TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES TO FACTOR UTB

1. **Application of these Conditions**

1.1 These Conditions apply to each supply of Goods and/or Services by the Supplier to the Customer pursuant to a Purchase Order. Where there is no other applicable written and signed agreement and the Supplier accepts (or is deemed to accept) a Purchase Order (in writing, verbally, by electronic transmission, by part performance or by other conduct), the Supplier enters a separate and independently terminable agreement with the Customer in relation to the Goods and/or Services referred to in the Purchase Order on these Conditions and the terms in the relevant Purchase Order (referred to in these Conditions as the 'Contract').The Subcontractor shall diligently execute and perform the Works and shall complete the Works by the Date for Completion.

1.2 To the extent permitted by law, no contrary or other conditions purported to be included in the Contract by the Supplier (whether in its quote, delivery confirmation, invoices or otherwise) will apply to the Contract or in substitution to the Contract unless expressly accepted in writing by the Customer.

1.3 Any inconsistencies between the documents forming part of the Contract shall be resolved in the following order of priority: firstly, any special conditions in the Purchase Order; secondly, any other details and attachments to the Purchase Order; thirdly, these Conditions.

2. **Definitions and Interpretation**

In these Conditions and the Contract, unless a contrary intention is apparent:

"Chain of Responsibility legislation" means the road safety regime contained in State, Territory and Commonwealth legislation that provides that all parties who commission the carriage of goods or the provision of services by or involving heavy vehicles on roads may be held liable for breaches of road safety, and road related laws applicable to the performance of the Supplier's obligations under the Contract and/or vehicles used in the course of the Supplier performing those obligations.

"Conditions" means this document;

"Consequential Loss" means any loss of damage suffered by a party which is indirect or consequential or results from some special circumstance or supervening event or which is by way of loss or profits. Consequential Loss does not include: (a) loss which is suffered by a part as a result of a claim upon it by a third party; (b) loss which consists of a claim for death, personal injury or damage to property; or (c) liabilities, expenses, penalties or other forms of pecuniary or non-pecuniary detriment suffered or incurred by the Customer as a result of any Environmental Notice;

"Contract" has the meaning given in clause 1.1 above;

"Customer" means Select Utilities Pty Ltd (trading as Factor UTB), ABN 21 672 733 685, and includes its officers, employees, contractors, agents, and any other person acting on its behalf and with its authority;

"**Customer's requirements"** means the Customer's requirements in relation to the supply of the Goods and/or the Services, as advised by the Customer to the Supplier;

"Eligible Data Breach" means any unauthorised access to, unauthorised disclosure of, or loss of, Personal Information disclosed to the Supplier or its Personnel by the Customer or any Personal Information derived from or incorporating such Personal Information, and includes an eligible data breach or similar expressions as may be defined in the Privacy Act from time to time;

"Environmental Law" means any statute or common law relating to the storage, handling or transportation of waste, dangerous goods or hazardous material, relating to contamination, pollution, occupational health and safety or which has as one of its purposes or effects the protection of the environment;

"Environmental Notice" means a direction, order, demand or other requirement to take action or refrain from taking any action from any Government Agency in connection with any Environmental Law;

"Goods" means those goods (if any) supplied, or to be supplied, by the Supplier pursuant to the relevant Purchase Order;

"Government Agency" means any government or governmental, semi-governmental, local government, administrative, fiscal, quasi judicial or judicial body, department, commission, authority, tribunal, agency or entity and include a person or entity exercising powers under an Environmental Law;

"Intellectual Property Rights" means any and all intellectual or industrial property rights anywhere in the world including any patent, copyright, design or trademark, any right to registration of any patent, copyright, design or trademark, or any other similar or other like right, including rights to trade secrets,

know-how, proprietary or confidential information;
"on a Free In Store basis" means delivery to such location as the Customer nominates, in all respects at the cost of the Supplier;
"Personal Information" has the meaning given in the Privacy Act;
"Personnel" means, in respect of a party, that party's officers, agents, employees, contractors and sub-contractors but does not include the other party or the other party's Personnel;
"Privacy Act" means the Privacy Act 1988 (Cth);
"Price" means the price for Goods and/or Services specified in the relevant Purchase Order (and includes all taxes, duties, charges, levies and fees payable);
"Purchase Order" means a written purchase order for Goods and/or Services issued to the Supplier by or on behalf of the Customer which by reference incorporates these Conditions;
"Services" means those services (if any) to be performed by the Supplier pursuant to the relevant Purchase Order;
"Special Conditions" means the Special Conditions set out in Schedule 1;
"Supplier" means, in relation to the Contract, the supplier or vendor referred to in the Purchase Order;
"Tax Invoice" means an invoice that meets the requirements prescribed by the Australian Taxation Office and the Customer from time to time.

