

Opal Conditions for Procurement of Services (October 2023)

1 Parties

Opal Packaging Australia Pty Ltd (ACN 636 682 883), Paper Australia Pty Ltd (ACN 061 583 533) and/or Specialty Packaging Group Pty Ltd (ACN 005 319 666) as applicable (**Opal**); and Contractor as detailed in the Purchase Order.

2 Definitions

Anti-bribery Laws means any law which prohibits bribery including laws which prohibit the giving of benefits to retain business or business advantage including the *Criminal Code Act 1995* (Cth).

Chain of Responsibility Legislation means any Commonwealth, State or Territory law based on or adapted from the model *Road Transport Reform (Compliance and Enforcement) Bill 2003* (Cth) as in force in the Commonwealth or in any Australian State or Territory.

Commencement Date means the date specified in the Purchase Order.

Conditions of Procurement means the terms and conditions set out in this document for the procurement of Services by Opal.

Confidential Information means any information relating to or contained in a Contract, or made available to a party in accordance with a Contract or any related agreement, or acquired while performing the Services, but does not include information that a recipient party can prove was in the public domain, has entered the public domain other than by a breach by the recipient party, or was already in the recipient party's possession.

Contract is defined in clause 3.

Contract Manager means the Opal representative named in the Purchase Order or any replacement nominated by Opal.

Contract Material means all materials or items created by the Contractor or on the Contractor's behalf in the course of providing the Services under a Contract.

Contract Sum means:

- (a) where the Services will be performed on a fixed cost basis, the lump sum specified in the Purchase Order;
- (b) where the Services will be performed on a time and materials basis, the sum ascertained by multiplying the labour rates specified in the Purchase Order by the quantity of work properly performed in accordance with a Contract; or
- (c) where the Services are performed on a fixed cost and time and materials basis, an aggregate of the sums referred to in paragraph (a) and (b) as applicable,

as adjusted under a Contract.

Contractor Representative means the person identified as such on the Purchase Order, as updated from time to time by written notice to Opal.

Corporations Act means the *Corporations Act 2001* (Cth).

Dispute is defined in clause 25.1.

Environmental Laws is defined in clause 13.1(a).

Force Majeure Event means an event:

- (a) which is outside the reasonable control of the party claiming that the event has occurred; and
- (b) the adverse effects of which could not have been prevented or mitigated against by that party by reasonable diligence or reasonable precautionary measures,

and includes natural disasters, acts of terrorism, riots, revolutions, civil commotion or epidemic.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Indemnified Persons is defined in clause 18.1.

Insolvency Event is defined in clause 24.2.

IP Rights means any rights normally covered with this term and includes existing and future copyrights, rights in designs, patents, trade marks 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.

ITP is defined in clause 15.1.

Laws means all laws including rules of common law and equity, statutes, regulations, determinations, by-laws, mandatory codes, standards and guidelines, writs, orders, injunctions, judgments and government authority requirements.

Modern Slavery has the meaning given to it in the *Modern Slavery Act 2018* (Cth).

Notice of Default has the meaning given to it in clause 24.5.

Notice of Dispute is defined in clause 25.1.

OHS&E is defined in clause 12.1.

OHS Laws is defined in clause 12.2.

Purchase Order means any purchase order lodged by Opal with the Contractor, including as varied in accordance with these Conditions of Procurement.

Relevant Trust is defined in clause 29.

Services means the services specified in the Purchase Order and all work, products/equipment, delivery, installation, commissioning, testing and documentation which is necessary or incidental to those Services.

Site means the location(s) specified in the Purchase Order or as otherwise notified by Opal to the Contractor from time to time.

Supplier Code of Conduct means Opal's Supplier Code of Conduct located at www.opalanz.com/policies and as amended or replaced from time to time.

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 a Contract, but does not include GST.

Termination Date means (i) the date specified in the Purchase Order, or (ii) the date upon which the Services are performed in accordance with the Contract and accepted by Opal, whichever is later. In the event that the Contract is terminated by a party in accordance with the Contract, the Termination Date means the date that is specified by the terminating party in the applicable notice (in accordance with the Contract).

Variation is defined in clause 9.1.

3 Contract

- 3.1 Opal has agreed to appoint the Contractor to provide the Services on the terms set out in these Conditions of Procurement.
- 3.2 By accepting a Purchase Order or supplying any service to Opal, the Contractor is bound by these Conditions of Procurement and the terms set out in the applicable Purchase Order (the **Contract**).
- 3.3 These Conditions of Procurement shall apply to the exclusion of all other terms and conditions, whether contained in the Contractor's invoice or conditions of sale or otherwise.

