordance with this clause 32 and that it has notified the individual of their rights to access and request correction of their personal information in accordance with Opal's privacy policy.

33.4 If the Buyer is a natural person, the *Privacy Act 1993* entitles the Buyer to certain rights, including having access to personal information held by Opal about the Buyer and to request correction of that personal information.

34. Acknowledgement

The Buyer acknowledges that it has received a copy of the Contract and in particular that the Contract constitutes a "security agreement" for the purposes of the PPSA and that Opal may register a financing statement in respect of the Contract.

35. Vienna Convention

The Buyer and Opal agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to any Contract.