L&M Goldstar Commercial Terms and Conditions

1. Definitions

1.1 **Business Days** means 8:00am :500pm, Monday to Friday and excluding a Saturday, Sunday or statutory public holiday.

1.2. **Contract Documents** or **Contract** means the contract constituted by the following documents in order of precedence:

a. Supplier's Credit Application (unless Purchaser is paying cash on delivery)

b. Supplier's quote terms and conditions;

c. a Purchase Order from the Purchaser; and

d. Delivery schedule.

1.3. **Contract Price** means the price stated in the quote, including GST.

1.4. **Consequential Loss** includes, but is not limited to, loss of profits, revenue, business, anticipated savings, goodwill, or any other form of economic loss, whether or not such loss was foreseeable at the time of entering into any part of this Contract.

1.5. **Custom Features** means any Goods that have been designed according to the specifications of a Purchaser or a project.

1.6. **Date of Delivery** means the date(s) specified on the delivery schedule and accepted by the Supplier.

1.7. **Defects Liability Period** means the manufacturer's warranty period for the Goods stated in the Quote and commencing on Delivery.

1.8. **Delivery** means the delivery of the Goods by the Supplier to the Purchaser at the Delivery Point.

1.9. **Delivery Docket** means the document setting out the type and quantity of the Goods accompanying the Goods when the Supplier makes Delivery of the Goods.

1.10. **Delivery Point** means the land and places made available to the Supplier by the Purchaser for the purposes of delivering Goods under the Contract and includes the delivery address.

1.11. **Delivery Schedule** means the document provided by the Purchaser and accepted by the Supplier in writing setting out the dates(s) of Delivery of the Goods to the Delivery Point.

1.12. **Due Date** means the date payment is due from the Purchaser to the Supplier specified in the Quote or otherwise agreed between the parties in the Contract Documents.

1.13. **Force Majeure Event** means inability to obtain or deliver Goods or parts from approved sources or where indicated on the Quote, provide services under the Scope of Work due to:

a. any strike, shortage of labour or lockout;

b. war, riots, accident, civil commotion, fire, act of God;

c. lightning, storm, flood, strong winds, or an otherwise abnormal weather event;

d. pandemic, epidemic, outbreaks of infectious disease or any other public health crisis or any governmental measures imposed to address such public health crisis, including quarantine or any other social restrictions; or

e. any other event whatsoever beyond the reasonable control of the Supplier.

1.14. **Goods** means the goods listed in the Quote.

1.15. **GST** is a goods and services tax, as governed by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

1.16. **Indirect Loss** refers to any loss that does not arise directly and naturally (in the ordinary course of things) from the breach of this Contract but results as a secondary effect of such breach.

1.17. **Intellectual Property Right** includes any patent, trademark or name, registered design, copyright or other protected right.

1.18. **Invoice or Invoices** means the invoice sent from the Supplier to the Purchaser in respect of the delivered Goods.

1.19. **Installation Date** means the date agreed between the Parties and noted on the Delivery Schedule which the Supplier will install the Goods, where previously indicated on the Quote.

1.20. **Non-Stock Items** means Goods not ordinarily kept in stock by the Supplier.

1.21. **Order Number** means the identifying number on the set out on the Purchase Order

1.22. **PPSA** means the Personal Property Securities Act 2009 (Cth).

1.23. **Purchase Order** means a document from the Purchaser accepting the Supplier's Quote.

1.24. **Purchaser** means the person or entity which a valid Quote is addressed to.

1.25. **Scope of Works** means the work the Supplier will provide to the Purchaser in relation to the Quote.

1.26. **Supplier** means Winning Appliances Pty Ltd (ACN: 002 193 688).

1.27. **Supplier's Credit Application** means the application including terms and conditions providing credit to the Purchaser, signed by the Purchaser and accepted by the Supplier.

1.28. **Quote** means the Supplier's quote and the terms and conditions.

1.29. **Quote Number** means the Purchaser's identifying order number so set out in the Purchase Order;

1.30. **Related Body Corporate** has the same meaning as defined under section 50 of the Corporations Act 2001 (Cth).

1.31. **Variation Request** means a written request in writing titled "Variation Request" from one party to the other party requesting an amendment to the Quote or the Contract in accordance with clause 8.

1.32. **Warranty Period** means the manufacturer's warranty period for the Goods.