3. **Sale, Delivery and Installation**

3.1 The Supplier must:

(i) supply the Goods to the Customer free of encumbrances;
(ii) deliver the Goods to the Customer on a Free In Store basis within the agreed time (such time being of the essence), or if no time is agreed, within a reasonable time from the date of the relevant Purchase Order;
(iii) unload the Goods and where the Customer carries out that unloading, it is carried out on behalf of the Supplier and is at the Supplier's risk provided such unloading by EEI occurs at the request of the Supplier; and
(iv) install the Goods, in all respects as directed by the Customer.

3.2 The Supplier must complete provision of the Services by the date for completion agreed with the Customer and time shall be of the essence in respect of such date. If no date has been agreed, the Supplier must complete provision of the Services within a reasonable time of the date of the relevant Purchase Order.

4. **Testing, Acceptance and Rejection**

4.1 The Customer may test the Goods (including at the Supplier's premises) as it sees fit before, at and after delivery and installation.

4.2 In the event that the Goods and/or Services delivered or performed (as applicable) do not satisfy the Customer (acting reasonably and having regard to the Customer's requirements and the Contract), the Customer may reject the Goods by written notice to the Supplier and in addition to any other right may:

(i) require the Supplier to reimburse to the Customer the Price (or any part) paid in respect of such unacceptable Goods or Services; or
(ii) require the Supplier to replace the unacceptable Goods or re-perform the Services in a reasonable time required by the Customer to the satisfaction of the Customer in accordance with the Contract; or
(iii) if the Supplier does not comply with the foregoing, have a third-party re-supply the Goods or re-perform the Services at the Supplier's cost.

4.3 Subject to the foregoing, the Customer will accept the Goods upon being satisfied (acting reasonably) that the Goods comply with the Contract, are fully functional and meet the Customer's requirements.

4.4 If the Customer rejects the Goods, risk in the Goods remains with the Supplier and the Supplier must immediately remove the Goods from the Customer's premises at the Supplier's cost.

5. **Price, Taxes, Variations and Concessions**

5.1 The Supplier must bear all customs and import duties (including anti-dumping duties) levied.

5.2 If the Price is in Australian currency, but is specified as being subject to variation by reason of any change in the relative value of the Australian dollar and the currency of another nation ("foreign currency"), then when seeking payment of the Price, the Supplier must provide the Customer with evidence satisfactory to the Customer of:

(i) the portion of the Price that is subject to variation, including all applicable customs documentation; and
(ii) any relevant payment by the Supplier in the foreign currency.

5.3 If the Price is specified as being payable in a foreign currency, then:

(i) the Customer will pay the Price in the foreign currency into the Supplier's nominated Bank account; and
(ii) the Supplier must provide such evidence relating to its obligation to pay for the Goods or the Services in the foreign currency as the Customer may require.

5.4 The Supplier shall ensure that any invoice or other request or demand for payment shall constitute a tax invoice under the relevant GST legislation

enabling the Customer to claim input tax credits in respect of the supplies to which the invoice relates and shall include reference to the relevant Purchase Order number.

5.5 No Retrospective Price Variation

No variation to a subsequent invoice will be permitted on account of any variation the Supplier was entitled to but did not claim in respect of a previous invoice after the expiry of fourteen (14) days after such invoice was issued to the Customer.

6. **Customs**

The Customer may make applications for customs or import duty concessions that it considers appropriate. If any such application is successful, and the Price includes an amount for customs or import duty at a higher rate, the Customer may deduct the difference from the Price payable to the Supplier under these Conditions.

7. **Payment**

7.1 Upon acceptance of the Goods by the Customer or completion of the Services to the Customer's requirements (as the case may be), the Supplier must provide a correctly rendered Tax Invoice referencing the relevant Purchase Order number to the Customer's Accounts Payable department at the following details:

Email: accounts@factorutb.com.au

or post,

Level 2, 89-92 South Terrace, Adelaide SA 5000

7.2 Subject to receipt of a correctly rendered Tax Invoice and subject to the Supplier's compliance with the Contract in all respects, the Customer will pay the Supplier the Price pursuant to the payment terms specified in the relevant Purchase Order and these Conditions.

