# THIS PURCHASE ORDER FOR GOODS AND/OR SERVICES IS PLACED UNDER THE FOLLOWING TERMS AND CONDITIONS

## 1. APPLICABILITY

(a) These terms and conditions of purchase (these "Terms") are standing terms that apply to and are incorporated into each Purchase Order issued by Dunn & Pilcher to the Supplier. Each Purchase Order, together with these Terms and the description in the Purchase Order of the Goods and/or Services (or the scope of work document referenced in the description, if any), forms a separate contract between Dunn & Pilcher and the Supplier (the "Agreement"). These Terms apply to all scopes of work, whether for the supply of Goods only, the performance of Services only, or the supply and installation of Goods (including any associated commissioning, testing, and making good), and references in these Terms to "the Supply", "the Goods" and "the Services" are to be read accordingly. In the event of any inconsistency between the documents comprising the Agreement, the following order of precedence applies: (i) these Terms; (ii) the Purchase Order; and (iii) the description in the Purchase Order of the Goods and/or Services (or the scope of work document referenced in the description, if any). Despite the foregoing, if any document confers a higher standard of performance, broader warranty, longer liability period, or greater protection on Dunn & Pilcher than another, the document providing the higher standard or greater protection prevails to the extent of the inconsistency.

(b) The Agreement comprises the entire agreement between the Parties in respect of the Purchase Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms apply to the exclusion of any terms and conditions submitted, proposed, or referred to by the Supplier (including in any quotation, acknowledgement, invoice, delivery docket, or other document), all of which are expressly rejected. No such terms form part of the Agreement, regardless of whether Dunn & Pilcher signs, stamps, or otherwise endorses any document containing them. The Supplier is taken to have accepted the Purchase Order on the earliest of: (i) the Supplier's written or electronic acceptance; (ii) the Supplier commencing performance of any Services or the manufacture, procurement or assembly of any Goods for the Purchase Order; or (iii) delivery of any Goods to the Delivery Address.

## 2. DEFINITIONS

For the purpose of this Agreement, the following terms shall have the meanings set out below:

(a) "Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with such specified Person. As used herein, "control" means possession, directly or indirectly, of the power to direct or cause the direction of management and policies through ownership of voting securities, contract, or otherwise;

(b) "Applicable Law(s)" means any laws, regulations, rules, municipal by-laws or orders of any Governmental Authority, or any other requirement having the force of law, as the same may be amended from time to time, that relate or are applicable to the subject matter herein;

(c) "Defects Liability Period" means the period specified in the Purchase Order or, if none, 12 months from Practical Completion of the Project (or, in respect of a Major Defect, 6 years from Practical Completion);

(d) "Delivery Address" means the project site address specified in the Purchase Order;

(e) "Delivery Date" means the date or dates for delivery of Goods or performance of Services specified in the Purchase Order;

(f) "Dunn & Pilcher" means DUNN & PILCHER CONSTRUCTIONS PTY LIMITED;

(g) "Goods" means goods, materials, machinery, equipment, articles, items, supplies, parts, and any other property;

(h) "Governmental Authority" means any Commonwealth, State, Territory, or local government, or any government or regulatory authority, agency, commission or department exercising statutory power in Australia;

(i) "HBA" means the Home Building Act 1989 (NSW);

(j) "Major Defect" has the meaning given in section 18E(4) of the HBA;

(k) "Person" means any individual, corporation, company (including any limited liability company), partnership, joint venture, association, joint-stock company, or unincorporated organization or other business entity, or a government or any agency or political subdivision thereof;

(l) "Practical Completion" means practical completion of the residential building work for the Project as determined by Dunn & Pilcher acting reasonably;

(m) "Price" means the price specified in the Purchase Order for the Supply, expressed in Australian dollars and exclusive of GST (which is payable by Dunn & Pilcher in addition to the Price on receipt of a valid tax invoice) unless the Purchase Order states otherwise;

(n) "Project" means the residential building work (including any associated supply and installation) to which the Supply relates, as identified in the Purchase Order;

(o) "Purchase Order" or "PO" means a purchase order document issued by Dunn & Pilcher to the Supplier in the form of Dunn & Pilcher's PO template (including any special conditions and any scope of work document referenced in the description in the Purchase Order) which specifies the Price, the Delivery Date, the Delivery Address, and the Scope of Work for a particular engagement;

(p) "Representative(s)" means, as to any Party, (i) a director, officer, employee, agent, or representative of such Party; (ii) a financial, legal, or other advisor of such Party; or (iii) a consultant, subconsultant, contractor or subcontractor of such Party;

(q) "Scope of Work" means the description in the Purchase Order of the Goods and/or Services to be supplied (or the scope of work document referenced in the description, if any);

(r) "Services" means the performance of services including labour, transportation, design, delivery, installation, inspection, and testing specified or required under the Purchase Order or otherwise by Dunn & Pilcher;