2. Application of terms and validity of contract

2.1. A Contract will only be formed between the Purchaser and Supplier when:
   a. the Purchaser provides a signed Quote to the Supplier;
   b. a Purchase Order is sent by the Purchaser to Sunshinecoast@LMgoldstar.com.au and
   c. accepted by the Supplier in writing by its authorised representative; and
   d. a Delivery Schedule is provided to the Supplier and the Supplier accepts the Delivery
   e. Schedule in writing.

2.2. These terms and conditions apply to any Purchase Order or supply of the Goods to the Purchaser referred to in this Quote. This Contract represents the entire agreement between the parties in respect of this Quote and any supply of Goods referred to herein. Subject to clause 2.3, the Contract will supersede any prior communications or agreements, whether written or verbal with respect to the subject matter hereof. No modification of the Contract shall be binding on the Supplier unless made in writing and signed by the Supplier's authorised representative. No director, officer, agent, or employee of the Supplier will in any way be liable, whether personally or otherwise, for any debt or liability of the Supplier as a result of the entry into the Contract.

2.3. In the case of any inconsistency, ambiguity or discrepancy in or between any documents comprising the Contract, the order of precedence shall apply in resolving the inconsistency, ambiguity, or discrepancy in the following order:
   a. the Supplier's Credit Application;
   b. Quote;
   c. a Purchase Order from the Purchaser accepted in writing by the Supplier; and
   d. any Delivery Schedule provided by the Purchaser and agreed to in writing by the Supplier.

2.4. Any performance of any part of the Contract, including the supply of any Goods or service will not bind the Supplier in any way unless the process in clause 2.1 is complied with, by both parties in advance.

2.5. The Contract supersedes and will prevail over any terms and conditions or supply agreement attached to a Purchase Order relating to this Quote.

2.6. Pricing of the Goods contained in the Quote is valid until the day after the expiry date specified in the Quote. If the Purchaser fails to accept the Quote before the expiry date in accordance with clause 2.7 or requests a variation under clause 8, the Supplier may re-price the Goods at its discretion.

2.7. 2.7 The Purchaser acknowledges and agrees that the pricing of the Goods contained in the Quote may be subject to change should the Quote be varied or on expiry of the Quote. This may be due to increases in delivery and/or manufacturer costs and the Supplier may, at its discretion, re-price the Goods on variation of the Quote in accordance with clause 8.

2.8. To accept the Quote the Purchaser must return a signed Quote to the Supplier.

2.9. Once a purchase order for the Goods has been raised, subject to clause 8, the Purchaser is liable for any reasonable costs associated with any agreed variation to the Purchase Order. Costs may include but are not limited to:
   a. the cost of returning the Goods to the manufacturer;
   b. the cost of storing the Goods; and
   c. the entire cost of the Goods in the event the Supplier cannot return to Goods to the manufacturer.

2.10. Once the stock has been received by the Supplier, it will be held for a maximum period of 60 days, at which time the Purchaser must either accept Delivery of the Goods and pay the Contract Price or pay for storage costs of the Goods until such date the Delivery of the Goods is fulfilled.

2.11. The Purchaser is responsible for ensuring all quantities in the Purchase Order are correct. The Supplier is not obliged to consider variations to errors, omissions or incorrect assumptions made by the Purchaser.

3. Orders for Custom Goods or Specific Brands of Goods

3.1. Any orders which include:
   a. Falcon;
   b. AEG;
   c. Asko
   d. bathroom fittings and fixtures;
   e. any Goods which include Custom Features; or
   f. Non-Stock Items.

   are subject to additional terms set out in clauses 3.2 to 3.5.

3.2. The Supplier will not place an order for any of the Goods set out in 3.1 with the Manufacturer, until:
   a. the Supplier receives all of the Contact documents in accordance with clause 2; and

3.3. The Purchaser acknowledges orders for Goods may be subject to manufacturing lead times following receipt of a Purchase Order and Delivery Schedule.

3.4. Subject to clause 8, the Purchaser will have no ability to cancel or vary the order for Goods once a Purchase Order is submitted to the Supplier unless the Supplier provides written consent.

3.5. The Supplier will not be liable for any cost, damage, claim, or loss associated with delay caused by the Purchaser's failure to comply with clause 2.

4. Price and Payment

4.1. In consideration of the Supplier delivering the Goods, the Purchaser will pay the Supplier in accordance with the Quote or Contract unless otherwise agreed by the Supplier in writing.

4.2. Unless otherwise directed by the Supplier, Invoices will be submitted from the Supplier to the Purchaser following Delivery of the Goods to the Delivery Point.

4.3. Purchaser will pay invoices submitted by the Supplier according to the Quote and Credit Terms. Unless otherwise agreed between the Parties in writing, payment will be due to the Supplier thirty (30) days after the end of the month in which the invoice is dated, subject to any variations in accordance with Clause 8, via an electronic bank transfer.