3.4 All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of these Conditions of Procurement are superseded by these Conditions of Procurement and are of no effect. No party is liable to any other party in respect of those matters. No oral explanation or information provided by any party to another:

- (a) affects the meaning or interpretation of these Conditions of Procurement; or
- (b) constitutes any collateral contract, warranty or understanding between any of the parties.

4 Performance of Contract

4.1 The Contractor must perform the Services in accordance with a Contract to the reasonable satisfaction of Opal.

4.2 The Contractor must:

- (a) comply with the requirements of all Laws (including ordinances, regulations and by-laws) and of all authorities in any way relating to the Contractor's access to the Site or the provision of the Services;
- (b) obtain all permits and pay all fees required for the performance of the Services;
- (c) at all times in providing the Services and performing or complying with all its obligations under or in connection with these Conditions of Procurement, comply with the Supplier Code of Conduct;
- (d) comply with all relevant codes and standards, including Australian Standards; and
- (e) indemnify Opal and keep Opal indemnified against all fines, penalties, losses or damages incurred in connection with any breach of this clause 4.2.

4.3 Where there is a procedure for obtaining accreditation in relation to provision of the Services, then the people providing the Services must be accredited and the Services must be provided to the standard required by the accreditation body.

4.4 The Contractor must not assign, novate, subcontract or otherwise deal with any of its rights or obligations under the Contract without the prior written consent, which will not be unreasonably withheld, of Opal. The Contractor will:

- (a) be liable for the acts and omissions of subcontractors as if they were the acts and omissions of the Contractor; and
- (b) not, by subcontracting the Services, be relieved of any of its obligations or liabilities under the Contract or at Law (notwithstanding any consent obtained from Opal).

4.5 Opal may assign or novate any of its rights or obligations under these Conditions of Procurement or a Purchase Order upon prior written notice to the Contractor.

4.6 The Contractor may only work on the Site during the working hours identified in the Purchase Order, or where no working hours are identified then during the normal business hours of that Site, unless Opal agrees otherwise in writing.

4.7 The Contractor must, promptly and before executing any Contract or commencing any Services, advise in writing if it considers that providing the Services in accordance with the Contract would involve a breach of the Chain of Responsibility Legislation and, if so, any amendments required so as not to breach that Law.

4.8 The Contractor acknowledges and agrees that Opal has provided the resources, assistance or other items to the Contractor as required by Law and that, except as set out in these Conditions of Procurement or otherwise agreed by Opal in writing, Opal is not required to provide any further resources, assistance or other items to the

Contractor in order for the Contractor to perform its obligations under a Contract.

5 GST and Taxes

5.1 Unless otherwise stated, all prices and other amounts specified in a Contract (including the Contract Sum) are exclusive of GST but inclusive of all other Taxes. Where GST is payable in respect of any such amount, the parties must comply with this clause 5.

5.2 If GST is payable on a Taxable Supply made under, by reference to or in connection with a Contract, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause 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.

5.3 No payment under this clause 5 is required until the Contractor has provided a valid Tax Invoice or Adjustment Note as the case may be to Opal.

5.4 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. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

5.5 Where the Contractor makes or gives Contractor Allowances and other Adjustment Events occur in respect of amounts paid or payable by Opal under a Contract, the Contractor must promptly issue any Adjustment Notes that may be required under the GST Law. If the amount of GST is to be reduced, the Contractor must refund to Opal any GST Opal has overpaid.

5.6 This clause 5 will continue to apply after expiration or termination of a Contract.

5.7 Expressions used in this clause have the same meanings as when used in the GST Law, except that Taxable Supply shall exclude the reference to section 84-5 of the GST Law.

6 Contract Documents

6.1 Any documents provided by Opal to the Contractor remain the property of Opal and must be promptly returned on Opal's written request.

6.2 The Contractor must supply to Opal the documents specified in the Purchase Order.

6.3 Inspection or review by the Contract Manager of any drawings, plans or specifications supplied by the Contractor does not:

- (a) constitute an approval, endorsement, or acknowledgment by the Contract Manager that the drawings, plans or specifications, or the works to which they relate, comply with a Contract; or
- (b) affect any warranty given by the Contractor under clause 17.1.

7 Latent Conditions

7.1 The Contract Sum includes all costs of overcoming all conditions on or within the Site (including any prior work by others) which could have been contemplated by a competent contractor who had examined all information made available by Opal to the Contractor for the purpose of making an offer to perform the Services, obtained and examined all information reasonably obtainable from authorities by the making of reasonable enquiries, and inspected the Site and its near surrounds.

- 7.2 If the Contractor becomes aware of a condition on or within the Site (including any prior work by others) which could not have been contemplated under clause 7.1, it may submit a request for Variation under clause 9. In order to be eligible to request such Variation, it must promptly, and before disturbing the condition, give the Contract Manager written notice including full particulars of the condition. The Contract Manager may then give a direction for a Variation under clause 9.5. The Contractor will have no entitlement to submit such request, if the condition could have been contemplated in accordance with clause 7.1 of these Conditions of Procurement, or it fails to comply with this clause 7.2.

