1. The following definitions apply:

1.1 "**Agreement**" means these Terms & Conditions.

1.2 "**Claim**" means any claim, action or demand for any loss, damage, liability (be it present or future, known, unknown, liquidated or contingent) including without limitation any loss of profit, loss of opportunity, consequential loss, or a claim on the Contractor's insurance.

1.3 "**Contractor**" means the contractor named in the PO.

1.4 "**Factor**" means Select Utilities Pty Ltd t/as Factor UTBs.

1.5 "**Delivery Point**" means the place for delivery identified in the PO.

1.6 "**Goods**" means goods and/or materials identified in the PO.

1.7 "**PO**" means the Purchase Order to which these Terms & Conditions apply.

1.8 "**Price**" means the Total Amount identified in the PO which is inclusive of GST (unless otherwise stated), and inclusive of all other costs and charges.

1.9 "**Services**" means works and/or services identified in the PO.

1.10 "**Site**" means the project address identified in the PO.

1.11 Headings are for reference only and must not be used in interpretation of the Agreement.

2. **Contractor's Obligations:** The Contractor shall promptly supply and deliver the Goods and/or promptly carry out and complete the Services for the Price and in accordance with this Agreement ("**Contract Works**"). The Contract Works includes all goods and materials and/or works and services not expressly identified in the PO but are otherwise incidental to and reasonably necessary for the Contract Works (including without limitation all plant, equipment, service, utilities, and delivery to the Site (or other location reasonably requested by Factor)).

3. The Contract Works shall be completed on or by the time(s) identified in the PO and/or reasonably directed in writing by Factor.

4. The Contractor shall comply with any reasonable written direction given by Factor.

5. The Contractor warrants it has the skills and experience to comply with the obligations under this Agreement.

6. The Contractor must not, without the prior written approval of Factor, assign, subcontract, encumber or transfer any of the Agreement. Any such approval will not relieve the Contractor of its obligations under the Agreement.

7. **Obligation on Goods:** To the extent the Contract Works comprise Goods, the Contractor shall ensure the Goods are of new and merchantable quality, fit for purpose, and free from any security interests registered or unregistered (subject to any express requirement to the contrary). The work shall be carried out in accordance with good engineering and comply with all applicable Australian Standards and/or other reference codes, the requirements of the relevant Statutory Authorities and the Law.

8. **Quality Standards:** The Contractor shall comply with the standards of quality specified in the PO. If no standards are specified Contractor shall comply with the best quality standards applicable to the Good(s) concerned.

9. **Legislation:** The Contractor must comply with all applicable Acts, Ordinances, regulations, codes of practice, by-laws, orders, awards and proclamations of the relevant jurisdiction; all applicable Australian Standards; to the extent the Contract Works constitute construction work: the National Construction Code (including the Building Code of Australia) as varied from time to time; and certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the performance of this Agreement. The Contractor is responsible for all fees and charges payable in connection with the foregoing.

10. **Cooperation:** The Contractor shall cooperate and coordinate with other subcontractors engaged by Factor and meet with Factor as reasonably requested by Factor.

11. **Contractor to Inform itself:** The Contractor warrants it has carefully and prudently inspected the Site and documents provided by Factor (or has been provided an opportunity to do so) and the Price is a true fixed price inclusive of all costs, expenses and disbursements which are required for the Contractor to fulfil its obligations under this Agreement. The Contractor acknowledges it shall have no entitlement to any adjustment to the Price or additional time under this Agreement for the Contractor's failure to ensure that it is fully informed regarding all the circumstances relating to the PO.

12. **Site access:** Factor grants the Contractor access to the Site for the limited purpose of it performing its obligations under this Agreement. The Contractor shall take proper care and precautions to ensure the Site (and its surrounds) is secure, clean and tidy, and not subject to damage or interference. If the Contractor causes damage or interference to the Site (or its surrounds) it must notify Factor in writing and promptly make good that damage or interference at its own cost.