(s) "Standards" means the standards and specifications for the Supply described in the Purchase Order or otherwise specified by Dunn & Pilcher, including but not limited to: (i) Dunn & Pilcher Code of Conduct and Business Ethics; (ii) Dunn & Pilcher Anti-Bribery and Anti-Corruption Policy; (iii) Dunn & Pilcher Health & Safety (including PPE requirements); (iv) Dunn & Pilcher Environmental Management Policy; (v) Dunn & Pilcher Site Rules; and (vi) Dunn & Pilcher Drug and Alcohol Policy;

(t) "Supplier" means the Person providing the Supply to Dunn & Pilcher under the Purchase Order and named as addressee on page 1 hereof. Dunn & Pilcher and Supplier are also collectively referred to herein as "Parties" and individually as a "Party";

(u) "Supply" means the supply of the Goods and/or the performance of the Services by Supplier under this Agreement;

(v) "Work Product" means all deliverables under this Agreement and all information, data, materials, and technology conceived of, modified, developed, or reduced to practice by or on behalf of Dunn & Pilcher, whether on its own or jointly with any other person, in performing the Services or made part of the Goods, whether or not patented or patentable and in whatever form or medium stored.

## 3. SUPPLY OF GOODS

If Supplier is supplying Goods, then the following terms shall apply:

(a) Supplier shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the Parties (the "Delivery Date"). Time is of the essence in respect of the Delivery Date. If no delivery date is specified, Supplier shall deliver the Goods within 30 days of Supplier's receipt of the Purchase Order. If Supplier fails to deliver the Goods in full on the Delivery Date, Dunn & Pilcher may terminate this Agreement immediately by providing written notice to Supplier and Supplier shall indemnify Dunn & Pilcher against any losses, claims, damages, and reasonable costs and expenses directly attributable to Supplier's failure to deliver the Goods on the Delivery Date. Dunn & Pilcher has the right to return any Goods delivered prior to the Delivery Date at Supplier's expense and Supplier shall redeliver such Goods on the Delivery Date.

(b) Supplier shall deliver all Goods to the Delivery Address during Dunn & Pilcher's normal site working hours or as otherwise instructed by Dunn & Pilcher in or under the Purchase Order. The Supplier is responsible at its cost for all delivery logistics to the Delivery Address, including transport, unloading, materials handling on Site, and compliance with site access conditions, site rules, and safety requirements notified by Dunn & Pilcher. Supplier shall pack all goods for shipment according to Dunn & Pilcher's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Unless otherwise specified in the Purchase Order, no charges shall be allowed for packing or crating. Supplier must provide Dunn & Pilcher prior written notice if it requires Dunn & Pilcher to return any packaging material. Any return of such packaging material shall be made at Supplier's risk of loss and expense.

(c) Supplier shall not substitute Goods without the prior written consent of Dunn & Pilcher. If Supplier delivers more or less than the quantity of Goods ordered, Dunn & Pilcher may reject all or any excess Goods. Any such rejected Goods shall be returned to Supplier at Supplier's sole risk and expense. If Dunn & Pilcher does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

(d) The Purchase Order number must appear on all shipping documents, shipping labels, tags, invoices, containers, bills of lading, express receipts, packing lists, correspondence or other documents relating to this Agreement.

(e) Shipping must be accompanied by a "Material Safety Data Sheet", as applicable, and a "Shipping Notice" or "Packing Slip" describing safety information and the contents of each container showing weight, quantity, and purchase order number.

(f) Transportation charges invoiced must be supported by carrier's original receipted bill.

(g) Title and risk of loss for the Goods shall pass to Dunn & Pilcher upon the later of (i) delivery of the Goods to the Delivery Address, and (ii) acceptance of the Goods by Dunn & Pilcher's site representative. Goods delivered to Site but not yet accepted remain at the Supplier's risk.

(h) Dunn & Pilcher has the right to inspect the Goods on or after the Delivery Date. Dunn & Pilcher, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Dunn & Pilcher rejects any portion of the Goods, Dunn & Pilcher has the right, effective upon written notice to Supplier, to: (i) rescind this Agreement in its entirety; (ii) accept the Goods at a reasonably reduced price; or (iii) reject the Goods and require replacement of the rejected Goods. If Dunn & Pilcher requires replacement of the Goods, Supplier shall, at its expense, promptly replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Supplier fails to timely deliver replacement Goods, Dunn & Pilcher may replace them with goods from a third party and charge Supplier the cost thereof and terminate this Agreement for cause pursuant to Section 5. Any inspection or other action by Dunn & Pilcher under this Section shall not reduce or otherwise affect Supplier's obligations under the Agreement, and Dunn & Pilcher shall have the right to conduct further inspections after Supplier has carried out its remedial actions.

## 4. PERFORMANCE OF SERVICES

If Supplier is supplying Services, then the following terms shall apply:

(a) Supplier shall provide the Services to Dunn & Pilcher as described and in accordance with the schedule set forth on the Purchase Order and in accordance with the terms and conditions set forth in these Terms.