8. **Title and Risk**

Title to and risk in the Goods will pass to the Customer on acceptance.

9. **Warranties**

9.1 The Supplier warrants that the Goods will:

(i) unless otherwise agreed with the Customer prior to the date of the relevant Purchase Order, be new on delivery to the Customer;
(ii) conform with any description applied to the Goods and any sample of them provided by the Supplier;
(iii) meet the Customer's requirements, the requirements in the relevant Purchase Order and be fit for the purpose of those requirements;
(iv) be free of any defects in materials, workmanship or installation;
(v) be of merchantable quality and conform to any legally applicable standards; and
(vi) be manufactured and constructed in accordance with the quality assurance program specified in the relevant Purchase Order (if any).

9.2 Without limiting any other provision of these Conditions:

(i) if a defect appears in the Goods in the 12 months or such other period as may be specified in a Purchase Order ("Warranty Period") from the date on which they are accepted by the Customer then at the Customer's sole discretion either:
   a) the Supplier must remedy the defect (at the Customer's option) by repairing or replacing the Goods without charge to the Customer; or
   b) the Customer will remedy the defect by repairing or replacing the Goods and invoice the Supplier for any costs reasonably incurred or allocated by the Customer; and
   c) in either case the Customer may invoice the Supplier for any direct costs reasonably incurred or allocated by the Customer arising from the defect;
(ii) the costs of and incidental to the repair, rectification or replacement of defective Goods (including re-delivery) will be paid by the Supplier; and
(iii) any Goods repaired or replaced during the Warranty Period shall have a further warranty period of equivalent duration from the date of the repair or replacement.

9.3 The Supplier warrants that the Services, the Goods, and any other services provided in connection with the Goods, do not and will not infringe the Intellectual Property Rights of any person.

9.4 The Supplier warrants that the Services (and any services provided in connection with the Goods) will be performed by appropriately qualified and experienced personnel with all due care and skill, in accordance with all applicable law and best industry practice and in such manner as meets the Customer's requirements.

9.5 If the Supplier breaches the warranties referred to in this clause 9, the Customer may at its option and without prejudice to any of its other rights:

(i) require the Supplier to remedy the breach, including by re-supply of the Goods and/or Services; or
(ii) terminate the Contract immediately by notice in writing.

10. **Subcontracting and Assignment**

10.1 The Supplier may not assign or sub-contract the performance of any matter or thing required by the Contract without the prior written consent of

the Customer (which may be withheld or granted subject to conditions).

10.2 Any subcontracting of the Supplier's obligations under the Contract does not relieve the Supplier of any of its obligations under such Contract and the Supplier will be liable to the Customer for the acts and omissions of its subcontractors and any of that subcontractor's Personnel as if they were the Supplier's acts or omissions.

11. Confidentiality and Privacy

11.1 Each party must keep confidential all terms of the Purchase Order and all information from or concerning the other party (or its business practices) that it acquires as a result of any dealings under this Contract or any other agreement between the parties.

11.2 Each party will ensure that any Personal Information supplied by the other party will be protected against misuse and loss, and from unauthorised access, modification or disclosure in the same way as if the receiving party was bound by the requirements of the Australian Privacy Principles under the Privacy Act, regardless of whether or not the receiving party is subject to the Privacy Act. Each party will ensure that any subcontractor of that party is bound to comply with privacy obligations equivalent to those of the receiving party under the Contract.

11.3 Without limiting the other provisions in this clause 11, if either party is, or becomes, aware that there has been an Eligible Data Breach or there are reasonable grounds to suspect or believe that there may have been, or has been, an Eligible Data Breach in respect of Personal Information, the notified party must forthwith notify the other, not notify any other person of the Eligible Data Breach (except to the extent that it is required to do so at law) and comply at its own cost with all reasonable directions of the other party in respect of such Eligible Data Breach.

11.4 The parties agree that the obligations contained in clause 11 does not limit or inhibit the Customer's ability to deal with the Confidential Information in its ordinary course of business including but not limited to the disclosure of Confidential Information to the Customer and the disclosure of quotes or product specifications to other suppliers for the purpose of engaging those suppliers in the provision of goods and/or services which are similar or identical to the Goods and Services.

12. Termination

12.1 Either party may, subject to any other provision of the Contract and without limiting any other right, or remedy, immediately terminate the Contract if the other party:

(i) breaches the Contract or any Purchase Order and (if capable of remedy) has failed to remedy that breach within fourteen (14) days of written notice from the terminating party specifying the alleged breach and requiring remedy; or

(ii) advises the terminating party that it is not, or will not be able to, perform all of its obligations under the Contract.

