A. Terms and Conditions of Sale & Supply

The Terms and Conditions of Sale & Supply outlined below represent the only Terms and Conditions authorised and accepted by Databuild, and shall apply to form part of any contract arising from acceptance in writing by Databuild of any order placed by Customer.
These specified Terms and Conditions of Sale are in addition to the software licence displayed at point of install and available on request.

B. Definitions
'Databuild' means Databuild Australia – a Division of ITW Australia Pty Ltd (ABN 63 004 235 063).
'Customer' means any person to whom Databuild has agreed to supply goods.
'Goods' means the goods , including services, which Databuild has agreed to supply to the Customer.
'Services' means any services requested by the Customer, including technical advice and use of software.
'Site' means owned/leased property of the Customer. For customers with multiple sites, sites must be greater than 1 kilometre apart.

C. Offer and Acceptance
Any quotation made by Databuild is not an offer to sell or to provide services and no order given in pursuance of any quotation shall bind Databuild until accepted by it in writing. All orders are subject to acceptance by Databuild within 30 days of receipt by it of the Customer's order and these terms and conditions shall be deemed to be incorporated in any agreement between Databuild and the Customer. Any terms and conditions contained in any order, offer acceptance or other document of the Customer and all representations, statements, terms, conditions and warranties (whether
implied by statute or otherwise) not embodied herein are expressly excluded to the fullest extent permitted by law.

D. Price/Payments
Unless otherwise expressly agreed by Databuild in writing beforehand, all goods will be charged for at, and the Customer will pay, Databuild's prices ruling for such goods at the date or dates of order.
The Customer shall make payment to Databuild within thirty (30) day from which the goods are delivered, unless expressly agreed otherwise.
Prices are subject to change without notice.
Databuild reserves the right at its sole discretion to alter at any time its payment terms with the Customer.
Databuild reserves the right to offset any amounts receivable from the Customer against any amounts payable to that Customer or any company affiliated with the Customer or any Related Body Corporate of the Customer. This right exists irrespective of the date the liability has been created or debt incurred with Databuild.

E. Delivery
(a) Databuild will make all reasonable efforts to deliver the goods to the Customer on the agreed date(s), but shall be under no obligation or liability to the Customer for any delays in or failing to comply with delivery dates if such delay or non-compliance is due to causes or events referred to in Clauses K and N.
(b) Delivery shall be effected upon:
(i) physical delivery of the goods to the address requested by the Customer, or
(ii) pick up by Customer, or
(iii) physical delivery to the Customer's nominated carrier.
Notation by Databuild's carrier on the delivery docket shall be conclusive evidence of delivery.
(c) If the Customer refuses to accept delivery of the goods then the risk in the goods shall, unless otherwise determined by Databuild, pass to the Customer from the time of such refusal. In such an event, Databuild shall be entitled to payments for the goods as if they were delivered and in
addition to any of its rights and remedies (including its right to sell the goods).
(d) Databuild shall not be liable for any losses however caused arising directly or indirectly or consequentially from Databuild's performance of this contract.
(e) Databuild's liability for faulty workmanship or defective goods is limited to the goods.
(f) Deliveries are subject to availability of time and Databuild will not be liable for any loss due to unavailability.

F. Property and Risk
(a) Legal and equitable title in all goods supplied by Databuild to the Customer shall remain vested in Databuild until Databuild has received payment for all monies outstanding due to Databuild for goods supplied.
(b) Goods supplied by Databuild to the Customer in which title remains vested in Databuild shall be held by the Customer as fiduciary bailee of Databuild and shall be stored so that the same are identifiable as Databuild's property.
(c) Databuild shall have the right to repossess at any time goods in which title remains vested in Databuild, and to enter the premises of the Customer for such purpose without liability and without prejudice to the pursuit of any other legal remedy available to Databuild.
(d) The risk of loss or damage to the Goods shall pass to the Customer on delivery to or collection by the Customer of the Goods, as referred to in Clause E(b).

G. Description and Specification
(a) Whilst every effort is made to ensure their accuracy, the descriptions, illustrations and materials contained in any catalogues, price lists, brochures, leaflets or other descriptive matter provided by or on behalf of Databuild represents the general nature of the item described therein and shall not form any part of any order or agreement or amount to any representation or warranty.
(b) The Customer warrants that any of the goods   supplied by Databuild which are based in whole or in part upon designs, or specifications supplied to Databuild by or on behalf of the Customer shall not infringe any letters, patents or registered designs or any other intellectual property rights of any third party. The Customer shall indemnify and keep indemnified Databuild, its servants and agents against any action, loss, cost, claim, damage or liability of any nature that may be brought against or suffered by Databuild, its servants or agents for any breach of this warranty.
(c) Databuild does not warrant or guarantee and it shall not be a term of any agreement between Databuild and the Customer that any goods supplied by Databuild which are based in whole or in part upon any designs or drawings or specifications supplied to Databuild by or on behalf of the Customer will achieve any standard or performance or any capacity whatsoever.