8 Invoices and Payment

- 8.1 The Contractor shall issue invoices for Services performed, in accordance with the invoice frequency outlined in the Purchase Order or where no invoice frequency is set out, upon completion of all Services in accordance with the Contract. Each invoice shall be given in writing to the Contract Manager and shall include Opal's Purchase Order or contract number, the type and value of Services performed, payments already received and payments already claimed but not yet received and any other relevant details of other amounts then due to the Contractor under the Contract.
- 8.2 Opal will pay invoices as per the terms in the Purchase Order, or if not specified, within sixty-two (62) days of the end of the month of invoice.
- 8.3 If the Contract Sum, or any alteration to it, is calculated using labour rates, the labour rates:
- (a) will be applied to the Services properly performed by the Contractor in accordance with a Contract, as measured by the Contract Manager; and
 - (b) will not be adjusted during the term of these Conditions of Procurement.
- 8.4 The making of a payment under a Contract is a payment on account only. It is not an admission of the value of the Services, of liability, or that the Services have been performed to Opal's reasonable satisfaction.

9 Variations

- 9.1 A Variation means:
- (a) a material change in the character of the Services; or
 - (b) a material increase or decrease in the scope of the Services, including for the purpose of retaining a third party to perform the part of the Services omitted (in which case there will be no liability to the Contractor for loss of profit), but does not include any work to overcome a breach, act or omission of the Contractor.
- 9.2 Opal must give the Contractor notice of a proposed Variation. The Contractor shall, as soon as practicable after receiving such notice, notify the Contract Manager whether the proposed variation can be effected.
- 9.3 Within fourteen (14) days of the notice of the proposed Variation, the Contractor must submit a reasonable estimate of the effect of the proposed Variation on the Contract Sum:
- (a) in the form reasonably required by Opal; and
 - (b) accompanied by a detailed explanation of the basis for that estimate including relevant cost information such as vendor pricing for materials and estimated quantities of plant, materials and labour required.
- 9.4 Where the Contract Sum is based on rates, to the extent applicable the Contractor must offer those rates to Opal for any further Services required under a Variation.
- 9.5 The Contract Manager may then direct the Contractor to perform the Variation on the basis of the adjusted

Contract Sum provided and the terms of the Contract, and the Contractor must so perform the Variation.

- 9.6 Unless the Contractor and Opal have agreed a Variation pursuant to this clause 9, neither party is obliged to make any payment or perform any work which is the subject of the alleged Variation.
- 9.7 No Variation will vitiate a Contract and the Contractor must not vary the Services except in accordance with this clause 9.

10 Risk

Without prejudice to any right of rejection or other rights which Opal may have, risk of loss in any Contract Materials will pass to Opal on delivery by the Contractor to the Site.

11 Provision of the Site

- 11.1 Subject to compliance with clauses 12 and 16 of these Conditions of Procurement, and any other applicable safety policies and procedures notified to the Contractor, Opal must give the Contractor non-exclusive access to those parts of the Site as are necessary for the performance of the Services from time to time, or for carrying out rectification work as directed by Opal.
- 11.2 The Contractor acknowledges that access given under this clause will not be exclusive and that there may be other persons accessing the Site for any purpose (including for the purpose of performing work on the Site). The Contractor must co-operate with those people and holds Opal and its directors, officers, employees, agents, contractors and suppliers harmless for any loss, cost, expense or outgoing suffered or incurred in connection with any person being on the Site.
- 11.3 The Contractor must:
- (a) make good at its own cost all fencing, roads, footpaths and any other places or surfaces which are disturbed in connection with the performance of the Services; and
 - (b) keep the Site and adjacent areas clean and tidy during the performance of the Services and remove from the Site all rubbish, debris and waste resulting from the performance of the Services.
- 11.4 The Contractor must at its cost take all measures necessary to protect people and property at the Site, including avoiding unnecessary interference with the passage of people and vehicles and preventing nuisance and unreasonable noise and interference. If there is a possibility that any person may be injured by access to any part of the Site, the Contractor must take whatever steps are necessary to restrict access to that part of the Site.