13. **Variations:** Factor may direct a variation to the Contract Works in writing ("**Variation**") and the Contractor shall comply with that variation. A Variation may increase or decrease the scope of the Contract Works, and any effect on the delivery date(s) of the Goods and/or Services. If a Variation removes or reduces the scope of the Contract Works, the Contractor shall not be entitled to any payment for that Variation and the Price shall be reduced by the value of the Contract Works omitted (as reasonably assessed by Factor). The Contractor must immediately notify Factor if it considers a direction not identified as a Variation to substantially and materially vary the Contract Works. If the Contractor fails to notify Factor in writing within 2 days of the direction, the Contractor acknowledges it shall have no entitlement to an adjustment to the Price and the delivery date(s) on account of that direction.

14. **Estimates:** Factor may, but is not required to, request the Contractor provide an estimate of the cost of a proposed Variation (which must promptly be provided in writing). Where the Contractor provides an estimate and a Variation is directed, then any increase to the Price under clause 13 shall not exceed the Contractor's estimate.

15. **EOT Claims:** The Contractor may only request additional time to perform its obligations under this Agreement in respect of an act or omission of Factor in default of its obligations under this Agreement or for any matter which is agreed to by Factor (with that agreement being at Factor's sole discretion). The Contractor's request for additional time must be made in writing to Factor immediately upon the Contractor becoming aware of the matter giving rise to the delay ("**EOT Claim**"). The Contractor shall supply any information Factor reasonably requires to assess the EOT Claim. Factor may consider the request and may, at its sole discretion, grant the Contractor additional time to comply with its obligations under this Agreement. Factor may at any time and at its absolute discretion grant the Contractor additional time to comply with its obligations under this Agreement for any reason.

16. **Payment:**

16.1 **Payment (Progress Payments):** If the PO specifies payment via "Progress Payments", the following applies: The Contractor must submit to Factor monthly claims for progress payments by the 25th day of each month or such other day as reasonably directed by Factor ("**Payment Claim**"). A Payment Claim shall include evidence of the value of the Contract Works completed to the date of the Payment Claim and any other information requested by Factor. Factor shall assess the Payment Claim and make payment to Contractor of the amount it reasonably assesses as complete within 30 days from end of month in which the Contractor's invoice is received by Factor. Factor may provide the Contractor a certificate of the amount assessed.

16.2 **Payment (Otherwise):** If the PO specifies payment via a process other than "Progress Payments" (or does not specify any particular process), the following applies: Factor shall make payment to the Contractor upon receipt of an acceptable tax invoice (containing all information Factor requests) along with any information or documents Factor requests, within 30 days after the end of month in which the Contractor's invoice is received by Factor. If an invoice does not contain all information requested by Factor, the invoice shall be deemed void and the Contractor is at liberty to issue a compliant invoice. The Contractor may only submit an invoice as follows: for parts of the Contract Works which are Services, upon receiving a Completion Notice; and for parts of the Contract Works which are Goods: upon delivery; and for Goods after Factor receipt and acceptance of that material as per clause 43.

17. **Payments:** All payments made to the Contractor are on account only and do not constitute approval or acceptance by Factor of any part of the Contract Works.

18. **Deduction:** Factor may deduct and set off any claim it has against the Contractor from monies payable to the Contractor (including in accordance with clause 16).

19. **Defects:** Factor may at any time direct the Contractor to remedy, replace or complete any of the Contract Works which are, in the opinion of Factor, defective or not compliant with this Agreement. The Contractor shall promptly comply with that direction at its own cost (and such direction is not a Variation). A direction given under this clause may not be given after the expiration of 12 months from the date Factor confirms the Contract Works are complete (in accordance with clause 26).

20. **Warranty:**

20.1 The warranties in clause 20 are in addition to any statutory warranties applicable to the Good(s). Any Good(s) repaired under warranty may be subject to a further full warranty period of one (1) year, unless otherwise stated in the PO, if required by Factor at its sole determination, commencing on the date of completion of any such repair.

20.2 The Contractor warrants that it has all intellectual property rights (including, without limitation, any patents, trademarks and copyrights) necessary to supply the Goods and/or Services in accordance with the Agreement and indemnifies Factor against any losses, costs, damages or expenses incurred by Factor as a consequence of any claim by a third party that it has a right to any intellectual property in the Goods or that the Goods and/or Services infringe their intellectual property rights.