(b) Supplier shall ensure that all Persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Supplier, are properly licensed, certified or accredited as required by Applicable Law and are suitably skilled, experienced and qualified to perform the Services.

(c) Where any Services constitute residential building work under the HBA, the Supplier warrants that it holds a current contractor licence under the HBA authorising it to perform the Services, and will provide a copy of the licence on request.

(d) Supplier shall keep and maintain any Dunn & Pilcher equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the Dunn & Pilcher's written instructions or authorization.

(e) The Purchase Order number must appear on all invoices or other documents relating to this Agreement.

(f) Dunn & Pilcher shall have the right to inspect the Services to ensure that such services conform to the requirements of this Agreement, but no such inspection by Dunn & Pilcher shall relieve Supplier of its obligations hereunder. If any of the Services performed by Supplier do not conform to the requirements of this Agreement, such failure to conform shall constitute a breach and Dunn & Pilcher shall have the rights and remedies provided hereunder, together with all other rights and remedies available to Dunn & Pilcher at law or equity.

## 5. TERMINATION

(a) Except with respect to Goods in transit to Dunn & Pilcher, Dunn & Pilcher may terminate this Agreement for any reason after ten days' prior written notice to Supplier.

(b) Dunn & Pilcher may immediately terminate this Agreement by written notice to Supplier if Supplier or its Representatives (i) fail to comply with any Applicable Laws or any policies, guidelines or practices of Dunn & Pilcher, the noncompliance of which presents, in the reasonable opinion of Dunn & Pilcher, a serious threat to human safety or health or to the environment or (ii) breach any of Supplier's representations, warranties, obligations, or covenants contained in this Agreement.

(c) If Dunn & Pilcher terminates the Agreement for any reason, Supplier's sole and exclusive remedy is payment for the Goods received and accepted and Services performed and accepted by Dunn & Pilcher prior to the termination, less any amounts owing by Supplier to Dunn & Pilcher. Supplier is not entitled to any loss of profit, loss of bargain, loss of opportunity or any other amount in respect of the termination. On termination by Dunn & Pilcher for cause, Dunn & Pilcher may (without further notice) take possession of any Goods on Site, complete the Supply itself or engage others to complete the Supply, and recover from Supplier as a debt due all costs, losses and expenses incurred in doing so. Supplier shall not be entitled to payment for Services performed or Goods supplied after the effective date of any notice of termination unless approved by Dunn & Pilcher or otherwise provided in this Agreement or the notice of termination.

(d) No Party shall be relieved of any of its obligations arising hereunder prior to the termination hereof.

(e) Termination shall be without prejudice to any rights and remedies available to a Party, including injunctive relief.

## 6. PRICE

The Price for the Supply is the fixed lump sum amount set out in the Purchase Order and is not subject to rise and fall, escalation, currency adjustment, quantity reconciliation, provisional sums, or any other form of adjustment, except by way of a Variation issued under clause 8. The Price is the Supplier's full and exclusive entitlement for performing the Supply and includes everything necessary or incidental to performing the Supply in accordance with this Agreement, including (without limitation) all materials, labour, plant, equipment, tools, packaging, transportation and delivery to the Delivery Address, unloading and on-site handling, installation (where applicable), commissioning, testing, making good, site clean-up, compliance with site rules and Applicable Laws, insurance, all taxes, duties, fees and imposts other than GST (which is payable by Dunn & Pilcher in addition to the Price on receipt of a valid tax invoice), and the Supplier's overhead and profit. No claim for any additional amount (including for increased material, labour, transportation, fuel, energy, currency or regulatory costs, for delay or disruption (other than as expressly permitted under this Agreement), or for work the Supplier ought to have foreseen) is allowable, and no increase in the Price is effective, without the prior written consent of Dunn & Pilcher given by way of a Variation under clause 8. Where the scope of any part of the Supply genuinely cannot be priced as a fixed lump sum at the date of the Purchase Order (including, without limitation, excavation, ground works, demolition, asbestos or hazardous materials removal, latent conditions rectification, and call-out or defect-rectification work during the Defects Liability Period), the Supplier must submit, before any such work is commenced, a schedule of contingency rates (the "Contingency Rates") covering all-inclusive hourly or daily labour rates by trade and classification, plant and equipment rates, a materials margin (capped at 10% unless the Purchase Order states otherwise) on documented at-cost materials, and the basis of measurement. The Contingency Rates, once approved in writing by Dunn & Pilcher, are fixed for the duration of the Purchase Order and form part of the Agreement. Work carried out under the Contingency Rates must be authorised in advance in writing by Dunn & Pilcher's authorised representative, recorded on daily timesheets countersigned on site by Dunn & Pilcher's site representative, and invoiced at the approved Contingency Rates and quantities only. The Supplier is not entitled to payment for work carried out otherwise than in accordance with this clause.