12.2 Any additional cost to the Customer as a result of a breach of this Agreement by the Supplier for the acquisition of replacement Goods or Services from a third party will be an amount due by the Supplier to the Customer immediately on the Customer making demand for that amount.

12.3 The Customer may, at any time, cancel the whole or any part of the Purchase Order. Such cancellation will extinguish any further obligation of the Customer to the Supplier under the Contract (other than payment of that portion of the Price in respect of Goods or Services already supplied or performed as at the date of cancellation).

12.4 Termination, completion or expiry of the Contract for any reason shall not extinguish or otherwise affect any rights of either party against the other which accrued prior to the time of the termination, completion or expiry or otherwise relate to or may arise at any future time from any breach or non observance of obligations of the Contract which arose prior to the time of the termination, completion or expiry. The provisions of the Contract which, by their nature, survive termination, completion or expiry will continue to survive (including without limitation clauses 4.4, 9.2, 11.1, 13.1, 13.6).

13. Indemnities and Insurance

13.1 The Supplier indemnifies and must keep indemnified the Customer and its Personnel from and against any and all liabilities, expenses, costs, losses or damage suffered incurred or allocated by the Customer or its Personnel that arises out of or as a consequence of:

(i) Physical loss or damage to property of the Customer or any third party caused or contributed by the acts or omission of the Supplier or its Personnel (except to the extent that such loss is caused or contributed to by the Customer or its Personnel);

(ii) any breach of the Contract (including any breach of warranty) by the Supplier, or any negligent act or omission or misconduct of the Supplier or its Personnel;

(iii) the insolvency of the Supplier, or any claim against the Customer or its Personnel by the Supplier's Personnel arising as a result of a matter between the relevant person and the Supplier;

(iv) any defect or non-compliance in the Goods or the Services.

13.2 Public and Product Liability

(i) The Supplier must maintain Public and Products Liability insurance until the end of the project's defects liability period.
(ii) Except in respect of injury to or death of any person (for which no limit applies), the liability of the Supplier under the indemnity in this clause 13.2 is limited to TEN MILLION DOLLARS ($10,000,000.00) for each event.

13.3 Workers' Compensation

The Subcontractor must effect and maintain Workers' Compensation insurance in accordance with the legislation of the State or Territory in which the work is performed.

13.4 Professional Indemnity Insurance

(i) If the Services involve design, engineering, or professional advice, the Supplier must maintain professional indemnity insurance for a period of at least seven (7) years following completion of the Services.
(ii) This policy must cover all claims, losses, or expenses incurred by the Customer arising from any act, error, or omission by the Supplier in the performance of the Services.
(iii) The policy must provide coverage for no less than five million dollars ($5,000,000) per occurrence, unless otherwise specified in the Purchase Order.

13.5 The Supplier must provide evidence to the Customer of the currency of its insurance policies referred to in clause 13 upon request by the Customer.

13.6 Each party shall not be responsible to the other for any Consequential Loss suffered, incurred or allocated as a result of a breach of any provision of the Contract by that party.

14. Compliance with Laws

14.1 The Supplier must obtain all necessary approvals, authorisations and licences required in order to perform and comply with its obligations under the Contract and without limiting the foregoing, must comply with (and must ensure that any officer, employee, agent, contractor or sub-contractor of the Supplier complies with):

(i) all applicable laws (including without limitation laws in respect of work health and safety; anti slavery, human-trafficking, and migration laws; and all relevant Chain of Responsibility Legislation); and
(ii) the requirements of any relevant government agency in supplying the Goods, performing the Services and carrying out its obligations under the Contract.

14.2 The Supplier must, when reasonably requested by the Customer, provide such information as the Customer reasonably requires to satisfy itself that the Supplier is compliant (and that any officer, employee, agent, contractor or sub-contractor of the Supplier is compliant) with this clause 14.2.

14.3 Upon any reasonable request from the Customer from time to time, and at no charge to the Customer, the Supplier must provide to the Customer any information in connection with these Conditions that the Customer requires in order to comply with any law, policy or government reporting requirement.

15. Record Keeping

15.1 The Supplier must keep full, true, up to date and proper records (including quality assurance documentation) and books of account ("Records") regarding the Goods and Services provided under this Contract.