H. Cancellation
Subject to Section 75A of the Trade Practices Act 1974 and without limiting the entitlement of a consumer to rescind a contract as provided in that Section, any order may only be cancelled, varied or suspended with the consent of Databuild and in the event of such cancellation, variation or suspension, the Customer undertakes to reimburse and indemnify Databuild for any costs, expenses or charges incurred by Databuild in preparation for and in the execution of an order which, without limiting the generality thereof, shall include an amount equal to 50 per centum of the net profits to Databuild of the order had the order not been cancelled, varied or suspended.

………………………   ……………………………… *Page 1 of 3*
(Initials)

I. Warranty

(a) Where any applicable legislation implies any term, condition or warranty into the relationship between Databuild and the Customer or into a contract of sale between Databuild and the Customer in relation to the sale or supply of goods or services, or otherwise gives the Customer

a particular remedy against Databuild, and the legislation or any legislation avoids or prohibits provisions excluding or modifying the application of, or exercise of, or liability under such term, condition, warranty or remedy, then that term, condition, warranty or remedy shall be deemed to be included in these Terms and Conditions, or, as the case may be, apply to the relationship. However, Databuild's liability

for any breach of such term, condition or warranty or under such remedy shall be limited, at Databuild's option, in any one or more of the ways permitted by the legislation including, where so permitted:

(i) If the breach relates to any goods to:

(a) the replacement of those goods or the supply of equivalent goods;

(b) the repair of those goods;

(c) the payment of the cost of replacing those goods or

acquiring equivalent goods;

(d) the payment of the cost of having those goods repaired;

And

(e) if the breach relates to any Services to:

(a) the supplying of those services again; or

(b) the payment of the cost of having those services supplied again.

(b) Except as expressly provided in Paragraph (1)(a) above, all terms, conditions, warranties, undertakings, inducements and representations, whether express or implied, statutory or otherwise, relating in any way to any goods or services supplied by Databuild are excluded. Without limiting the generality of the preceding sentence, Databuild will not be under any other liability in respect of any loss or damage

(including consequential loss or damage) however caused

(whether by negligence of Databuild or any person or otherwise) which may be suffered or incurred or which may arise directly or indirectly in respect of any goods or services supplied by Databuild.

J. Claims and Returns

(a) Examination of the goods shall be made by or on behalf of the Customer, and unless within seven days of delivery of the goods, the Customer gives written notice that the goods are not in accordance with the Customer's order(s), the goods shall be deemed to be in all respect in accordance with the order(s) and the contract, and the Customer shall be bound to accept and pay for the same accordingly.

If the goods are made to suit specifications provided by the

Customer, an error in the specifications will not entitle the Customer to reject the goods and the Customer shall be liable for the full price of the goods and any costs involved in altering the goods.

(b) Claims by the Customer for credit, other than claims in respect of return of goods, will not be valid unless made in writing prior to the end of the payment period referred to in Clause D – Claims by Customer for credit in respect of good which are defective or have not been supplied in accordance with these Terms and Conditions of Sale must first have prior written approval of Databuild's authorised representative and will not be valid unless made within seven days of delivery of the goods and the goods the subject of such claim(s)

subsequently being returned to Databuild with a signed Return of Goods Authority on carrier(s) and to warehouse(s) nominated by Databuild..

K. Excusable Delays

(a) Databuild shall not be liable for any failure to comply with these Terms and Conditions when such failure is caused by or arises out of any of the following:

(i) Fire, storm, tempest, earthquake, inevitable accident or other Act of God.

(ii) Any act of public enemy.

(iii) Any act of the government of the Commonwealth of Australia or any State or Territory thereof or any instrumentality created thereby, which has the necessary power to prevent or delay the due performance of any or all of the requirements and/or terms and conditions of any order placed by the Customer.

(iv) Any act of any person engaged in subversive activity or

sabotage.

(v) Epidemics or quarantine restrictions.

(vi) Strikes, slow-downs, lockouts or labour stoppages or disputes of any kind or freight embargoes.

(vii) Any shortfall, delay or failure to supply by any of Databuild's suppliers.

(viii) Any other cause or event whatsoever which is beyond the control and without the fault or negligence of Databuild.