20.3 The warranties in clause 20.1 are in addition to any conditions, guarantees and warranties which are or may be implied under any State or Federal legislation applicable to the Goods and/or Services and their supply or performance.

21. **Damages**: The Contractor acknowledges that Factor has placed the PO to enable it to fulfil its contractual and other duties to third parties, and that any damages to which Factor may become entitled against Contractor under the terms and conditions shall include all Factor's liabilities for breach of such duties occasioned by Contractor's breach hereunder, irrespective of whether the Contractor knew the nature or potential extent of any such duties and liabilities which may arise from the Contractor's breach hereunder.

22. **Suspension:** Factor may, at any time by written notice, suspend all or part of the PO for any reason whatsoever. Upon receipt of a notice of suspension, the Contractor shall cease work in accordance with the directions of the notice. The Contractor shall recommence the work under the PO within forty-eight (48) hours of being directed to do so by Factor.

23. **Termination:** Factor may terminate this Agreement at its absolute discretion for its convenience or due to Contractor's default providing written notice to the Contractor. In this event, Factor shall pay the Contractor a reasonable amount assessed by Factor for the Contract Works completed in accordance with this Agreement up to the date of Factor's notice. Factor shall not be liable to make any additional payments to the Contractor in respect of the Contract Works. To the maximum extent permitted by law, Factor has no liability to the Contractor for any claim the Contractor may have against Factor arising from the termination of this Agreement pursuant to this clause.

24. **Notice of Breach:** If Factor forms the view that the Contractor has breached this Agreement, it may give written notice to the Contractor of that fact. The Contractor must remedy the breach within 14 days of the notice, failing which Factor may immediately terminate this Agreement and/or have the breach remedied (by itself or another) and the cost of doing so (or the future cost of doing so as reasonably assessed by Factor) shall be a debt payable by the Contractor to Factor.

25. **Indemnity:** The Contractor shall indemnify and keep indemnified Factor and its officers, employees and agents against any claims, demands, proceedings, liabilities, costs, charges and expenses arising from any act, neglect, default or omission of the Contractor, its employees or agents of its obligations under this Agreement. This clause survives termination.

26. **Completion:** To the extent the Contract Works are construction work, the following applies: The Contractor shall, at least 7 days before it believes it will complete the Contract Works, give Factor notice of that matter. Factor may inspect the Contact Works and confirm in writing if the Contract Works have been completed in accordance with this Agreement. If Factor does not consider the Contract Works are complete, it shall give written notice to the Contractor of that fact with reasons as to why and the Contractor shall promptly, and at the Contractor's own cost, do all things necessary to remedy those reasons. A notice under this clause is not a Variation. The Contract Works are "complete" upon Factor confirming in writing it is satisfied the Contract Works are complete ("**Notice of Completion**").

27. **Insurance:** The Contractor shall obtain and maintain the policies of insurance identified in clause 27 of this Agreement and if specified in the PO. Any insurance policy maintained is at the cost of the Contractor and must cover Factor as an insured (or where such cover is impossible or commercially impracticable, note the interest of Factor).

27.1 The Contractor must insure the Goods against all risk of loss and damage for the full replacement value until delivery to and acceptance of the Goods by Factor at the Delivery Point;

27.2 The Contractor must effect and maintain for the life of the Agreement, public and product liability insurance with a limit of indemnity of not less than $20,000,000 for any one loss or occurrence;

27.3 Where the Services include professional services (including design activities), the Contractor must effect and maintain for 7 years following completion of the Services, professional indemnity insurance with a limit of indemnity of not less than A$5,000,000 for any one loss or occurrence;

27.4 The Contractor must take out workers compensation insurance as required by law;

27.5 Where the Goods are to be delivered to Factor premises and/or Site, third party motor vehicle insurance in the amount of A$10,000,000 for any one loss or occurrence (from the date of the PO until the time when the Contractor has complied with all of its obligations under the PO and this Agreement);

27.6 The Contractor must ensure that any sub-contractor, person, employees and agents of sub-contractor or other appointed to perform any of the Contractor's obligations under this Agreement shall effect and maintain the insurances on the same terms under this Agreement. Factor shall retain the right to claim under Contractor insurances required under this Agreement, and Contractor shall be liable to Factor for the acts and omissions of sub-contractors, person, employees and agents of sub-contractor or other appointed as if they were acts or omissions of the Contractor; and