4.4. Each amount quoted by the Supplier for a Contract is exclusive of GST unless otherwise stated.

4.5. Unless otherwise stated in the Quote, the Contract Price does not include expedited freight costs such as air freight, import taxes or exchange rates.

4.6. Unless otherwise stated in the Quote, the Contract Price does not include the costs of Delivery Point inductions or inspections, which may be necessary preconditions for the Supplier to deliver the Goods to the Delivery Point.

4.7. Any costs incurred by the Supplier associated with receiving payment in the event the Purchaser requires the Supplier to use a particular software or platform is excluded from this Quote and will be borne by the Purchaser and added to the Supplier's invoice.

4.8. All payments must be made on or before the Due Date as a condition precedent to future deliveries. The failure of the Purchaser to make payments in accordance with this Quote or the Contract will entitle the Supplier to elect, without prejudice to any other rights of the Supplier, to continue with or to terminate the Contract. If the Supplier elects to terminate the Contract, the Supplier must provide fourteen (14) days' notice to the Purchaser of the termination. In either case, to recover damages for the breach of Contract, it will not be necessary for the Supplier to tender to the Purchaser the Goods or any portion or portions thereof before bringing action for damages.

4.9. The Supplier will not accept progress payments or recipient-created tax invoices

4.10. The Supplier will not provide security, retention money, or liquidated damages to the Purchaser under any circumstances.

4.11. If a dispute arises, the Purchaser acknowledges that it is not entitled to withhold payment or set off any amount due to the Supplier for the Goods and agrees that it must pay the whole of any undisputed amount in accordance with clause 4.

5. Delivery

5.1. The Supplier will use its best endeavours to effect Delivery to Delivery Point at the Date of Delivery or by the time stated, as agreed by the parties in writing, subject to compliance with clause 2.

5.2. If the Supplier fails to effect Delivery to Delivery Point in accordance with clause 5.1 by reason of a Force Majeure Event, the Supplier may at its option cancel the Order or any unfulfilled part of the Order or extend the time for its performance or completion by the time lost because of the event preventing or delaying Delivery, by providing notice to the Purchaser of any such cancellation or extension.

5.3. The Supplier will not be liable for any damage or loss in relation to a delay subject to clause 5.2

5.4. If Supplier cancels the Order (or part of the Order), Supplier must refund the Purchaser any amounts paid for cancelled parts of the Order not received by the Purchaser.

5.5. Unless otherwise agreed in writing, the Supplier will deliver the Goods to the Purchaser's Delivery Point during Business Days. A Delivery Docket listing the quantity and type of Goods delivered will accompany each Delivery and be signed by the Purchaser. Unless otherwise agreed, all costs associated with Delivery will be included in the Contract Price.

5.6. Delivery is deemed to occur when the Goods are unloaded at the Purchaser's premises or other premises agreed by the parties. If the Purchaser fails or refuses, or indicates to Supplier that it will fail or refuse, to take or accept delivery, then the Goods will be deemed to have been delivered when Supplier was ready, willing and able to deliver them.

5.7. If the Purchaser is unable to deliver the Goods to the Purchaser due to the Purchaser failing or refusing the Goods, or indicating the Purchaser may fail to receive or refuse the Goods, the Supplier may, at their discretion take the Goods back to their warehouse and store the Goods. The Purchaser will be liable for a return delivery fee of $150.00 and any applicable storage costs, at the Supplier's discretion.

5.8. The Purchaser must inspect the Goods on Delivery and shall, within twenty four (24) hours of delivery, notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or Delivery Docket.

6. Risk

6.1. Risk and responsibility for any loss or damage to the Goods will pass to the Purchaser immediately following Delivery to Delivery Point, or once Delivery to Delivery Point is deemed by the Supplier to have been affected, notwithstanding that Delivery of the Goods may be staggered or that the Purchaser may not have signed a receipt for the Goods.

6.2. The Supplier will not be liable for any loss or deterioration of, or damage to, the Goods:

a. where a carrier or subcontractor is engaged by the Supplier to deliver the Goods to the Purchaser, from such time as the Purchaser acknowledges receipt of the Goods; and

b. where a carrier is engaged by the Purchaser or the Purchaser is the carrier, from such time as the Goods

are loaded onto the carrier's or Purchaser's vehicle at the place of dispatch by Supplier.

7. Title and Ownership of the Goods

7.1. Title in the Goods will pass to the Purchaser following full payment, in cleared funds, to the Supplier in accordance with the Supplier's invoice for the Goods without set off.