12 Occupational Health and Safety and Environment

- 12.1 The Contractor is responsible for the management of all occupational health, safety and environmental (**OHS&E**) matters which may arise in performing the Services, and must take all necessary precautions to prevent any harm, damage or nuisance to the environment.
- 12.2 The Contractor must ensure that the Services are performed in accordance with all applicable OHS&E standards, legislation, permits, and industry codes of practice including, but not limited to, the *Occupational Health and Safety Act 2004 (Vic)* and the *Occupational Health and Safety Regulations 2017 (Vic)* (**OHS Laws**).
- 12.3 The Contractor must perform its obligations under a Contract in a manner that does not cause Opal to breach any of its obligations under OHS Laws.
- 12.4 All employees, agents or subcontractors of the Contractor attending any Opal Site must comply with any policies, procedures or manuals implemented by Opal from time to time, and with any reasonable written

or oral instructions given by Opal representatives including site management.

- 12.5 The parties shall meet regularly to discuss OHS&E issues.
- 12.6 Where reasonably required by Opal or as required at Law, the Contractor shall provide a copy of its safety management system consisting of:
- (a) OHS&E policy;
 - (b) roles and responsibilities of Contractor personnel for the Site, and records of relevant skills, competencies, and qualifications;
 - (c) WorkCover certificates of personnel working on Site;
 - (d) safe work method statements or job safety analysis (JSA); and
 - (e) where the Contractor will be working on site for an extended period of time and the Contract Manager so reasonably requests, a Site specific safety plan.
- 12.7 All persons carrying out work at the Site must have completed the site specific safety induction program and, if performing construction work, meet the legislative training requirements. Workers will not commence work on Site until they have received the minimum requirements for OHS&E induction training.
- 12.8 The Contractor must immediately inform Opal of all incidents, injuries or near misses in relation to any person engaged in, or affected by, the Contractor's performance of its obligations under these Conditions of Procurement, including any fact or circumstance relevant to the Contractor's ability to provide the Services without risk to health and safety under these Conditions of Procurement.
- 12.9 Upon request by Opal, the Contractor must provide evidence of the Contractor's compliance with obligations under this clause 12.
- 12.10 If Opal conducts inquiries in relation to incidents, injuries or near misses where permitted under applicable Law, the Contractor must assist Opal with its reasonable inquiries and promptly cooperate with any requests by Opal for information, documentation or access to interview the Contractor's employees.

13 Environment Law Compliance

- 13.1 Without limiting the Contractor's other obligations under the Contract, the Contractor agrees:
- (a) to comply with all Laws relating to the protection of the environment, including but not limited to the *Environment Protection Act 2017* (Vic), the *Environment Protection Regulations 2021* (Vic), and all relevant instruments made thereunder (**Environmental Laws**);
 - (b) to perform its obligations under the Contract in a manner that does not cause Opal to breach any of its obligations under Environmental Laws;
 - (c) to immediately inform Opal of any:
 - (i) contamination in, on or under the land or adjoining land; or
 - (ii) pollution incident,that the Contractor causes or contributes to, or that it becomes aware of, in the course of providing the Services. The Contractor must provide detail about the nature of the contamination or pollution incident, risks of harm, measures taken (if any) to respond to the contamination or pollution incident and any other information reasonably requested by Opal;
 - (d) to immediately provide Opal a copy of any correspondence or notice given or received by the

Contractor under or in relation to Environmental Laws;

- (e) to comply with any direction or request given by Opal that relates to requirements imposed under Environmental Law;
- (f) if Opal conducts an investigation or assessment in relation to contamination, pollution, or risks of harm to human health or the environment where permitted under applicable Law, to assist Opal with its reasonable inquiries and promptly cooperate with any requests by Opal for information, documentation or access to interview its personnel;
- (g) to be responsible for any and all waste generated by the Contractor in the course of conducting the Services, and to promptly ensure such waste is lawfully removed from the Site and transported to a lawful place;
- (h) to promptly provide evidence of its compliance with obligations under this clause, if requested by Opal;
- (i) without limiting clause 26, any breach by the Contractor of this clause that gives rise to circumstances which present actual or potential risk to human health or the environment entitles Opal to suspend the whole or part of the Services and the Contractor must bear any cost it incurs as a result of that suspension; and
- (j) on and from the Commencement Date to the extent permitted by Law, to indemnify Opal against any loss, expense, liability or damage suffered or incurred by Opal which may arise as a result of any breach of this clause by the Contractor.

13.2 The Contractor warrants that it is familiar with and has the capacity, resources, competencies and experience to comply with its obligations under this clause.

