

# Terms & Conditions of Sale

The logo for Heber, consisting of the word "Heber" in white, bold, sans-serif font, centered within a solid red square.

## 1. GENERAL

1.1 HEBER LIMITED is called "the Company" and the individual, firm, company or other party with whom the Company contracts is called "the Customer";

1.2 "Goods" means the goods (including Special Goods) as hereinafter defined articles or materials which are to be supplied by the Company pursuant to the Contract (as hereinafter defined);

1.3 "Special Goods" means the goods drawings documents technical information and details prototypes models circuit diagrams and computer programs produced according to the Customer's requirements or specifications;

1.4 "Services" shall include any feasibility study design advisory or other service to be provided by the Company pursuant to the Contract whether in relation to the supply of Goods or otherwise and where the Contract is for or includes work or work and materials and/or the supply of labour;

1.5 "Design" means the design (if any) to be produced pursuant to and in accordance with the Contract;

1.6 "Intellectual Property Rights" means patents, registered and unregistered designs, copyright know how and all other intellectual property protection (other than trade marks) where ever in the world enforceable;

1.7 "Knowhow" means all inventions, discoveries, improvements and processes (whether patentable or non patentable, copyright works (including without limitation computer programs), designs (whether or not registered or registerable) and all other technical information of whatever nature;

1.8 "In writing" means any written communication between the Company and the Customer including, without limitation, facsimile and electronic mail

## 2. THE CONTRACT

2.1 Any contract howsoever made between the Company, and the Customer ("the Contract") shall incorporate and be subject to these Conditions. For the avoidance of doubt these Conditions shall apply to the exclusion of any terms and conditions at any time imposed by the Customer and shall supersede any previous agreement or agreements between the Company and the Customer;

2.2 Any quotation or estimate given by the Company is an invitation to the Customer to make an offer only and no order of the Customer placed with the Company in pursuance of a quotation or estimate or otherwise shall be binding on the Company unless and until it is accepted in writing on the Company's acknowledgement of order form;

2.3 The only terms of the Contract shall be those contained expressly or by reference in the Company's acknowledgement of order form, and any statement or representation written or oral made or given prior to the

date of the Contract is hereby excluded unless expressly incorporated therein;

2.4 Telephone orders may be made if the Customer has an account with the Seller with no outstanding payments and can in addition supply an order reference number, but to be effective such orders must be confirmed in writing within seven days to the Company. The Customer should state "Confirmation of Telephone Order" on the written confirmation; if failure to do so leads to duplication of orders the Customer must either accept the duplicated order or incur a cancellation charge in respect of the duplicated order.

## 3. PRICES

Unless otherwise provided in the Contract:-

3.1 The price is ex-works Bevedere Mill, Stroud, England and is exclusive of packing and delivery charges. Where such charges are incurred at the request of the Customer such charges will be separately invoiced;

3.2 The price of the Goods and Services is exclusive of Value Added Tax or any other tax duty tariff or charge arising in the United Kingdom or elsewhere;

3.3 If after the date of the Company's acceptance of order any increase shall occur in the costs of any materials, labour, transport or other items including overheads which the Company has to pay or incur in the performance of the Contract, then the amount of any increase in such costs shall be added to the price or prices stated in the acceptance of order and the Customer shall pay the resultant increased price or prices. In the case of any dispute a certificate of the Company's auditors certifying the amount of such increase shall save in the case of manifest error be conclusive and binding on the Customer and the Company;

3.4 Where the price has been quoted in the Company's quotation or estimate based on certain batch quantities and specific delivery periods or in the case of design work on the information available at the time, the Company reserves the right to vary the price for the Goods should the Customer order different quantities from those stated and/or require delivery over a different period or if further information is forthcoming which substantially alters the basis upon which the quotation or estimate was made;

3.5 The cost of any variation or modification in the design specification, material or drawings of the Goods or Services, or any development thereof requested by the Customer for whatever reason after the date of the Customer's acceptance of order shall, if such variations or modifications are accepted by the Company, be borne by the Customer.