7.2. The Purchaser acknowledges and agrees that until it has paid, in cleared funds, to Supplier the Contract Price of all Goods supplied by Supplier in the Contract and all moneys otherwise owing by the Purchaser to Supplier for any reason whatsoever:

A. the Purchaser holds the Goods as bailee for and on behalf of the Supplier;

B. the Supplier retains full title and ownership in all Goods supplied to the Purchaser;

C. for such time as the Purchaser retains possession of the Goods, the Purchaser must:

a. insure the Goods for the full Contract Price;

b. store the Goods securely and in such manner that they may be identified as the property of Supplier and easily removable by Supplier; and

c. ensure the Goods are properly maintained in the condition in which they were delivered and must make good any damage or deterioration.

7.3. A default event will occur if:

a. in the sole opinion of the Supplier, there is a material risk that the Purchaser is, or will be, unable to pay any amounts owing to the Supplier or perform any other obligation under these Terms and the Supplier gives notice in writing to the Purchaser of this opinion;

b. the Purchaser defaults in paying any sums due to the Supplier;

c. the Purchaser is an individual and becomes insolvent, bankrupt, commits any act of bankruptcy, compounds with or enters into any compromise or arrangement with its creditors;

d. the Purchaser is a company and has a provisional liquidator, receiver, manager or official manager, trustee for creditors or in bankruptcy, voluntary administrator or analogous person appointed to it or any of its property;

e. judgement is entered against the Purchaser in any Court and the Supplier gives notice in writing to the Purchaser that, in its sole discretion, the Supplier considers it to be a default event; or

f. a secured creditor seizes or takes possession of any collateral in the possession of the Purchaser and the Supplier gives notice in writing to the Purchaser that, in its sole discretion, Supplier considers it to be a default event.

7.4. If a default event occurs, then:

a. all moneys accrued, owing or remaining unpaid by the Purchaser to the Supplier will become immediately due and payable without the need for any demand by the Supplier and the security interest constituted by these Terms will become immediately enforceable;

b. for Goods held as a bailee in accordance with clause 7.2:

a. the Purchaser must not sell or otherwise deal with the Goods in its possession;

b. the Purchaser irrevocably authorises the Supplier or any agent of the Supplier to enter any premises occupied or owned by the Purchaser, with seven (7) days' notice to the Purchaser, where the Supplier reasonably suspects the Goods are kept and to use the name of the Purchaser and to act on its behalf for the purpose of recovering possession of Supplier's Goods;

c. if the Supplier recovers possession of and resells the Goods to any other party, then to the extent permitted by law:

i. the Purchaser will have no claim to any surplus proceeds received by the Supplier from the sale of the Goods; and

ii. the Purchaser will indemnify the Supplier against any deficiency from the sale of the Goods; and

c. Supplier may cease performance of and cancel any unperformed Contract for the sale of Goods, reserving all of Supplier rights and remedies against the Purchaser, without being liable for any loss suffered by the Purchaser as a result of the cancellation of the Contract.

8. Variations

8.1. The Purchaser is responsible for ensuring all quantities in the Purchase Order are correct. The Supplier will not be obliged to consider variations to errors, omissions, or incorrect assumptions made by the Purchaser.

8.2. Subject to clause 3, the Purchaser may request a variation to the Quote or Contract by providing a notice in writing to the Supplier titled "Variation Request" and specifying the Quote Number.

8.3. The Supplier will either accept, partly accept or reject the Variation Request from the Purchaser, in writing within 7 Business Days of receiving the Variation Request.

8.4. In the event the Supplier accepts or partly accepts the Variation Request, the Supplier will provide an updated Quote to the Purchaser within 7 Business Days with the pricing of the varied Goods, restocking fees, services and other associated costs at the Supplier's discretion.

8.5. The Supplier may, by providing written notice to the Purchaser, vary the Goods specified in any Quote or Purchase Order. The Supplier will make reasonable attempts to provide similar Goods in terms of price, specification and quality.

8.6. If the Purchaser refuses to accept the variation, the Supplier may terminate the Contract without penalty and will not be liable for any costs or loss as a result of the termination.

8.7. Once a purchase order is submitted to the Supplier, the Purchaser cannot cancel or vary the order for Goods unless the Supplier provides prior written consent.

9. Personal Property Securities Act 2009 (Cth) (PPSA)

9.1. The Purchaser acknowledges and agrees that these Terms (and, where applicable, any Contract) constitute a security agreement for the purposes of the PPSA and create or provide for a security interest in all Goods supplied from time to time or at any time by Supplier to the Purchaser (if any), securing the performance by the Purchaser of its obligations under the Terms and all other moneys payable by the Purchaser to Supplier for any reason.

