

HILLMORR

WALLCOVERINGS

1. Definitions

- 1.1 “HILLMORR” means Hillmorr Pty Ltd T/A Hillmorr Wallcoverings, its successors and assigns or any person acting on behalf of and with the authority of Hillmorr Pty Ltd T/A Hillmorr Wallcoverings.
- 1.2 “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting HILLMORR to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “Goods” means all Goods or Services supplied by HILLMORR to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any GST where applicable) for the Goods as agreed between HILLMORR and the Client in accordance with clause 5 below.
- 1.5 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and HILLMORR.
- 2.3 Any advice, recommendation, information, assistance or service provided by HILLMORR in relation to Goods and Services supplied is given in good faith, is based on HILLMORR’s own knowledge and experience and shall be accepted without liability on the part of HILLMORR and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.
- 2.4 The Client acknowledges that:
- (a) the supply of Goods on credit shall not take effect until the Client has completed a credit application with HILLMORR and it has been approved with a credit limit established for the account;
 - (b) In the event that the supply of Goods request exceeds the Client’s credit limit and/or the account exceeds the payment terms, HILLMORR reserves the right to refuse delivery; and
 - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, HILLMORR reserves the right to vary the Price with alternative Goods as per clause 5.2, subject to prior confirmation and agreement of both parties. HILLMORR also reserves the right to halt all Services until such time as HILLMORR and the Client agree to such changes. HILLMORR shall not be liable to the Client for any loss or damage the Client suffers due to HILLMORR exercising its rights under this clause.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (New South Wales), 2000 and Section 14 of the Electronic Transactions (Queensland) Act 2001, or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that HILLMORR shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by HILLMORR in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by HILLMORR in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of HILLMORR; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give HILLMORR not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by HILLMORR as a result of the Client’s failure to comply with this clause.

5. Price and Payment

- 5.1 At HILLMORR’s sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by HILLMORR to the Client; or

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- (b) HILLMORR's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of ninety (90) days.
- 5.2 HILLMORR reserves the right to change the Price if a variation to HILLMORR's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to changes to the scope of the Services, availability of stock or increases in the cost of materials and labour etc.) will be charged for on the basis of HILLMORR's quotation, and will be detailed in writing, and shown as
- 5.3 variations on HILLMORR's invoice. The Client shall be required to respond to any variation submitted by HILLMORR within ten (10) working days. Failure to do so will entitle HILLMORR to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At HILLMORR's sole discretion, a deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by HILLMORR, which may be:
- (a) before delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with HILLMORR's payment schedule;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by HILLMORR.
- 5.6 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and HILLMORR.
- 5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by HILLMORR nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to HILLMORR an amount equal to any GST HILLMORR must pay for any supply by HILLMORR under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Delivery of Goods**
- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at HILLMORR's address; or
 - (b) HILLMORR (or HILLMORR's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At HILLMORR's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3 Any time specified by HILLMORR for delivery of the Goods is an estimate only. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. HILLMORR will not be liable for any loss or damage incurred by the Client as a result of delivery being late. In the event that the Client is unable to take delivery of the Goods as arranged then HILLMORR shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 HILLMORR may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7. Risk**
- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, HILLMORR is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by HILLMORR is sufficient evidence of HILLMORR's rights to receive the insurance proceeds without the need for any person dealing with HILLMORR to make further enquiries.
- 7.3 If the Client requests HILLMORR to leave Goods outside HILLMORR's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- 7.4 Where the Client has supplied materials for HILLMORR to complete the Services, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. HILLMORR shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 7.5 Where HILLMORR is requested to design or commission wallpaper printing services using measurements or dimensions supplied by the Client or the Client's representatives, and these measurements are found to be incorrect the Client is liable for the costs for the re-creation of the sign writing or printing as well as the original production costs.
- 7.6 The Client acknowledges and accept that:
- (a) variations of colour, shade and grain are inherent in all dye lots. While every effort will be taken by HILLMORR to match colour, shade or grain of product, HILLMORR shall not be liable for any loss, damages or costs howsoever arising resulting from any variation in colour, shading or grain between batches of product or sale samples and the final product supplied; and

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- (b) HILLMORR cannot guarantee to produce perfectly uniform patterned product, therefore there is no guarantee that patterned product will match perfectly when joined; and
- (c) the application process for wallpapering may require seams and cross-joins and that the appearance of these may be affected by light source and in particular the construction of the chosen product.
- (d) Goods supplied may:
 - (i) exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. HILLMORR will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching.

8. Accuracy of Clients Plans and Measurements

- 8.1 HILLMORR shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, HILLMORR accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 In the event the Client gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Contractor places an order based on these measurements and quantities. HILLMORR accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

9. Specifications

- 9.1 The Client acknowledges that all descriptive specifications, illustrations, dimensions and weights stated in HILLMORR's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by HILLMORR.