## 7. PAYMENT

(a) The Supplier may submit a payment claim under the Building and Construction Industry Security of Payment Act 1999 (NSW) ("SOPA") in respect of the Supply no more frequently than once per calendar month, unless the Purchase Order specifies a different frequency. Each payment claim must: (i) be addressed to Dunn & Pilcher at the address specified in the Purchase Order; (ii) reference the Purchase Order number; (iii) itemise the Goods delivered and/or Services performed in the relevant period, with a breakdown of materials, labour, equipment, freight, GST, and any reimbursable expenses supported by documentation; (iv) state that it is made under SOPA; and (v) be in a form reasonably required by Dunn & Pilcher.

(b) Dunn & Pilcher will provide a payment schedule within 10 business days of receipt of a payment claim. The due date for payment is 15 business days after receipt of a valid payment claim, or such other date as is required by SOPA (whichever is earlier).

(c) Payment of any amount by Dunn & Pilcher does not constitute acceptance of the Supply or waive any right of Dunn & Pilcher under this Agreement.

(d) Dunn & Pilcher may deduct, withhold or set off against any amount payable to the Supplier (whether under this Agreement or any other agreement between the Parties) any amount that the Supplier owes, or that Dunn & Pilcher reasonably estimates the Supplier may owe, to Dunn & Pilcher, including amounts in respect of defects, delay, rectification costs, liquidated damages, third party claims, indemnity claims, retention, or any other actual or anticipated liability of the Supplier to Dunn & Pilcher. Dunn & Pilcher may exercise this right whether the relevant liability is liquidated, unliquidated, present, future, contingent or disputed, and may continue to exercise it notwithstanding any insolvency event affecting the Supplier to the extent permitted by law. Where Dunn & Pilcher intends to withhold an amount in respect of a payment claim under the Building and Construction Industry Security of Payment Act 1999 (NSW), Dunn & Pilcher will identify the withheld amount and the reason for withholding in the corresponding payment schedule. Nothing in this clause limits any right of set-off, withholding, abatement, deduction or counterclaim available to Dunn & Pilcher at law or in equity. The

Supplier's rights of set-off, withholding, abatement or deduction against any amount payable by it to Dunn & Pilcher are excluded to the maximum extent permitted by law.

(e) Nothing in this Agreement operates to make payment to the Supplier contingent on receipt by Dunn & Pilcher of payment from any third party, and any provision purporting to do so is of no effect.(f) Where the Price exceeds $50,000 and the Purchase Order does not state otherwise, Dunn & Pilcher may retain 5% of each progress payment as retention. Half of the retention will be released on Practical Completion of the Project and the balance on expiry of the Defects Liability Period. Where the Price exceeds $250,000, Dunn & Pilcher may require, in lieu of cash retention, an unconditional bank guarantee for 5% of the Price from an Australian trading bank acceptable to Dunn & Pilcher, in a form approved by Dunn & Pilcher, to be provided before any payment is made.

## 8. CHANGES IN SPECIFICATIONS

(a) The description in the Purchase Order of the Goods and/or Services (or the scope of work document referenced in the description, if any), the Price, the Delivery Date and any other term of a Purchase Order may only be varied by a written amendment to the Purchase Order signed by an authorised representative of Dunn & Pilcher (a "Variation"). No variation is valid or binding on Dunn & Pilcher unless it complies with this clause, and the Supplier is not entitled to any adjustment to the Price, the Delivery Date or any other term unless a Variation has been issued in accordance with this clause.

(b) Dunn & Pilcher may at any time, by written instructions and/or drawings issued to Supplier (each a "Change Order"), direct changes to the Supply (whether by addition, omission, change in sequence, or otherwise). Supplier shall within 5 business days of receipt of a Change Order submit to Dunn & Pilcher a firm cost and time proposal for the Change Order. Dunn & Pilcher may accept the proposal (in which case a Variation will be issued), reject it, or direct the Supplier to proceed pending agreement, in which case the Supplier shall be entitled to be paid the reasonable cost of the changed work.

(c) The Supplier shall not be entitled to any extension of time, adjustment to the Price, or other relief in respect of any matter unless it provides written notice to Dunn & Pilcher within 5 business days of becoming aware (or of when it should reasonably have become aware) of the matter giving rise to the claim, with full particulars of the cause, the impact, and the relief claimed. Failure to give notice in accordance with this clause is an absolute bar to any claim.