## 4. RISK AND PROPERTY

4.1 Risk of damage to or loss of the Goods shall pass to the Customer at the time when the Company notifies the Customer that the Goods are available for

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collection. Save as expressly provided in the Contract, the Company shall not have any liability whatsoever for or in connection with any damage to or loss of the Goods in transit to any contracted place of delivery;

4.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other Goods agreed to be sold by the Company to the Customer for which payment is then due;

4.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property, but the Customer shall be entitled to resell or use the Goods in the ordinary course of its business;

4.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

## 5. DELIVERY

5.1 The Company will use its reasonable endeavours to comply with any date or dates for despatch or delivery of the Goods and for the supply or completion of the Services (as the case may be) as stated in the Contract, but unless the Contract otherwise expressly provides such date or dates shall constitute only statements of expectation and shall not be binding. The Customer shall accordingly accept delivery of the Goods when tendered and time of delivery shall not be of the essence of the Contract;

5.2 If, notwithstanding that the Company has used its reasonable endeavours the Company fails to despatch or deliver the Goods or to supply or complete the Services by such date or dates, such failure shall not constitute a breach of the Contract nor shall the Customer be entitled to treat the Contract as thereby repudiated or to rescind it or any related contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom;

5.3 If the Company shall be prevented or hindered from performing the Contract or any part thereof by any circumstances beyond its reasonable control (including without prejudice to the generality of the foregoing force majeure, trade disputes including disputes involving the Company's own workforce, inability to obtain materials or labour, power or machinery breakdown or failure) further performance of the Contract shall be suspended for so long as the Company is so prevented or hindered provided that in

the event that the performance of the Contract shall be suspended for more than six consecutive calendar months the Customer and the Company shall be entitled by notice in writing to the other forthwith to terminate the Contract or to cancel any outstanding part thereof and in such circumstances the Customer shall pay at the Contract rate for all goods and services supplied or all work done and materials used by the Company up to the actual date of such termination. The Company shall not have any liability to the Customer for any direct or consequential loss or damage suffered by the Customer as a result of the Company's inability to perform its obligations under the Contract in the aforementioned circumstances;

5.4 When expedited delivery or completion is agreed to by the Company and necessitates overtime or other additional costs, the Customer shall reimburse the Company for the amount of such overtime payment or other costs. Where postponement of delivery or completion is agreed by the Company the Customer shall, if required by the Company pay all costs and expenses (including a reasonable charge for storage of the Goods) occasioned thereby but the goods shall be held at the Customer's risk as from the time of postponement and the Customer shall be responsible for insurance of the Goods;

5.5 If no time for delivery or completion is specified in the Contract the Customer shall be bound to accept the goods when the same are ready for delivery by the Company; the Company shall be under no obligation to deliver or complete the same until the expiry of a reasonable time from the date of the contract;

5.6 In respect of Contracts under which the Company sells outside the United Kingdom the Customer must obtain all necessary export or import licences, exchange control consents, and all other approvals of national and regional governments and authorities required to enable performance of the Contract as soon as reasonably practicable.

5.7 Where the Goods are delivered or Services are supplied by instalments each such instalment shall be deemed to be sold or supplied under a separate contract to which these Conditions shall apply (*mutatis mutandis*) and save as provided in Clause 7.3 no default in respect of any one instalment shall affect or prejudice due performance of the Contract as regards any other instalments.

5.8 If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

5.9 The Company reserves the right to deliver up to 5% more or 5% less than the quantity ordered, and the quantity so delivered shall be deemed to be the

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quantity ordered, with the consequent adjustment to the price.

## 6. REFERENCES

Each Contract may be subject to the Company being satisfied as to the Customer's credit references (which unless otherwise stated shall be one bank reference and two trade references).

## 7. PAYMENT

7.1 Unless the Contract otherwise provides, the Contract price for the Goods and/or Services shall be due and payable in full thirty days from the date of the Company's invoice. Invoices will be issued when the Company notifies the Customer that the Goods are ready for collection;

7.2 Where Goods and/or Services are delivered or performed by instalments, the Customer shall be obliged to pay for each instalment upon the terms set out in sub-clause 7.1 of this Condition;

7.3 The time stipulated for payment shall be of the essence of the contract and failure to pay within the period specified shall entitle the Company to suspend further deliveries of the Goods or completion of the Services pending payment without prejudice to any other remedy available to the Company;

7.4 Unless otherwise agreed in writing the Customer shall not be entitled to set off against any monies due to the Company under the Contract, any amount claimed by or due to the Customer by the Company whether pursuant to the Contract or any other account whatsoever;

7.5 The Company shall be entitled to interest on any part of the Contract price not paid by its due date from that date until actual payment at the rate of 4 per cent per annum above the Base Lending Rate of Lloyds TSB PLC prevailing from time to time during such period.