(b) In the event of a failure by Databuild to perform or carry out any or all of the Terms and Conditions hereof arising from any of the causes or events set forth in sub-paragraphs (a) of this paragraph, the Customer shall be entitled to obtain the goods contracted for supply elsewhere for the duration of such failures and to reduce pro rata, and without any obligation to Databuild, the quantity or amounts of the

goods contracted for supply with the Customer.

L. Termination

(a) Without prejudice to any of its other rights, Databuild may at its option without liability or notice require payment in cash before delivery notwithstanding the terms of payment specified herein or agreed or may terminate an order or suspend further deliveries:

(i) if the Customer shall commit any breach of this or any other contract with Databuild including failure to make any payments on the due dates;

(ii) if being an individual, the Customer shall die or have a receiver appointed over his assets;

(iii) if being a company, the Customer is or becomes an externally administered body corporate (within the meaning of the Corporations Law) or a controller (within the meaning of the Corporations Law) enters into possession or takes control of all or any of the Customer's assets or undertaking or if the Customer is or becomes insolvent (within the means of the Corporations Law) or ceases or threatens to cease carrying on business;

(iv) if the Customer compounds with or negotiates for any

composition with its creditors or permits any judgment against it to remain unsatisfied for seven days;

(v) if any distress execution or other legal process shall be levied upon the Customer.

(b) Upon termination or suspension of deliveries Databuild may recover and resell the goods and the Customer hereby grants to Databuild a licence for access to the Customer's premises for the purposes of such recovery and to examine the goods.

M. Taxes

The Customer must in addition to the price, pay any value added, consumption turnover of similar tax, impost or duty on the goods introduced by the Commonwealth and/or State or Territory government to the intent that the prices for the goods are paid to Databuild as net amounts clear of such tax.

………………………   ………………………………… *Page 2 of 3*
(Initials)

N. Insolvency & Default

If,

(a) the Customer makes default in any payment due hereunder;

(b) a resolution is passed or proposed or a petition is presented or an application filed for the winding up of the Customer;

(c) a receiver or receiver and a manager is appointed of the property or any part of the property of the Customer;

(d) the Customer makes or proposes to make any arrangement with its Creditors;

(e) the Customer is placed under official management; or

(f) execution is levied upon the assets of the Customer for an amount in excess of $1,000.00 and it not within seven days satisfied, then, and in any such event, Databuild may at its option withhold further deliveries or cancel the contract without prejudice to its rights hereunder PROVIDED HOWEVER that Databuild may at any time and from time to time upon such terms as it may determine waive any of its rights under this clause, but without prejudice to its rights thereafter to rely upon the happening thereafter of any of the events hereinbefore referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.

O. Waiver

Failure by Databuild to insist upon strict performance of any term or condition hereof shall not be deemed a waiver thereof or of any rights which Databuild may have and shall not, and or shall any express waiver be deemed to be a waiver of any subsequent breach of any term or condition.

P. Governing Law

All contracts shall be governed by and construed in accordance with the laws in force in Victoria, Australia.

Q. Declaration

1. I/We the undersigned declare that the information provided by me/us in support of this application is true and correct in every particular.

2. I/We agree to be bound solely by your Terms and Conditions as detailed above and I/we further agree that any terms or conditions of purchase that may be incorporated in any order, acceptance of quotation or any other document delivered by me/us shall , unless those Terms and Conditions are agreed to in writing by your duly authorised representative, have no legal effect.

3. I/We agree that any legal costs incurred by you on a solicitor and own client basis in the recovery of any monies due by me/us shall be recoverable in full from me/us.

4. I certify that I am authorised to sign this application on behalf of the applicant.

5. I acknowledge that these terms and conditions are also available via the website 'Databuild.com.au' and can change without notice.

DIRECTOR: ……………………………………………………..

DATE: ………………………………………………………….

SOLE TRADER/PARTNER …………………………………….

DATE: ………………………………………………………….

This declaration has been signed by (print name):

……………………………………………………………………… *Page 3 of 3*

AGREEMENT TO GUARANTEE AND INDEMNIFY (01/05/2007)

To: The Supplier

1.We Guarantee payment to you of all monies and performance of all obligations including any past, present and future indebtedness or obligation by the Customer or any of us arising from any past, present or future dealing with you and any GST applicable thereto.

2. We Indemnify You against all loss or damage arising from any past, present or future dealing with the Customer or any of us.