9.2. The Purchaser agrees and confirms that it is duly authorised to bind its related entities and grant security for and on behalf of its related entities. The Purchaser, for and on behalf of each of its related entities, acknowledges the ongoing ownership interest of the Supplier in and grants or provides for a security interest in all Goods supplied, whether directly or indirectly to any related entity to secure the performance by the Purchaser of its obligations under the Terms and all other moneys payable by the Purchaser to Supplier for any reason.

9.3. Nothing in these Terms may be construed as an agreement or consent by Supplier to:

a. subordinate in favour of any person any security interest granted or provided for in favour of Supplier; or
b. defer or postpone the date of attachment of any security interest granted or provided for in favour of Supplier.

9.4. The Purchaser must not and must procure that its related entities do not create, cause or allow to be created or exist, a security interest (within the meaning of the PPSA) over, or in respect of any of its rights in or to, any of the Goods in its possession or control, prior to title to the Goods passing to the Purchaser, other than a security interest arising under these Terms or a security interest otherwise expressly consented to in writing by Supplier.

9.5. The Supplier may register any security interests created or provided for under these Terms on public registers, including the Personal Property Securities Register (as defined in the PPSA) at any time before or after delivery of the Goods.

9.6. The Purchaser must and must procure that its related entities, do all things and provide all information reasonably necessary to enable the Supplier to perfect its security interests in the Goods, including assisting the Supplier to complete the registration of any financing statement in respect of its security interest in the Goods and ensuring that each such security interest is enforceable against third parties, or otherwise effective.

9.7. The Purchaser agrees not to change and agrees to procure that its related entities do not change, details recorded in a financing statement registered by the Supplier without giving the Supplier 10 Business Days prior written notice.

9.8. The Supplier may apply or appropriate all money received from the Purchaser as the Supplier sees fit (including so as to enable the Supplier to preserve any purchase money security interest (as defined in the PPSA)). An application or appropriation by the Supplier will override any appropriation made by the Purchaser. For the purposes of section 14(6)(a) of the PPSA, this clause constitutes the method of payment application agreed by the parties.

9.9. To the extent permitted by law, the Purchaser for and on behalf of itself and each of its related entities irrevocably waives any rights it or that entity may have to receive notices from Supplier under ss 95, 118, 121(4), 130, 132(4) and 135 of the PPSA, or reinstate a security agreement following termination under s143.

9.10. The Purchaser agrees for and on behalf of itself and its related entities that it irrevocably waives any rights it may have to receive a verification statement (as defined in the PPSA).

9.11. Where the Supplier has rights or powers in addition to, or existing separately from those in Chapter 4 of the PPSA, those rights and powers will continue to apply and are not limited or excluded (or otherwise adversely affected) by the PPSA.

9.12. The Purchaser agrees to indemnify Supplier for any costs incurred by Supplier under this clause.

10. Warranties

10.1. The Supplier will use reasonable endeavours to ensure during the Warranty Period that all Goods:

a. will comply with the specifications of the Contract;
b. will be fit and suitable for their intended purpose(s);
c. will be accompanied by all necessary instructions, technical documents, operating and service manuals and applicable warranties;
d. comply with all applicable laws, rules, regulations and industry and safety standards;
e. will be new and of merchantable quality; and
f. free from manufacturing defects but excluding any damage which occurs once risk passes to the Purchaser including by another party, during installation (if installation is not carried out by the Supplier) or user error.

10.2. If during the Warranty Period, the Purchaser finds any of the Goods not comply with 10.1 the Purchaser will:

a. notify the Supplier in writing within 24 hours or as soon as practical;
b. provide reasonable evidence of the Goods' non-compliance with clause 10.1;
c. allow the Supplier, manufacturer or subcontractor to attend the Delivery Point and inspect or collect the Goods; or
d. if reasonable evidence indicates to the Supplier the Goods do not comply with clause 10.1 the Supplier will repair, resupply or make good the Goods and cost of which will be paid for by the Supplier.

11. Intellectual Property

11.1. The Supplier:

a. warrants that the sale or use of the Goods will not infringe or contribute to the infringement of any Intellectual Property Right either in Australia or elsewhere;

11.2. The Supplier agrees to assign to the Purchaser at no cost to the Purchaser a non-exclusive, revocable licence or use its best endeavours to procure from any person holding the Intellectual Property Rights a non-exclusive, revocable licence or agreement to use the Intellectual Property Rights and copying of documents for such purposes as the Goods were purchased or any purpose incidental to the purpose for which the Goods were purchased.