27.7 Upon request of Factor, Contractor shall provide Factor with such form and type of evidence with respect to the existence of such insurance coverage as Factor may request. If, after being so requested, the Contractor fails promptly to provide satisfactory evidence of the insurances required under this clause 27, then, without prejudice to Factor's other rights and remedies, Factor may effect the relevant insurances and the cost thereof shall be a debt due from, and payable by, the Contractor to Factor. Factor may refuse to make any payment due under the Agreement until such evidences is produced by the Contractor.

28. **Injury to Persons or Property:** The Contractor shall as a separate and distinct obligation indemnify Factor and its employees, servants and agents, and at all times keep Factor and its employees or its servants or agents in relation to any injury, loss of life or damage to any property or financial or other consequential loss and in respect of any loss, injury, expense or damage howsoever caused or arising from any cause whatsoever arising directly or indirectly out of or in any way attributed or incidental to the execution and performance of this Agreement. The Contractor shall insure himself against such liability for a sum agreed with the Contractor in the specified PO, or in the absence of agreement, for a reasonable sum not less than ten million (A$10M) for any one loss or occurrence.

29. **Ownership:** Ownership in the Contract Works immediately vests in Factor as follows: in the case of Services, upon completion or termination of the Agreement; in the case of Goods: upon being delivered to Site. The Contractor shall ensure the Contract Works is undamaged up to and until ownership vests in Factor.

30. **Dispute:** If a dispute or difference arises, either party may issue a notice of dispute giving full particulars of the dispute and the parties shall meet and use best endeavours to resolve the dispute. No proceedings in court may be commenced until such a meeting has occurred. This clause does not limit any other right of the parties under this Agreement and the parties shall continue to perform their obligations.

31. **Copyright:**

31.1 Factor shall own and have copyright to any documents (including drawings) created by the Contractor in providing the Contract Works and the Contractor shall deliver up those documents upon completion of any PO or earlier written request from Factor.

31.2 Any information provided by Factor to the Contractor, which is noted as confidential shall not be disclosed to any third party without the prior written consent of Factor. The obligations under this clause 31 shall be continuing obligations and shall survive the completion or termination of the PO and/or the Agreement.

31.3 All documents (including drawings), blueprints, sketches and copies supplied by Factor remain the property of Factor, shall not be copied or used by the Contractor for any purpose other than the supply of the Goods and/or Services, without the prior written approval of Factor and are to be returned to Factor with the Goods and/or Services unless otherwise agreed.

31.4 By accepting any PO, the Contractor agrees to indemnify and hold harmless and protect Factor, its successors, customers and users of its products, from and against all costs, including legal fees, loss, damages, liability, claims, demands and suits of law or equity for actual or alleged infringement of any patent, trademarks, designs or copyrights or corresponding right in.

32. **Directions / Policies:** The Contractor shall ensure its staff, employees or agents comply with any reasonable lawful direction or policy of Factor's, including as to site safety.

33. **GST:** If Factor is required to pay GST in respect of a supply made under, or pursuant to, or by reason of a breach of this Agreement, Factor must (in addition to any other payment for, or in connection with, the supply) on receipt of a valid tax invoice from the Contractor for the supply, pay to the Contractor an amount equal to such GST.

34. **Assignment:** The Contractor may not assign its rights or obligations under this Agreement without Factor's prior written consent (which may be withheld or subject to conditions).

If any person is appointed by the Contractor to perform any of the Contractor's obligations under this Agreement (which appointment must be in accordance with this clause 34), whether by sub-contract or otherwise, the Contractor shall remain liable to Factor for all of the acts and omissions of such person.

35. **Representatives:** The parties nominate those persons named on the PO as their representatives who may exercise the parties' respective rights under this Agreement. The parties may nominate additional representatives from time to time in writing.

36. **Communication:** Any direction, instruction, Variation, notice or otherwise given under this Agreement and/or any PO may be given electronically to the other party via its representative, or by post or delivery to the other party's address (including email address).

37. **Governing law:** This Agreement is governed by the laws of South Australia and the parties submit themselves to the courts of that jurisdiction.