14 Non-conforming services

- 14.1 If Opal is of the reasonable opinion that any Services have not been performed satisfactorily, or there are any defects or omissions in the Services, then Opal may direct the Contractor at the Contractor's expense and within a reasonable time to:
- (a) remove, rectify or replace any defective work;
 - (b) perform any omitted or unsatisfactory Services; and
 - (c) make good all damage, loss or injury caused by the Contractor.
- 14.2 If:
- (a) the Contractor fails to comply with such a direction; and
 - (b) that failure has not been made good within fifteen (15) days after the Contractor receives written notice from the Contract Manager that Opal intends to have the subject work rectified by others,
- then Opal may have that work so rectified and the Contract Manager shall certify the cost reasonably incurred as moneys due from the Contractor to Opal.
- 14.3 Nothing in a Contract prevents Opal, either directly or through a third party, from rectifying or replacing defective work or performing omitted Services and recovering from the Contractor any reasonably incurred expenses or damages. For the avoidance of doubt, action taken by Opal that is consistent with this clause 14 does not in any way affect the liability of the Contractor or break the chain of responsibility in relation to the defective or omitted work.

15 Testing

- 15.1 Unless the Purchase Order contains an inspection and test plan (**ITP**) for the Services (and the results of the Services), the Contractor must, if directed by Opal,

provide to the Contract Manager an ITP that is consistent with and incorporates the requirements of a Contract, the Contractor's quality control system, relevant Law, government consents and applicable codes and standards. Opal may, acting reasonably, direct changes to the ITP submitted by the Contractor, and the Contractor must incorporate such changes at its cost until Opal is reasonably satisfied that the ITP complies with this clause 15.1.

- 15.2 Tests of the Services (or the results of the Services) must be conducted in accordance with a Contract, the approved ITP and the reasonable directions of Opal.
- 15.3 The party obliged to carry out a test or requiring a test to be undertaken must give the other party at least twenty-four (24) hours' notice of the time that the test will be undertaken, and the test may proceed at that time even if the other party does not attend, unless otherwise agreed by parties.
- 15.4 Subject to clauses 15.6 and 15.7, the costs of and incidental to tests are deemed to be included in the Contract Sum unless the test:
- (a) is not specified in the approved ITP and is directed by Opal; or
 - (b) is carried out by the Contractor under clause 15.5, and the test shows that the Services tested are in accordance with a Contract.
- 15.5 Without prejudice to any other right, if a party delays in conducting a test, the other party may conduct the test, after giving reasonable notice to the delaying party.
- 15.6 Results of tests must be made available promptly to each party and to the Contract Manager. If a test reveals that any Services rendered were not in accordance with a Contract, the Contractor must promptly re-perform the Services and retest, at no cost to Opal.
- 15.7 A party may require that a test be repeated and must bear the costs of the repetition unless the repeat of the test does not confirm the previous test, in which case the costs of the repetition will be shared equally among the parties.
- 15.8 All test equipment must be maintained, calibrated and certified to the standards of operation and calibration prescribed by applicable codes and standards, or where no such code or standard exists, to the standard prescribed by the manufacturer. If requested by Opal, the Contractor must provide written evidence that test equipment has been calibrated and certified in accordance with this clause 15.8.

16 Insurance

- 16.1 The Contractor must take out and maintain the following policies of insurance, on terms and with reputable insurers approved by Opal, from the Commencement Date until the Termination Date:
- (a) public liability insurance to the amount of AUD\$20 million per occurrence and in the aggregate in respect of accidental damage or loss to any property and accidental injury (including death) to any person arising out of the performance of the Services;
 - (b) AUD\$20 million in respect of product liability;
 - (c) workers' compensation insurance as required under workers' compensation legislation; and
 - (d) if stipulated in the Purchase Order, construction plant and equipment insurance in respect of the replacement value of all constructional plant, equipment and supplies including temporary works and materials not for incorporation, used or to be used by the Contractor in connection with a Contract.

- 16.2 The insurances referred to in clause 16.1 must extend to include Opal as an insured or, where this is unobtainable, contain an agreement by the insurer to waive all rights of subrogation against Opal.
- 16.3 The Contractor must, prior to commencing work on Site, and on request by Opal, produce sufficient evidence that the insurances required under clause 16.1 have been effected and are current. If the Contractor fails to do so, Opal may itself, acting reasonably, effect the insurance. The cost of doing so and maintaining such insurance will be a debt due from the Contractor to Opal.

17 Warranties

- 17.1 The Contractor warrants that the Services (and the results of those Services) will:
- (a) meet all requirements set out in a Contract;
 - (b) strictly conform to any description or sample provided to Opal by the Contractor;
 - (c) be of merchantable quality and fit for any purpose which Opal makes known to the Contractor in the Contract or for which the Services 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 Contractor has good title thereto) and will not be subject to any security interests in favour of the Contractor (or any of its related bodies corporate) arising under a Contract or otherwise; and
 - (g) not infringe the IP Rights of any person.
- 17.2 The Contractor warrants that it understands and has been compliant with, and will continue to act in compliance with, the Chain of Responsibility Legislation.
- 17.3 The representations and warranties set out in this clause 17 are in addition to any other warranties or guarantees contained in any relevant request for quotation or implied by Law (including Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) or otherwise provided by the Contractor.
- 17.4 Notwithstanding any other rights which Opal may have under a Contract or at Law, if the Contractor breaches any of the warranties set out in this clause 17, Opal may at its option, acting reasonably:
- (a) require the Contractor to perform the Services again, at the Contractor's cost and within a reasonable time; or
 - (b) terminate a Contract and require the repayment by the Contractor of any amounts which Opal may have made pursuant to that Contract.