## 9. DELAY OR NON-DELIVERY OF SUPPLY

Time is of the essence with respect to Supplier's obligations hereunder and the timely delivery of the Goods and Services, including all performance dates, timetables, project milestones and other requirements in this Agreement. If Supplier is supplying Services, it will proceed diligently, continuously, and expeditiously in accordance with accepted industry practices and Standards and with any performance schedule set forth in the Purchase Order or any Variation issued under clause 8 ("Performance Schedule"). If Supplier is supplying Goods, then the following terms shall apply: (i) if upon Supplier's receipt of the Purchase Order or at any time thereafter, the Goods cannot be shipped within the time specified hereunder, notice thereof must be given immediately to Dunn & Pilcher's representative by email or through Dunn & Pilcher's recognized portal, together with advice on the best delivery possible; and (ii) failure to provide Services by the dates set out in the Performance Schedule or to deliver Goods on or before the date specified in the Purchase Order shall entitle Dunn & Pilcher, at its option, to terminate all or any part of the Purchase Order without prejudice to any other rights Dunn & Pilcher may have as a result thereof. Without limiting any other right or remedy of Dunn & Pilcher, if the Supplier fails to deliver the Goods by the Delivery Date, fails to complete the Services by the date set out in the Performance Schedule, or otherwise fails to perform the Supply in accordance with this Agreement (including by reason of defective workmanship, defective materials, or any other failure to meet the standards required by clause 11), the Supplier shall pay Dunn & Pilcher liquidated damages of 1% of the Price for each week (or pro rata for any part of a week) during which the failure continues, calculated from the Delivery Date (or, in the case of poor performance, from the date Dunn & Pilcher first notifies the Supplier of the failure) up to and including the date the Supplier remedies the failure or Dunn & Pilcher engages others or otherwise remedies the failure, subject to a cap of 10% of the Price. The Parties acknowledge that this rate is a genuine pre-estimate of the loss Dunn & Pilcher is likely to suffer and is not a penalty. Liquidated damages payable under this clause are in addition to, and not in substitution for, Dunn & Pilcher's right to recover any additional costs incurred under clauses 5, 7(d), or 11(c) of this Agreement, and any other right or remedy available to Dunn & Pilcher at law, in equity, or under this Agreement. If for any reason the liquidated damages in this clause are held to be unenforceable, the Supplier remains liable to Dunn & Pilcher for general damages at common law for the same failure.

## 10. ACCESS TO SITE

If the Supply requires Supplier to enter onto Dunn & Pilcher's site ("Site"), then the following shall apply: (i) Supplier acknowledges that entry onto the Site is at Supplier's own risk. Supplier shall ensure that Supplier's Representatives are aware that they enter onto the Site at their own risk; (ii) Supplier shall have control of and be liable for all risk of loss or damage to all equipment, machinery, or other property belonging to Supplier and its Representatives that is brought onto the Site; (iii) Supplier may be required to provide proof that the insurance policies required herein are obtained and are in effect before entering the Site; and (iv) Supplier will be required to observe and comply with Site rules and regulations and applicable safety policies and guidelines of Dunn & Pilcher when on Site and will require its Representatives to do the same. Subject to the requirements set forth herein, Supplier and Supplier's Representatives are hereby authorized to enter the Site at such times as may be reasonably necessary to perform the Supply. Supplier and its Representatives may enter only those portions of the Site as are required for the Supply and shall perform the Supply in a manner that shall not interfere with any activities conducted by Dunn & Pilcher or any other Person at the Site.

## 11. WARRANTIES

(a) Supplier warrants to Dunn & Pilcher that the Goods, when delivered and (where applicable) installed, will: (i) be free from any defects in workmanship, material and design; (ii) conform to the description in the Purchase Order of the Goods and/or Services (or the scope of work document referenced in the description, if any) and all applicable specifications, drawings, designs, samples and other requirements specified by Dunn & Pilcher including the Standards; (iii) be fit for the purpose for which Dunn & Pilcher (expressly or by implication) has made known to Supplier and for any purpose for which Goods of that type are commonly supplied; (iv) be of acceptable quality within the meaning of section 54 of the Australian Consumer Law; (v) comply with the National Construction Code, the Building Code of Australia, and all relevant Australian Standards in force at the time of supply; (vi) be free and clear of all liens, security interests or other encumbrances; and (vii) not infringe or misappropriate any third party's intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Dunn & Pilcher, and run for the Defects Liability Period.

(b) Supplier warrants to Dunn & Pilcher that the Services will: (i) be performed by Supplier and its Representatives who possess the skills, qualifications, licences (including any licence required under the HBA), certifications and experience necessary to perform the Services, with the care, skill and diligence of a competent professional providing services of the same nature; (ii) conform in all respects to the description in the Purchase Order of the Goods and/or Services (or the scope of work document referenced in the description, if any), the specifications described in this Agreement, and the Standards; (iii) be carried out in a proper and workmanlike manner and in accordance with the National Construction Code, the Building Code of Australia, all relevant Australian Standards, and all Applicable Laws; (iv) be free from errors, omissions and other defects; (v) not infringe any intellectual property rights; and (vi) be fit for the purpose for which Dunn & Pilcher (expressly or by implication) has made known to Supplier, and for any purpose for which services of that type are commonly supplied. To the extent the Services constitute "residential building work" within the meaning of the HBA, Supplier acknowledges that the statutory warranties in section 18B of the HBA apply to the Services and are, on a back-to-back basis, owed by Supplier to Dunn & Pilcher. The warranties in this Section run for the Defects Liability Period (and, in respect of a Major Defect, for the period specified in section 18E(1)(a) of the HBA).