11.3. The Supplier grants the Purchaser a right to use and disseminate the Intellectual Property Rights for the purpose Goods were purchased for.

11.4. Unless otherwise agreed by the Supplier in writing, the Supplier maintains the right to bring claims against the Purchaser and any third party for any breaches of Intellectual Property Rights.

12. Indemnity and Exclusion of Liability

12.1. Supplier's liability to the Purchaser arising, directly in connection with the Goods or the Contract is limited to the amount of consideration paid for by the Purchaser and in respect of:

a. a material breach of the Contract by the Supplier;
b. a breach of warranty by the Supplier; or
c. any negligent act or omission, by the Supplier or any of its officers, employees, contractors or agents.

12.2. Supplier's liability to the Purchaser arising, directly in connection with the Goods or the Contract is limited to the amount of consideration paid for by the Purchaser and in respect of:

12.3. The Supplier will not be liable for any, harm, liability, damage, cost or expense (including legal fees) suffered by the Purchaser caused or contributed to by an act or omission of the Purchaser or another party, the Supplier repossessing the Goods or enforcing any other rights under the Contract.

12.4. To the extent permitted by law and without limiting any other rights of the Supplier, the Purchaser must indemnify and on demand reimburse, the Supplier and keep the Supplier indemnified against all claims, suits, actions, demands, loss, costs, expenses (including legal expenses on a full indemnity basis), judgments and awards made against Supplier or incurred by Supplier to the extent that such liability, cost, expense or loss is caused by:

a. a breach of the Contract by the Purchaser;
b. any negligent act or omission, by the Purchaser or any of its officers, employees, contractors or agents; or
c. Supplier repossessing the Goods or enforcing any other rights; the Supplier has under the Contract, or at law except to the extent that the liability is caused or contributed to by an act or omission of Supplier.

12.5. The exclusions and limitations of liability set out in this clause 12 shall not apply to a liability which cannot be limited or excluded by law, including under the Competition and Consumer Act 2010 (Cth) or any other applicable legislation.

12.6. Each party agrees to take all reasonable steps to mitigate any loss or damage it may suffer or incur as a result of any act or omission of the other party under this Contract.

13. Insurance

13.1. The Supplier, from receipt of the Purchase Order from the Purchaser, will have in place or obtain the insurances:

a. including workers' compensation, public and product liability with an insurer (who shall also be authorised to carry on business under the Insurance Act 1973 (Cth) of not less than $20,000,000.00 per occurrence; and
b. maintain all insurances in full force and effect for the duration of the Contract and the Defects Liability Period; and
c. provide to any certificate of currency of those insurances as may be requested by the Purchaser.

13.2. The Purchaser, on issuing the Purchase Order to the Supplier, will have in place or obtain the insurances including:

a. workers compensation, public and product liability with an insurer (who shall also be authorised to carry on business under the Insurance Act 1973 (Cth) of not less than $5,000,000.00 per occurrence; and
b. maintain all insurances in full force and effect for the duration of the Contract and the Defects Liability Period; and
c. provide to any certificate of currency of those insurances as may be requested by the Supplier.

14. Dispute Resolution

14.1. Subject to clause 14.4, before resorting to external dispute resolution mechanisms, the parties must attempt to settle by negotiation any dispute in relation to this Agreement including by referring the matter to personnel who may have authority to intervene and direct some form of resolution.

14.2. If a dispute is not settled by the parties within 30 days of one party first sending to the other party written notice that they are in dispute, the dispute may be the subject of court proceedings or may be submitted to some alternative dispute resolution mechanisms as may be agreed in writing between the parties.

14.3. Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Agreement.

14.4. A party may commence court proceedings relating to any dispute arising from this Agreement at any time where that party seeks urgent interlocutory relief.

14.5. This clause will survive the expiration or termination of this Agreement.

15. Governing Law

These Terms and any Contract between the Purchaser and Supplier is governed by the laws of the State of New South Wales, Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

16. Entire Agreement

These Terms and the Credit Application constitute the entire Contract between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter, including any inconsistent terms in any order.

17. Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy.

18. Severability

Part or all of any provision of these Terms or any Contract that is illegal or unenforceable may be severed from these Terms or any Contract and the remaining provisions will continue in force.