18 Release and Indemnity

- 18.1 Subject to clause 18.3, the Contractor indemnifies Opal and its officers, employees, agents and contractors (**Indemnified Persons**) against:
- (a) any direct or indirect cost, loss, damage or expense or outgoing suffered or incurred by an Indemnified Person in respect of personal injury to or death of any person; or
 - (b) loss of or damage to any property (including any suit for an injunction in respect of any loss, apprehended loss or interference with enjoyment of any property),
- arising in connection with the performance or non-performance of the Services or any other obligation under a Contract by the Contractor, its employees, agents or subcontractors.

18.2 The Contractor hereby indemnifies, releases and holds the Indemnified Persons harmless from and against all actions, claims, charges, costs, expenses (including legal fees), losses, damages and other liabilities whatsoever arising directly, indirectly or consequentially out of or otherwise in connection with a breach by the Contractor of clauses 12, 19, 26 and 27 of these Conditions of Procurement by the Contractor.

18.3 The indemnities in clauses 18.1 and 18.2 do not apply to the extent that the loss, damage, injury, death, cost or expense is caused by any breach by Opal of any provision of a Contract or any negligent act or omission of Opal or any employee, contractor or agent of Opal.

19 Confidentiality

19.1 Both parties must keep confidential any Confidential Information.

19.2 Confidential Information may be disclosed to a party's employees, agents, and contractors on a need-to-know basis for the purposes of performing a Contract. All such recipients must agree to keep such Confidential Information confidential.

19.3 A party may disclose Confidential Information if required by Law or the requirements of a stock exchange, but to the extent permitted by Law must take all reasonable steps to notify the other party before disclosure.

20 Force Majeure

A party will not be in default or breach of these Conditions of Procurement or a Contract, or will not otherwise be liable to the other party, for any delay or failure to perform arising from a Force Majeure Event, provided that the party affected by such occurrence gives written notice thereof to the other party within seven (7) days of the commencement of that occurrence, and takes reasonable steps to mitigate and overcome the Force Majeure Event.

21 Intellectual Property

21.1 Nothing in these Conditions of Procurement or a Contract affects the ownership of any rights (including IP Rights) in any materials or items that existed as at the Commencement Date.

21.2 The Contractor assigns ownership of all rights (including IP Rights) in any Contract Material to Opal immediately on its creation.

21.3 The Contractor must, upon request by Opal, sign all documents and do all things as may be necessary to give full effect to this clause 21.

21.4 The Contractor indemnifies Opal in respect of any loss, damage, expense, claim or liability suffered or incurred by Opal as a result of any claim by a third party alleging infringement of any IP Rights in relation to the Services or Contract Materials.

22 Media

Neither party may make any public announcement or disclosure in relation to a Contract or any of its terms (except as required by any applicable Law or regulatory requirement), without the prior written consent of the other party.

23 Suspension

Opal has the right, acting reasonably, at any time and for any reason, to suspend a Contract or any part of a Contract with immediate effect by written notice to the Contractor. When the Contractor receives a notice of suspension from Opal, the Contractor must suspend a Contract until such time as Opal directs a Contract is no longer suspended. At such time, the Contractor must promptly recommence the performance of its obligations under a Contract. Where the suspension of a Contract is not a result of any default or action on the Contractor's part, Opal will reimburse the Contractor for the verified reasonable additional costs the Contractor incurred as a direct consequence of the suspension.

24 Term and Termination

24.1 A Contract commences on the Commencement Date and terminates on the Termination Date.

24.2 To the extent permitted by Law, each party may terminate a Contract immediately by notice in writing to the other party if that other party experiences any of the following (each an **Insolvency Event**):

- (a) is insolvent within the meaning of section 95A of the Corporations Act;
- (b) is presumed by a court to be insolvent by reason of section 459C(2) of the Corporations Act;
- (c) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
- (d) has an administrator appointed over all or any of its assets or undertaking or any step preliminary to the appointment of an administrator is taken;
- (e) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking; or
- (f) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

24.3 Opal may terminate a Contract with ten (10) days' notice in writing if:

- (a) subject to clause 18 of these Conditions of Procurement, the Contractor stops or suspends or threatens to stop or suspend the Services;
- (b) the Contractor is subject to a change in control; or
- (c) the Contractor engages in any act of dishonesty or fraud.