(c) The warranties set forth in this Section 11 are cumulative and in addition to any other warranty provided by law or equity. A cause of action for breach of the warranties in this Section 11 accrues on the date Dunn & Pilcher first becomes aware, or ought reasonably to have become aware, of the noncompliance, subject to any non-excludable statutory limitation period (including under the Home Building Act 1989 (NSW)). If the Supply does not conform to the warranties stated above, then Supplier shall either, at Dunn & Pilcher's option and at the sole cost and expense of Supplier, promptly repair or replace the defective Goods and/or re-perform the defective Services. Supplier shall be responsible for the cost of all relevant transportation to and from the Site, removal of defective Goods, reinstallation of replacement Goods, labour costs, reinstatement of any other trade's work disturbed by the rectification, and all other expenses associated therewith. Supplier must commence rectification within 10 business days of written notice of a defect during the Defects Liability Period, or immediately in the case of any defect affecting safety, weatherproofing, or habitability, and must complete the rectification as soon as reasonably practicable and to Dunn & Pilcher's reasonable satisfaction. If Supplier fails to promptly take such corrective action, then Dunn & Pilcher may engage others to undertake the rectification work and recover from Supplier as a debt due all costs, losses and expenses incurred (including a reasonable allowance for Dunn & Pilcher's site supervision and overhead). Supplier shall reimburse Dunn & Pilcher for all actual costs and expenses incurred by Dunn & Pilcher resulting from the failure of the Supply to meet the warranties hereunder. Replaced or repaired Goods and re-performed Services shall be subject to the same inspection, acceptance, and warranty provisions of this Agreement as originally delivered and performed.

(d) With respect to any warranties Supplier has received from third party suppliers or manufacturers, Supplier shall assign, or where assignment is not permitted hold on trust, for the benefit of Dunn & Pilcher and the owner of the Project, any such warranties, and shall provide Dunn & Pilcher with copies of the warranty contracts, provided that assignment of warranties to Dunn & Pilcher shall not relieve Supplier of its obligations hereunder. Supplier shall not take any action to modify, release, waive, or otherwise discharge any such warranties without the prior written consent of Dunn & Pilcher.

## 12. SUPPLIER REQUIREMENTS

Supplier shall: (i) pay all fees, wages, taxes, and medical insurance coverage and all other statutory deductions and benefits of its Representatives and comply with all applicable labor and employment requirements with respect to its Representatives, (ii) obtain all required licenses, consents, approvals, and permits necessary to perform its obligations hereunder, (iii) comply with all Applicable Laws that are applicable to this Agreement and Supplier's performance hereunder, including, but not limited to, all Applicable Laws related to anti-bribery, human rights and data protection, and (iv) comply with all rules, regulations and policies of Dunn & Pilcher, including security procedures concerning systems and data and remote access thereto.

## 13. WORK PRODUCT

All Work Product developed or made by Supplier or its Representatives during the term of this Agreement in the course of the Supply are works made for hire and shall belong to Dunn & Pilcher.

## 14. INDEMNITY

(a) To the fullest extent permitted by law, Supplier shall indemnify, defend, and hold harmless Dunn & Pilcher, its Affiliates, and their respective Representatives (collectively, the "Indemnified Parties") from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable legal costs (on a solicitor-and-own-client basis) and related professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or in connection with: (i) the Supply (including any defect in or non-conformity of the Goods or Services); (ii) any personal injury (including death), property damage, or damage to the Project or any part of the Site caused or contributed to by Supplier or its Representatives; (iii) any breach by Supplier of any Applicable Law (including the HBA, the Building and Construction Industry Security of Payment Act 1999 (NSW), work health and safety laws, and environmental laws); (iv) any breach by Supplier of any obligation, warranty or representation under this Agreement; or (v) the negligent or wilful act or omission of Supplier or its Representatives.

(b) Supplier shall, at its expense, defend, indemnify and hold harmless Dunn & Pilcher and any Indemnified Party against any and all Losses arising out of or in connection with any claim that Dunn & Pilcher's or any Indemnified Party's use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Supplier enter into any settlement without Dunn & Pilcher's or any Indemnified Party's prior written consent.

(c) Notwithstanding the foregoing, Supplier shall have no obligation to indemnify the Indemnified Parties if and to the extent that the relevant claim or Loss is primarily caused by the gross negligence or willful misconduct of the Indemnified Parties.

(d) Dunn & Pilcher shall have the right, at its option, to participate in the defence of any such claim or suit hereunder without relieving Supplier of any obligations hereunder. Supplier shall not enter into any settlement without Dunn & Pilcher's prior written consent.

(e) Supplier's indemnification obligations shall not be affected by any insurance Supplier is required to maintain under this Agreement. Every exemption, limitation, defence, immunity, indemnity, or other benefit contained in this Agreement or otherwise to which Dunn & Pilcher is entitled shall be held by Dunn & Pilcher for the benefit of and shall extend to protect the Indemnified Parties.