19. Terms of Agreement

19.1. The parties represent, warrant and agree that:

a. (a) this Contract has been created for the Goods and Services following negotiations between the parties and is an agreement specifically created for the Goods and Services (and not a standard form contract, even though the same or similar terms may be used to engage other person or party);
b. (b) each party has had ample opportunity to understand (including by reference to its legal advisers) and negotiate each term of this Contract and is satisfied that it accurately and properly represents the bargain negotiated by and between the parties; and
c. (c) neither party is of the opinion that any term of this Contract is unfair or contrary to what has been specifically negotiated and agreed between them for the Goods and Services;
d. (d) the singular shall include the plural and vice versa;
e. (e) words importing persons shall include corporations and words importing the masculine gender shall include the feminine gender;
f. (f) the headings shall not affect the interpretation of these terms and conditions;
g. (g) reference to any statute shall mean that statute as amended, modified or replaced from time to time
h. (h) and includes orders, ordinances, regulations and rules and by-laws made in terms of or pursuant to the relevant legislation;
i. (i) reference to a party or parties includes a reference to its successors and permitted assigns in accordance with these terms and conditions;
j. (j) "including" means "including (without limitation)";and
k. (k) each party to this Contract shall be exclusively responsible for its employees and its Contractors, suppliers and consultants (Contractors).

20. Scope of Work Assumptions and Requirements

20.1. With respect to any Scope of Work, the Supplier's requires:

a. Delivery Point working hours of 7am to 3:30pm, Monday to Friday.
b. The Supplier may provide Goods and Services outside of Business Days, however the Supplier may charge an additional fee at its discretion.
c. If the Supplier indicates in this Quote that installation will be provided by the Supplier, all works will be completed to the relevant Australian Standards and National Construction Code;
d. all materials, plant and equipment supplied remain the property of the Supplier and title in the works or any component does not pass until the Supplier is paid in full.
e. The Supplier will deliver the Goods and where indicated by the Supplier in the Quote, take away rubbish.
f. If removal of rubbish is not specified in the Quote and the Purchaser requests the Supplier to remove rubbish from the Delivery Point, the Supplier reserves the right to charge an additional fee for the removal of rubbish in the subsequent invoice.
g. The Purchaser will allow parking at the Delivery Point.

20.2. In addition to any specific exclusion that is set out in Supplier's Quote, any pricing submitted with this Quote excludes the following:

a. provision of storage facilities in the event the Purchaser's project is delayed or cannot receive the Goods at the agreed Delivery time;
b. provision of temporary Delivery Point facilities;
c. provision of dust, noise, fume, moisture, access hoardings;
d. provision of generators and fuel if a temporary power supply is not available;
e. provision of a sediment and erosion control plan;
f. provision of works to modify, strengthen, underpin or ground anchor adjacent Delivery Point, retaining walls and the like;
g. provision of and approval of a temporary traffic management plan and control devices;
h. obtaining any approvals or certifications, including building permit fees, any required approvals from the relevant state authority;
i. provision of traffic control;
j. provision of an intrusive Hazardous Materials Survey and Report;
k. removal of asbestos and other hazardous materials;
l. any other latent condition;
m. detailed design and construction detailed design other than any allowance which is specifically set out in this Quote;

Installation of Goods

If the Supplier has indicated in the Quote that installation services will be provided, the following clauses 20 to 25 shall apply.

21. Scope of Work for Installation of Goods

21.1. The Supplier will install household Goods, as indicated on the Quote, at the Delivery Point, including, but not limited to, ovens, cooktops, dishwashers, microwaves, refrigerators, range hoods, water heaters and any other Goods as agreed by both parties.

21.2. The scope of work includes installing Goods according to manufacturer specifications, Australian building codes and industry standards.

21.3. The Supplier will use boards and blankets to protect the flooring, bench and walls during the installation of Goods.

21.4. If the Supplier reasonably believes the Purchaser has not complied with the Purchaser Responsibilities in accordance with clause 22 or where the Supplier believes the installation may be prevented or obstructed due to a Force Majeure Event prior to or during installation or on-Delivery Point, if the issue cannot be remedied or overcome and the installation is delayed, the Purchaser will be contacted via phone or email.

21.5. If the Purchaser desires the Supplier to re-attend site to carry out the installation, the Purchaser must ensure they comply with the Purchaser Responsibilities in accordance with clause 22. A call-out fee will apply if a return trip is required to carry out the installation.

21.6. The Supplier reserves the right to terminate any installation where the Purchaser has not complied with the Purchaser Responsibilities in accordance with clause 22 or where the Supplier believes the installation may be prevented or obstructed due to a Force Majeure Event prior to or during installation or on-Delivery Point.