3. We Agree

(a) to pay to a stake-holder nominated by you the amount you certify is payable, before being entitled to dispute whether that amount is payable;

(b) this agreement shall be effective despite any conduct or event (including any later agreement to guarantee or indemnify and any other security taken or any Deed of Company Arrangement whether or not you agreed) which may have released or varied any obligation of the Customer or any of us;

(c) any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid;

(d) that we sign both in our personal capacity and as Trustee of every trust of which we are trustee;

(e) to notify you within 7 days, of any change in the Customer's structure, management or position, including **(i)** any sale or disposition of any part of the business of the Customer **(ii)** any change in director, shareholder, management, partnership or trusteeship **(iii)** any new charge, mortgage or security given to any party by the Customer **(iv)** any involvement in any franchise or licensed business in any capacity.

4. Charge: We charge in your favour all our estate and interest in any land or any other assets, tangible or intangible in which we now have any legal or beneficial interest personally or as Trustee or in which we later acquire any such interest, with payment of all monies owed by the Customer or any of us.

5. Consideration: You to grant credit at your discretion to the Customer and/or forbear from taking any legal action against the Customer for one month.

6. Proper Law: This Agreement and any claim or dispute between the Supplier, the Customer or any of us shall be governed by the law applicable in Victoria and heard in the appropriate courts in or nearest Melbourne.

7. Several Guarantors: If more than one Guarantor is intended to sign, we each agree to be liable for the full amount owed, even if we are the only one to sign. You may make any arrangement or compromise with any of us, obtain additional guarantees, indemnities or securities from any of us or any other party or release or compromise with any Guarantor or party and any amount may be extinguished or compromised without affecting our liability to you.

8. Credit Limit: Any credit limit you grant or apply to the Customer is at your discretion and will not limit our liability to you.

9. Privacy Act: You may make any enquiries you deem necessary to investigate us including enquiry with our bankers, any credit provider or credit reporter and any personal credit and consumer credit information, Land Data property inquiries and name searches ("the sources"). We authorise the sources to disclose anything about us which is in their possession. We agree that you may disclose information you have about us to the sources.

10. Severability: Any part of anything herein shall be severable without affecting any other part hereof.

11. Acknowledgment of Current Debt: We acknowledge that the Customer owes you the sum noted below at item C, but acknowledge and agree that this Agreement to Guarantee and Indemnify is unlimited.

12. Definitions: (a) "You" and "Your" means each of the parties listed below as "Supplier" jointly and severally **(b)** "We" and "us" means each of the Guarantors and the Customer jointly and severally **(c)** "Customer" means each of the parties listed below as "Customer" jointly and severally and any party or parties who acquire and/or conduct any part of the business of the Customer or have any beneficial interest therein until notice is given pursuant to clause 3(e) as well as each member of any franchise/licensed/network Group of which the Customer is a member.

13. Demand: We agree that our liability to you arises without any demand upon the Customer or any of us.

14. Stamp Duty: We agree to pay any stamp duty applicable to this Agreement or any charge or security created pursuant to clause 4 or otherwise.

15. Attornment: To give effect to all obligations arising under this Agreement, we Irrevocably Appoint any solicitor of the Supplier as our attorney.

16. Read and Understood: We have each read and understood this document before signing it. (* refer below).

17.Other Guarantees: We agree to provide details of all guarantees and/or indemnities we have given or subsequently give to any party which the Supplier ought reasonably to have knowledge of, in dealing with the Customer in reliance (in part or in full) upon this Agreement.

THE PARTIES:

A. **THE SUPPLIER:** **ITW Australia Pty Ltd** (ABN 63 004 235 063)

and each of its subsidiaries, divisions, affiliates, associated companies and related entities and any successors and assigns

B. **THE CUSTOMER:**

(ABN)

and each of its subsidiaries, divisions, affiliates, associated companies and related entities and any successors and permitted assigns

C. **CURRENT DEBT ACKNOWLEDGED:** **A.** Existing Customers $_____ as at _____

B. New customers Nil

D. **THE GUARANTORS**

(1) I, _____ *(Name)*

of _____ *(Address)*

Signature: _____

Witness (signature) _____ _____ *(print name)*

(2) I, _____ *(Name)*

of _____ *(Address)*

Signature: _____

Witness (signature) _____ _____ *(print name)*

DATED: _____ / _____ / _____

IMPORTANT NOTICE: If you sign this Agreement to Guarantee and Indemnify you may be required to pay someone else's debts. You should ensure that you read and understand its terms. If necessary, seek independent professional advice.

Please fax or email this form once completed to the details below:
Australia - Fax 03 9554 7099 or accounts@databuild.com.au
New Zealand - Fax 09 477 3518 or accounts@databuild.co.nz