38. **Inconsistency:** If a clause (or a part of a clause) of this Agreement is found to be invalid or unenforceable in any respect it shall be severed from this Agreement to the extent of the invalidity or unenforceability, and this Agreement shall otherwise continue in force. In the case of an inconsistency about the Contract Works, the higher requirement shall be deemed to apply. If, without limitation to clause 39, any document(s) of the Contractor's is incorporated into this Agreement, the following order of precedence shall prevail, these Terms & Conditions shall

rank higher than the PO in precedence in resolving any inconsistency.

Any PO for Goods and/or Services issued by Factor to Contractor for administration / financial controls will be pursuant to the terms and conditions of this Agreement, which will supersede any contrary or inconsistent terms and conditions contained in any Contractor quote, Contractor orders, Contractor standard forms, Contractors online ordering system or acknowledgements and will not be applicable or binding.

39. **Whole Agreement:** This Agreement constitutes the whole of the agreement between Factor and the Contractor in respect of the Contract Works and supersedes all previous communications, correspondence, offers and quotations (including any terms and conditions of the Contractor's contained therein) which may or may not be referred to in the PO.

40. **Amendment:** This Agreement (including these Terms & Conditions) may not be amended or varied except with the express written agreement of the parties.

41. **Waiver**: No failure or delay on the part of Factor in exercising any of its rights under the PO and/or this Agreement shall be construed as constituting a waiver of any such rights.

42. **Packing:** Goods must be prepared and adequately packed for transportation to avoid damage, to comply with carrier's requirements and to secure minimum transportation costs and insurance rates. No charge will be accepted by Factor for packing unless authorised in the PO. Finished machine surfaces must be protected against corrosion.

43. **Delivery:**
43.1 Unless otherwise specified in the PO, the Goods shall be delivered FOT (Free on Truck), adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified in the PO. The Goods shall be accompanied by a delivery docket which shall be signed by a duly authorised representative of Factor at the Sites point of delivery.

43.2 The Goods shall become the property and title of Factor upon delivery of the Goods to Factor Site store of the whole or any part of the goods comprised in the PO, as evidenced by the signature on the delivery docket by the duly authorised representative of Factor, but signing for delivery docket does not constitute acceptance. If Factor has not rejected the Goods within 30 (calendar) days from the delivery docket date of receipt at the Factor Site in the PO, then shall be deemed acceptance by Factor. Notwithstanding that Factor has taken delivery of the Goods, the Contractor shall remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements if the PO or as a breach of any warranty or any other provisions of this Agreement.

43.3 The Contractor shall take all reasonable steps to minimise and prevent any delay to the delivery of the Goods. Time shall be the essence for the PO. Factor may grant an extension of time as per clause 15.

43.4 If the Contractor fails to deliver the Goods by the specified delivery date(s), Factor shall be entitled to terminate the PO for default, either in whole or in part, in accordance with the provisions of clause 43.5 and/or deduct from monies due to the Contractor as liquidated damages, representing a genuine pre-estimate of Factor's damages and not as a penalty, the amount for each work day or part thereof by which delivery exceeds the specified delivery date.

43.5 If Factor suffers damage as a direct result of default of Contractor to deliver the Goods or perform the Services when due, Factor shall be entitled to claim and receive from Contractor as liquidated damages, financial compensation in the amount of 2.0% (two percent) of the Price of the Goods and Services per work day (being Monday to Friday) of delay, but in no event more than 20% (twenty percent) of the Price of the respective Goods and Services. The above remedy shall be in lieu of any and all other rights or remedies that Factor may have pursuant hereto, under the Agreement, PO or other contract or at law.

43.6 Factor reserves the right to refuse to accept liability for any Goods delivered in excess of the quantity ordered or delivered in excess of the quantity agreed in any delivery schedule approved by Factor.

43.7 In the event of rectification work being required, the Contractor will be notified and shall carry out such work as required by Factor in the time as specified by Factor and said rectification will be carried out by the Contractor's personnel at no cost to Factor. In the event of the Contractor not being able to complete the rectification work within reasonable time, rectification will be carried out by Factor at the Contractor's cost.