10. Title

- 10.1 HILLMORR and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid HILLMORR all amounts owing to HILLMORR; and
 - (b) the Client has met all of its other obligations to HILLMORR.
- 10.2 Receipt by HILLMORR of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 10.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 10.1:
 - (a) the Client is only a bailee of the Goods and must return the Goods to HILLMORR on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for HILLMORR and must pay to HILLMORR the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for HILLMORR and must pay or deliver the proceeds to HILLMORR on demand;
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of HILLMORR and must sell, dispose of or return the resulting product to HILLMORR as it so directs;
 - (e) the Client irrevocably authorises HILLMORR to enter any premises where HILLMORR believes the Goods are kept and recover possession of the Goods;
 - (f) HILLMORR may recover possession of any Goods in transit whether or not delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of HILLMORR;
 - (h) HILLMORR may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

11. Personal Property Securities Act 2009 ("PPSA")

- 11.1 In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to HILLMORR for Services – that have previously been supplied and that will be supplied in the future by HILLMORR to the Client.
- 11.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which HILLMORR may reasonably require to;

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- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, HILLMORR for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of HILLMORR;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of HILLMORR;
 - (e) immediately advise HILLMORR of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 11.4 HILLMORR and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by HILLMORR, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Client must unconditionally ratify any actions taken by HILLMORR under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

12. Security and Charge

- 12.1 In consideration of HILLMORR agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Client indemnifies HILLMORR from and against all HILLMORR's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising HILLMORR's rights under this clause.
- 12.3 The Client irrevocably appoints HILLMORR and each director of HILLMORR as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 13.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify HILLMORR in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow HILLMORR to inspect the Goods.
- 13.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 13.3 HILLMORR acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, HILLMORR makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. HILLMORR's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Client is a consumer within the meaning of the CCA, HILLMORR's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If HILLMORR is required to replace the Goods under this clause or the CCA, but is unable to do so, HILLMORR may refund any money the Client has paid for the Goods.
- 13.7 If the Client is not a consumer within the meaning of the CCA, HILLMORR's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by HILLMORR at HILLMORR's sole discretion;
 - (b) limited to any warranty to which HILLMORR is entitled, if HILLMORR did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 13.8 Subject to this clause 13, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 13.1; and
 - (b) HILLMORR has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, HILLMORR shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;

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- (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by HILLMORR;
 - (e) fair wear and tear, any accident, or act of God.
- 13.10 Notwithstanding anything contained in this clause if HILLMORR is required by a law to accept a return then HILLMORR will only accept a return on the conditions imposed by that law.
- 13.11 Subject to clause 13.1, customised, or non-stocklist items or Goods made or ordered to the Client's specifications are not acceptable for credit or return.

14. Intellectual Property

- 14.1 Where HILLMORR has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of HILLMORR. Under no circumstances may such designs, drawings and documents be used without the express written approval of HILLMORR.
- 14.2 The Client warrants that all designs, specifications or instructions given to HILLMORR will not cause HILLMORR to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify HILLMORR against any action taken by a third party against HILLMORR in respect of any such infringement.
- 14.3 The Client agrees that HILLMORR may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which HILLMORR has created for the Client.

15. Default and Consequences of Default

- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at HILLMORR's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client owes HILLMORR any money the Client shall indemnify HILLMORR from and against all costs and disbursements incurred by HILLMORR in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HILLMORR's contract default fee, and bank dishonour fees).
- 15.3 Further to any other rights or remedies HILLMORR may have under this contract, if a Client has made payment to HILLMORR, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by HILLMORR under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 15.4 Without prejudice to HILLMORR's other remedies at law HILLMORR shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to HILLMORR shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to HILLMORR becomes overdue, or in HILLMORR's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by HILLMORR;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

16. Cancellation

- 16.1 Without prejudice to any other remedies HILLMORR may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions HILLMORR may suspend or terminate the supply of Goods to the Client. HILLMORR will not be liable to the Client for any loss or damage the Client suffers because HILLMORR has exercised its rights under this clause.
- 16.2 HILLMORR may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice HILLMORR shall repay to the Client any money paid by the Client for the Goods. HILLMORR shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by HILLMORR as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

17. Privacy Act 1988

- 17.1 The Client agrees for HILLMORR to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by HILLMORR.
- 17.2 The Client agrees that HILLMORR may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or

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- (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 17.3 The Client consents to HILLMORR being given a consumer credit report to collect overdue payment on commercial credit.
- 17.4 The Client agrees that personal credit information provided may be used and retained by HILLMORR for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 17.5 HILLMORR may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 17.6 The information given to the CRB may include:
- (a) personal information as outlined in 17.1 above;
 - (b) name of the credit provider and that HILLMORR is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and HILLMORR has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of HILLMORR, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 17.7 The Client shall have the right to request (by e-mail) from HILLMORR:
- (a) a copy of the information about the Client retained by HILLMORR and the right to request that HILLMORR correct any incorrect information; and
 - (b) that HILLMORR does not disclose any personal information about the Client for the purpose of direct marketing.
- 17.8 HILLMORR will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 17.9 The Client can make a privacy complaint by contacting HILLMORR via e-mail. HILLMORR will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 18. Other Applicable Legislation**
- 18.1 At HILLMORR's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 (New South Wales), Building Industry Fairness Security of Payment Act 2017 (Queensland), may apply.
- 18.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 18.1 (each as applicable), except to the extent permitted by the Act where applicable.
- 19. Service of Notices**
- 19.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 20. Trusts**
- 20.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not HILLMORR may have notice of the Trust, the Client covenants with HILLMORR as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;

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- (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) the Client will not without consent in writing of HILLMORR (HILLMORR will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

21. General

- 21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of either New South Wales or Queensland in which state the Goods and/or Services were provided by HILLMORR to the Client however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction will be subject to the North Sydney Local Court in the state of New South Wales in which HILLMORR has its principal place of business.
- 21.3 Subject to clause 13, HILLMORR shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by HILLMORR of these terms and conditions (alternatively HILLMORR's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 21.4 HILLMORR may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 21.5 The Client cannot licence or assign without the written approval of HILLMORR.
- 21.6 HILLMORR may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of HILLMORR's sub-contractors without the authority of HILLMORR.
- 21.7 The Client agrees that HILLMORR may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for HILLMORR to provide Goods to the Client.
- 21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.