24.4 For the purpose of clause 24.3(b), a change in control will be deemed to occur if:

- (a) the Contractor becomes a subsidiary of a person, of which it was not a subsidiary at the Commencement Date; or
- (b) a person becomes entitled to 50% or more of the shares or stock (as to votes or paid up value) of the Contractor, having been entitled to less than 50% of the shares or stock (as to votes or paid up value) of the Contractor at the Commencement Date; or
- (c) a person is able to directly or indirectly control the Contractor where that person was not able to control the Contractor at the Commencement Date.

In this clause 24.4, "**control**" has the meaning given to it in section 50AA of the Corporations Act.

24.5 If the Contractor commits a breach of any obligation in a Contract, Opal may give the Contractor written notice (**Notice of Default**), specifying the breach and the date by which the Contractor must rectify the breach.

24.6 If the Contractor fails to rectify the default within the time specified in the Notice of Default, which must be no less than fifteen (15) days, Opal may, by notice in writing, do either or both of the following:

- (a) suspend payments due or which may become due under a Contract; and
- (b) either:
 - (i) immediately take over the incomplete Services (including any constructional plant, equipment and unincorporated materials of the Contractor at the Site) and at its option have the Services completed by itself or others; or

- (ii) terminate the applicable Contract, in which case the respective rights and liabilities of the parties will be the same as they would be at common law if the Contractor had wrongfully repudiated a Contract.

24.7 If Opal exercises the power in clause 24.6(b)(i) then, when the Services have been completed, the Contract Manager must calculate the difference between:

- (a) the reasonable additional cost of having the Services completed by itself or others, and any other reasonable loss, cost, damage or expense suffered or incurred by reason of the Contractor's default; and
- (b) the amount of suspended payments and security called on by Opal.

24.8 If the calculation results in a shortfall to Opal, the Contractor must pay the amount of the shortfall to Opal within fourteen (14) days of a written demand for payment.

24.9 Opal may terminate any Contract at any time upon providing one (1) month's written notice to the Contractor. Upon termination under this clause 24.9, the Contractor's only right to compensation will be for that portion of the Contract Sum corresponding to the Services performed up to the time of termination, and the Contractor will not be entitled to any other form of compensation from Opal in respect of such termination.

24.10 Termination or expiration of a Contract does not affect any accrued rights or remedies of either party, or any provisions which are stated, or by their context are required to survive termination or expiration.

25 Disputes

25.1 If a disagreement or dispute (together called a **Dispute**) between the parties in connection with a Contract or these Conditions of Procurement (including but not limited to the breach, termination, validity or subject matter of either), any party may give the other a written notice of dispute adequately identifying and providing details of the Dispute (**Notice of Dispute**). Notwithstanding the existence of a Dispute, all parties will continue to perform all obligations under the Contract.

25.2 Within fourteen (14) days after receiving a Notice of Dispute, the parties will confer at least once to resolve the Dispute or to agree on methods of doing so. After the initial conference, the parties will continue to work together in good faith to resolve the Dispute. At every such conference each party will be represented by a person having authority to agree such resolution or methods. All aspects of every such conference, except the fact of its occurrence, will be privileged, confidential, and without prejudice save as to costs.

25.3 After expiration of thirty (30) days from the giving of the written notice under clause 25.1, any party which has complied with the provisions of clauses 25.1 and 25.2, may in writing terminate the dispute resolution process provided for in those clauses and may then refer the Dispute to litigation.

25.4 No provision of a Contract, including this clause 25, will prevent a party from seeking urgent interlocutory relief.

26 Compliance with Modern Slavery Laws

26.1 The Contractor must take all reasonable steps to ensure there is no Modern Slavery in the Contractor's operations and supply chain, or that of the Contractor's subcontractors and suppliers, including:

- (a) establishing appropriate systems and processes to ensure any risks or occurrences of Modern Slavery in the Contractor's supply chains or any part of the

Contractor's business are identified, assessed and addressed;

- (b) undertaking due diligence of the Contractor's own suppliers and subcontractors to ensure that any risks or occurrences of Modern Slavery in their supply chains or any part of their businesses are identified, assessed and addressed;
- (c) implementing a system of training for the Contractor's employees in relation to the identification, assessment and addressing of Modern Slavery;
- (d) preparing and providing to Opal no later than 31 January each year, an annual report documenting the steps taken to identify and address risks or occurrences of Modern Slavery in the Contractor's supply chains, or in any part of the Contractor's business, including a record of all training completed by employees;
- (e) notifying Opal as soon as reasonably practicable after the Contractor becomes aware of, or have a reasonable basis for suspecting, instances of Modern Slavery in the Contractor's supply chains or any part of the Contractor's business; and
- (f) within such reasonable timeframes as are agreed with Opal, undertaking, at the Contractor's own cost, remediation actions to address and cease any instances of Modern Slavery in the Contractor's supply chains or any part of the Contractor's business. Any remediation action must address Modern Slavery occurrences to the reasonable satisfaction of Opal.