15.2 The Supplier must provide the Customer with a copy of such Records within seven (7) days of any request by the Customer, together with such further information in respect of the Supplier's performance of this Contract, the Supplier's Personnel and the Supplier's financial position as may be requested by the Customer.

15.3 The Supplier will retain Records for seven (7) years after completion of the Contract.

15.4 The Customer (or its representative) may audit the Records and the Supplier will ensure it and its Personnel assist and co-operate in the undertaking of any such audit.

16. Work Health and Safety

Without limiting any other obligation of the Supplier under the Contract, the Supplier must (and must ensure that its Personnel) comply in every respect with any and all requirements, directions, policies and procedures of the Customer regarding work health and safety and any person's use of, or access to, the Customer's premises and will promptly notify the Customer in writing of any incident or accident occurring on the Customer's premises.

17. Vienna Convention

Where the Supplier is incorporated outside the Commonwealth of Australia, the parties acknowledge that this Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna, Austria on 10 April 1980.

18. **Trusts**

In the event that the Supplier enters into a Contract as trustee of a trust (whether or not such trust is disclosed to the Customer), it is liable both in its own right and as trustee of such trust.

19. **Set Off**

19.1 Without prejudice to any other rights of the Supplier, the Supplier may withhold, deduct or set off any of the following from or against any amount owing by the Customer to the Supplier under the Contract, any other agreement, or at law:

(i) any amount owing by the Customer to the Supplier under this Agreement, any other agreement between the parties, or at law
(ii) any bone fide claim for payment of an amount which the Supplier considers will become a debt due and payable by the Customer to the Supplier, and:
   A. the Supplier has given the Customer details as to why it has formed the view that it is entitled to set off pursuant to this subclause; and
   B. the Customer has failed to satisfy the Supplier (acting reasonably) that such view is incorrect; or
(iii) any amount agreed by the Customer as due to the Supplier, or finally awarded in arbitration, litigation or expert determination in favour of the Supplier, and which arises out of or in connection with this Agreement, or any other agreement between the parties, or at law; or
(iv) the amount of any claim for loss, damages, costs or expenses which has been incurred or allocated by the Supplier by reason of any breach of or failure to observe the provisions of this Agreement by the Customer, or any other agreement between the parties, or at law.

19.2 Without prejudice to any other rights of the Customer, the Customer may withhold, deduct or set off any of the following from or against any amount owing by the Customer to the Supplier under the Contract, any other agreement between the parties, or at law:

(i) any amount owing by the Supplier to the Customer for any reason;
(ii) any bona fide claim for payment of an amount which the Customer considers will become a debt due and payable by the Supplier to the Customer, and;
   A. the Customer has given the Supplier details as to why it has formed the view that it is entitled to set off pursuant to this subclause; and
   B. the Supplier has failed to satisfy the Customer (acting reasonably) that such view is incorrect; or
(iii) any amount agreed by the Supplier as due to the Customer, or finally awarded in arbitration, litigation or expert determination in favour of the Customer; or
(iv) the amount of any claim for loss, damages, costs or expenses which has been incurred or allocated by the Customer by reason of any breach of or failure to observe the provisions of the Contract by the Supplier, or any other agreement between the parties, or at law.

19.3 Any amount set-off under the previous sub-clauses is without prejudice to the rights of the Customer in any subsequent negotiations, arbitration, litigation or expert determination to seek to vary the amount set-off.

20. **Terms which may operate unfairly**

If the Contract is a Small Business Contract and a term of the Contract would, but for this clause, be Unfair, the Customer may only apply or rely upon that term to the extent that doing so is reasonably necessary to protect the Customer's legitimate interests, and the term in any other event is severed from this Agreement. In this clause, capitalised terms not defined in these Conditions have the meaning given in the Australian Securities and Investments Commission Act 2001 (Cth).

21. **Exclusion of Proportionate Liability scheme**

To the maximum extent permitted by law, the operation of any law (including without limitation the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA)) which imposes or provides for a scheme of proportionate liability or apportioning liability between concurrent wrongdoers is excluded from the Contract and cannot be relied upon by either party to the Contract.

22. **Governing Law**

The Contract is governed by the laws of South Australia and the parties submit to the exclusive jurisdiction of the courts of South Australia.

23. **Special Conditions**

(i) The Special Conditions (if any) shall be incorporated into and form part of this Agreement and in the event of any inconsistency between the Special Conditions and any other part of this Agreement, the Special Conditions shall prevail to the extent of such inconsistency.
(ii) Any reference to "this Agreement" in any Special Condition shall be deemed to refer to this Agreement.