## 15. LIMITATION OF LIABILITY

(a) Subject to clause 15(b), neither Party will be responsible to the other for loss of profit, loss of goodwill, loss of revenue, loss of bargain, or loss of opportunity (in each case being indirect or consequential losses), or for indirect, consequential, special or punitive damages.

(b) Clause 15(a) does not limit the Supplier's liability in respect of: (i) Supplier's liability to Dunn & Pilcher which is recoverable, or which ought to have been recoverable, under insurance policies required to be effected by the Supplier pursuant to this Agreement; (ii) Supplier's liability for criminal acts, fraud, wilful misconduct or gross negligence; (iii) Supplier's liability to the Indemnified Parties in respect of any Claims made by and any Liabilities to any person other than the Indemnified Party; (iv) Supplier's liability for the infringement of third party intellectual property rights; (v) Supplier's liability for breach of the confidentiality provisions of the Agreement; (vi) claims in respect of damage to third party property or loss of use of third party property; (vii) personal injury (including death) to any person; or (viii) liability which cannot be limited at law; (ix) costs of investigation, rectification, replacement, removal, reinstallation or making good defects in the Supply, including consequential impact on other trades' work; and (x) liability for breach of the statutory warranties under Part 2C of the HBA or for amounts payable by Dunn & Pilcher to the owner of the Project arising from such breach.

## 16. SUPPLIER REPORTING AND UNFORESEEN CONDITIONS

Supplier shall report to Dunn & Pilcher from time to time on the status of the Supply and in so doing shall: (i) immediately notify Dunn & Pilcher if Supplier becomes aware of any unforeseen circumstances that may adversely affect the quality or safety of the Supply; (ii) if requested, provide Dunn & Pilcher with all or a portion of the then existing Work Product; (iii) promptly advise Dunn & Pilcher of all material results obtained during the course of providing the Supply; and (iv) if applicable, deliver to Dunn & Pilcher a final written report upon completion of the Supply or the earlier termination of this Agreement.

## 17. FORCE MAJEURE

Neither Party shall be liable for its failure to perform any of its obligations hereunder during any period in which the Supply is delayed by fire, flood, earthquake or other natural disaster, war, embargo, riot, acts of terror, pandemic or epidemic (but only to the extent the relevant event was not foreseeable at the date of the Purchase Order), or the intervention of any government authority of similar impact (and for the avoidance of doubt, adverse weather conditions that are typical for the location and season of the Site are not a force majeure event), provided that the Party suffering such delay immediately notifies the other Party in writing of the delay. Supplier's economic hardship or changes in market conditions (including commodity prices) are not considered an event of force majeure. If the Supply by Supplier is delayed for force majeure for a cumulative period of 14 days or more, Dunn & Pilcher, notwithstanding any other provision herein to the contrary, may terminate this Agreement by notice to Supplier. In the event Dunn & Pilcher does not terminate this Agreement due to an event of force majeure, then (i) the time for performance or cure shall be extended for a period equal to the duration of the event of force majeure, and (ii) Supplier shall provide Dunn & Pilcher with Supplier's plan to proceed the Supply notwithstanding the event of force majeure.

## 18. CONFIDENTIALITY

All non-public, confidential or proprietary information of Dunn & Pilcher, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Dunn & Pilcher to Supplier, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by Dunn & Pilcher in writing. Upon Dunn & Pilcher's request, Supplier shall promptly return all documents and other materials received from Dunn & Pilcher. Dunn & Pilcher shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (i) in the public domain; (ii) known to Supplier at the time of disclosure; or (iii) rightfully obtained by Dunn & Pilcher on a non-confidential basis from a third party.

## 19. AUDIT

During the term of this Agreement and for a period of 7 years thereafter, Supplier shall maintain complete and accurate books and records with respect to the Supply and the invoices submitted to Dunn & Pilcher for payment hereunder. Dunn & Pilcher may audit such books and records of Supplier as may be reasonably necessary to determine the accuracy of any invoice submitted by Supplier.

## 20. NOTICES

All notices and other communications required or permitted under this Agreement shall be in writing and shall reference this Agreement and shall be deemed delivered on the earlier of when receipt is acknowledged or verified or (i) when delivered in person, (ii) the first business day after when sent by email or fax, (iii) five days after having been sent by a recognized commercial express courier or certified mail return receipt requested with written verification of receipt. All communications shall be sent to the receiving Party at the address set forth in the Purchase Order.

## 21. SUBCONTRACTING

Supplier shall not delegate, subcontract, or outsource any of its duties and obligations arising hereunder without the prior written consent of Dunn & Pilcher. No delegation, subcontracting, or outsourcing by Supplier (permitted or otherwise) shall relieve Supplier of any duty or obligation arising under this Agreement. Nothing contained in this Agreement shall create any contractual relationship between Dunn & Pilcher and any Supplier subcontractor or supplier.