21.7. If the Supplier terminates any installation due to the Purchaser's failure to comply with the Purchaser Responsibilities in accordance with clause 22, the Supplier has no responsibility to refund any money paid by the Purchaser for the installation.

21.8. Any additional services not specified in this Quote must be re-quoted by the Supplier and will require the Purchaser to comply with sent at the time of booking, to

21.9. Any issues related to installation are to be reported to us within 7 days of completion of the installation to Jack@LMgoldstar.com.au

22. Purchaser Responsibilities

22.1. If the Supplier has indicated in the Quote that installation services will be provided, this clause 22 applies.

22.2. The Purchaser shall provide clear, safe and unobstructed access to the installation areas, free from debris and obstructions.

22.3. The Purchaser must ensure that all cabinetry adheres to the manufacturer's specifications, including proper ventilation and ducting at the installation Delivery Point. The Supplier will not

modify cabinets or gyprock, including such as pulling ducting through the ceiling or ensuring adequate ventilation for Goods to meet manufacturing standards.

22.4. The Purchaser shall ensure that all necessary utilities including but not limited to water, gas and electricity are available and in proper working order at the Delivery Point on the Installation Date, to allow the Supplier to commission the Goods after installation.

22.5. The Purchaser must end gas and water lines within the recess box using either copper material or a three quarter fitting. The Purchaser must ensure ample space for the Supplier to connect the necessary utilities to the Goods.

22.6. For any appliance that is to be installed on the floor, flooring is to be laid and finished.

22.7. All ducting is to be run for rangehood and if no ducting is required, a recirculation kit is to be provided on site.

22.8. Where a hot water tank is to be installed, the slab must be in place and ready for installation of the hot water tank.

22.9. For the installation of rangehoods, the Purchaser must ensure the rangehood splashbacks are fitted and the rangehood heights are prepared as per the manufacturer's specification and comply with the Building Code.

22.10. The Purchaser must inspect the Goods on delivery and shall, within twenty-four (24) days of delivery, notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or Bill of Quantities.

22.11. The Purchaser has acquired all necessary approvals, certifications, licences and permits to allow work to be carried out at the Delivery Point.

22.12. The Purchaser has the appropriate insurances, licences and permissions in place to enable the Supplier to carry out work at the Delivery Point.

23. Fees

23.1. If the Supplier cannot carry out the installation due a failure of the Purchaser to comply with clause 20 and a return trip is required to Delivery Point, the Purchaser will incur a call-out fee of $150.00 (excluding GST) in order for the Supplier to re-attend the Delivery Point and carry out the installation.

23.2. Any additional services requested by the Purchaser not included in the Quote will incur additional fees.

24. Risk and Title

24.1. Risk in Goods passes from the Supplier to the Purchaser once installation is complete at the Delivery Point.

24.2. Title to the Goods passes from the Supplier to the Purchaser on full payment in cleared funds for Goods and installation.

25. Warranty and Liability

25.1. The Supplier warrant's the installation services will be performed professionally and in accordance with manufacturing standards.

25.2. The Supplier shall not be liable for any damages, losses, or delays caused by factors beyond our control, including but not limited to:

a. Force Majeure EventsPurchaser; or
b. non-compliance with clause 22 by the Purchaser, including subcontractors.

25.3. The Purchaser is responsible for inspecting the installed Goods upon completion. Any defects or issues must be reported to us within 24 hours.

25.4. Subject to any applicable laws which cannot be excluded, the Supplier's liability for any defects in Goods is limited to either the replacing of the Goods or the repairing of the Goods, provided that the Purchaser has complied with the provisions of this Agreement and provided that the Purchaser or its officers, employees, agents, suppliers, contractors or consultants has not caused the defect.

26. Indemnity and limitations

26.1. The Purchaser indemnifies the Supplier for any direct or indirect losses, costs (including legal costs on a full indemnity basis), damages, expenses and other liabilities suffered or incurred by the Supplier or any Related Body Corporate or their respective employees, arising out of or in connection with the Goods, any breach, default or non-performance of this Agreement or a failure to comply with any laws or regulations, by the Purchaser's act, omission, negligence, misrepresentation, breach of duty, breach of statute or breach of warranty by the Purchaser. This indemnity is a continuing obligation separate from the other obligations of the parties and survives the expiry or termination of this Agreement.

26.2. Subject to any applicable laws that cannot be excluded, the Supplier's liability for any breach of this Agreement or for any damage, expense and other liabilities suffered or incurred by the Purchaser, including negligence or breach of Privacy Laws is limited to either the replacing or repairing of the Goods.