26.2 The Contractor must provide all reasonable assistance (including the provision of information and access to documents) that Opal reasonably requires to enable Opal to comply with its obligations under the *Modern Slavery Act 2018* (Cth).

27 Compliance with Anti-bribery Laws

In performing the Contractor's obligations under a Contract, the Contractor must:

- (a) not seek, accept, offer, give, promise or permit any payment, service, gift or other benefit from or to any person or firm, to obtain or retain business or business advantage, which is not a legitimate payment or benefit permitted by Law, or cause the seeking, acceptance, giving, promising or permitting of any such payment, service, gift or other benefit;
- (b) not engage in any activity, practice or conduct that would constitute an offence under any Anti-bribery Law if such activity, practice or conduct were carried out in Australia or other relevant jurisdiction as the case may be;
- (c) have and maintain throughout the term of a Contract policies and procedures that are designed to ensure the Contractor's compliance with Anti-bribery Law;
- (d) include, in each of the Contractor's contracts with the Contractor's subcontractors and/or suppliers, anti-bribery provisions that are at least as onerous as those set out in this clause 27; and
- (e) provide evidence of the implementation of the policies and procedures referred to in this clause 27 when reasonably requested to do so by Opal.

28 Notices

28.1 Unless otherwise stated in the Contract, any notices to be given by either party to the other must be in writing in English and shall be served by priority paid registered mail or email.

28.2 The particulars for delivery of notices are initially as set out in the Purchase Order. Each party may change its particulars for delivery of notices by notice to the other party.

- 28.3 A communication is given:
- (a) if posted within Australia to an Australian postal address, five (5) days after posting;
 - (b) if posted outside of Australia to an Australian postal address or within Australia to an address outside of Australia, fourteen (14) days after posting; or
 - (c) if sent by email, when confirmation of delivery is received by the sender which records the time that the email was delivered to the addressee's last notified email address unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee.

29 Trusts

If the Contractor is a trustee of a trust (**Relevant Trust**), the Contractor warrants and represents to Opal that:

- (a) the Contractor is the only trustee of the Relevant Trust;
- (b) no action has been taken or has been proposed to remove the Contractor as trustee of the Relevant Trust;
- (c) there is no subsisting breach of the Relevant Trust deed;
- (d) the Contractor has the power and, to the extent necessary, is authorised to enter into these Conditions of Procurement and any Purchase Order and to accept the obligations as trustee of the Relevant Trust;
- (e) there are and will at all times be sufficient assets in the Relevant Trust to meet or otherwise satisfy the Contractor's obligations arising from these Conditions of Procurement and any Purchase Order; and
- (f) the Contractor is indemnified out of the assets of the Relevant Trust.

30 General

- 30.1 Except as expressly stated otherwise in a Contract, Opal may conditionally or unconditionally give or withhold any consent to be given under a Contract, acting reasonably, and is not obliged to give its reasons for doing so.
- 30.2 These Conditions of Procurement apply to any services performed prior to execution of a Contract.
- 30.3 These Conditions of Procurement, as they apply to a Contract already in place, may only be varied, supplemented or replaced by a document signed by both Parties. The Supplier acknowledges that future Purchase Orders will be subject to the relevant Opal standard terms in place as at the date of the Purchase Order (as notified to the Supplier), which may be different to these Conditions of Procurement.
- 30.4 No failure to exercise, or any delay in exercising any right, power or remedy by a party under a Contract 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 and executed by a duly authorised representative of the party.
- 30.5 No clause in a Contract 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.
- 30.6 These Conditions of Procurement and each Contract is governed by the Laws of Victoria, Australia and each party will submit to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with all matters in connection with these Conditions of Procurement or a Contract.
- 30.7 Nothing in a Contract is intended to exclude, restrict or modify rights which Opal may have under common law, legislation or otherwise which may not be excluded, restricted or modified by agreement.

- 30.8 Where any provision of these Conditions of Procurement or a Contract is deemed illegal or unenforceable, the parts of the clause(s) that are deemed illegal are unenforceable and are to be severed from these Conditions of Procurement or Contract and all other provisions will remain unchanged.
- 30.9 Except as expressly stated otherwise, a party's rights under a Contract are cumulative and are in addition to any other rights.
- 30.10 These Conditions of Procurement are not intended to create a partnership, joint venture or agency relationship between the parties.
- 30.11 The meaning of general words is not limited by specific examples introduced by "including", or "for example", or similar expressions.
- 30.12 No rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.