## 22. INSURANCE

Supplier shall, at its own expense and prior to performing its obligations hereunder, procure and maintain insurance coverage underwritten by a reputable insurer with a security rating of at least A by Standard and Poor's (Australia) Pty Limited or A2 by Moody's Investors Service, Inc on terms and conditions consistent with prudent risk management practice and acceptable to Dunn & Pilcher, but in no event less than those specified below:

(a) public liability and product liability insurance with the following minimum limits (each occurrence and in the aggregate), or such higher limits as are specified in the Purchase Order: (i) where the Price is $50,000 or less, $5,000,000; (ii) where the Price is more than $50,000 but not more than $500,000, $10,000,000; and (iii) where the Price exceeds $500,000, $20,000,000;

(b) workers compensation insurance in compliance with the Workers Compensation Act 1987 (NSW) and the Workplace Injury Management and Workers Compensation Act 1998 (NSW), and with the Applicable Laws of any other State or Territory in which Supplier's personnel performing the Supply are based;

(c) where any of the Services constitutes residential building work for which Supplier is required under Part 6 of the HBA to obtain insurance under the Home Building Compensation Fund, Supplier shall obtain that insurance in favour of the homeowner in accordance with Part 6 of the HBA and provide a certificate of insurance to Dunn & Pilcher prior to commencement of the Services and prior to any payment being made;

(d) if Supplier shall use or provide for use of motor vehicles in providing the Supply, automobile (motor vehicle) insurance covering all liability for personal injury and property damage arising from the use of such vehicles with limits of liability of $1,000,000 for each occurrence and in the aggregate; and

(e) tools and equipment insurance with limits of $1,000,000.

(f) if Supplier is required to be certified, licensed or registered by a regulatory entity and/or where the Supplier's error in judgment, planning, design or other professional services could result in economic loss to Dunn & Pilcher, Supplier shall carry professional liability insurance with limits of liability of $2,000,000 for each claim and $5,000,000 in the aggregate.

Supplier shall maintain the insurance coverage required by this Agreement in force and effect throughout the term of this Agreement and, in the case of any coverage that is on a claims-made basis, for a period of two years after termination or, in the case of any applicable professional liability coverage, three years after termination. Supplier shall (i) cause Dunn & Pilcher to be an additional insured under each of the insurance policies required hereunder and (ii) ensure that each policy includes (x) a waiver by the insurer of its rights of subrogation under Applicable Law to bring a claim against Dunn & Pilcher and (y) a cross liability and severability of interests clause providing each insured the same rights under the policy; provided, however that the foregoing obligations shall not apply to workers' compensation insurance to the extent prohibited by Applicable Law.

## 23. DISPUTE RESOLUTION

(a) For any dispute, controversy or claims arising out of or relating to this Agreement or the breach, termination, interpretation or invalidity thereof (a "Dispute") the Parties shall endeavour for a period of 14 days to resolve the Dispute by negotiation. This period may be extended by agreement of the Parties. In the event the Dispute is not successfully resolved, the Parties agree to submit the Dispute to the exclusive jurisdiction of the courts of New South Wales. Nothing contained herein shall preclude a Party from initiating court proceedings relating to any Dispute arising under this Agreement where that Party seeks urgent or interim declaratory or injunctive relief.

(b) The prevailing Party in any proceeding shall, in addition to other relief awarded, be entitled to recover reasonable legal fees, expenses, and costs of investigation as actually incurred in any mediation, arbitration, litigation, appeal, bankruptcy, or other such proceedings.

## 24. GOVERNING LAW

The laws of New South Wales, Australia shall govern this Agreement and the transactions contemplated by this Agreement, without giving effect to the choice of law rules thereof. The U.N. Convention on the International Sale of Goods shall not apply to the provisions of this Agreement. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales, Australia and the appropriate courts of appeal from such courts for any other matter concerning this Agreement or the transactions contemplated hereby.

## 25. WAIVER

No waiver by Dunn & Pilcher of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Dunn & Pilcher. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

## 26. NO THIRD-PARTY BENEFICIARIES

This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

## 27. SEVERABILITY

If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, such provision shall be enforced to the fullest extent permitted by law and the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. A provision of similar economic effect shall be substituted for any invalid, illegal, or unenforceable provision.

## 28. SURVIVAL

Any obligations and duties that, by their nature, extend beyond the expiration or earlier termination of this Agreement, including but not limited to the warranties in Section 11, the indemnities in Section 14, and the confidentiality provisions in Section 18, shall survive any such expiration or termination and remain in effect.

## 29. ASSIGNMENT

Supplier shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Dunn & Pilcher. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Supplier of any of its obligations hereunder.

Notwithstanding the preceding paragraph, Dunn & Pilcher may assign or novate its rights or obligations under this Agreement without the written consent of the Supplier.

## 30. RELATIONSHIP OF THE PARTIES

The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

## 31. ENTIRE AGREEMENT

This Agreement sets forth the complete understanding of the Parties as to the subject matter hereof as of the date written above and supersedes all agreements and representations made or dated prior hereto. This Agreement may only be amended or modified in a writing stating specifically that it amends this Agreement and is signed by an authorized representative of each Party.