## 8. CONTRACTS FOR SPECIAL GOODS AND/OR SERVICES

8.1 The Company shall be entitled to reject any information supplied or details specified by the Customer which the Company in its judgement considers unsuitable. Additional costs incurred by the Company if such details or specifications are judged to be unsuitable, will be charged to the Customer;

8.2 If the Contract is for and includes Services to be performed by the Company including installation, the performance of any tests detailed in the Contract or otherwise, then, unless the Contract otherwise provides, the following additional provisions shall apply thereto:-

8.2.1 The Company shall be obliged to carry out such Services only during normal working hours. If the Customer requests that overtime be worked and the Company agrees thereto such overtime shall be paid for by the Customer in addition to the Contract price at the rate current in the trade and locality

concerned and a certificate of the Company's auditors certifying the amount payable for such overtime shall be conclusive and binding on the Customer and the Company;

8.2.2 If the Services are to be carried out at the premises of the Customer or at the request of the Customer at the premises of any other person then the Customer undertakes to provide or to procure the provision free of charge of:-

8.2.2.1 proper and safe storage and protection of all goods, tools, plant and equipment and materials on site;

8.2.2.2 free and safe access to the site and to the point at which the work is to be executed;

8.2.2.3 all facilities and services necessary to enable such work to be carried out safely and expeditiously;

8.2.2.4 if such work includes the installation of any goods all builders work, foundations cutting away and making good required and the ready availability of all plant and equipment so as to permit such goods to be tested forthwith on completion of such work and the Customer shall pay to the Company the amount of any expenses incurred by the Company by reason of any breach by the Customer of any of its undertakings in this sub-clause but without prejudice to the Company's right to recover further damages therefor and a certificate of the Company's auditors certifying such amounts shall be conclusive and binding upon the Company and the Customer;

8.2.3 Where the Goods and/or Services are to be supplied on site they shall at all times be at the sole risk of the Customer and if any part thereof is lost damaged or destroyed through any cause whatsoever, the Company shall be entitled to charge as a variation to the Contract for the restoration of any Goods or Services so lost, damaged or destroyed.

## 9. WARRANTY/LIABILITY

9.1 Subject to the provisions of this clause 9 and clause 13.3 the Company warrants that the Goods have been designed and manufactured with reasonable care and shall and will be free from defect in materials and workmanship for a period of 12 months from delivery;

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9.2 The warranty set out above is given by the Company subject to the following conditions:-

9.2.1 the Company shall be under no liability in respect of any defect in the Goods arising from any drawing design or specifications supplied by the Customer;

9.2.2 the Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's reasonable instructions, misuse or alteration or repair of the Goods without the Company's approval;

9.3 Save as expressly provided in these Conditions, all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law;

9.4 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to comply with specifications shall be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent or reasonable inspection and subject in any event to clause 9.1) within a reasonable time after discovery of the defect or failure. If the Customer fails to notify a defect or failure in accordance with this clause 9.4, the Goods shall be conclusively presumed to be in accordance with the contract and free from any defect or damage and the Customer shall be deemed to have accepted the Goods;

9.5 Where any valid claim in respect of the Goods which is based on any defect in the quality or condition of the Goods or their failure to comply with specifications is notified to the Company in accordance with these conditions, the Company shall be entitled, at its option, to rectify or replace the Goods (or the part in question) or refund the price for the Goods (or a proportionate part) but shall have no further liability to the Customer;

9.6 Without prejudice to the generality of the foregoing, in the case of the supply of Special Goods or Services, the following additional provisions of this clause 9.6 shall apply:

9.6.1 while the Company exercises all reasonable care and skill in the design and/or development of Special Goods and/or the provision of Services, the Customer recognises that the Company supplies and/or Designs components only and that it is the responsibility of the Customer to thoroughly test any Special Goods or items generated from designs produced in the course of the Services prior to their incorporation in assembled products or systems;

9.6.2 Subject to clause 9.8 the liability of the Company in respect of the supply of Special Goods and/or Services whether in contract

tort (including negligence or breach of statutory duty) or howsoever otherwise arising, shall be limited to £100,000 in respect of any event or series of events arising out of the same or substantially the same cause or circumstances.

9.7 Subject to clause 9.8 the Company accepts liability to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of the Company its employees agents and sub-contractors up to a limit of £5,000,000 in respect of any event or series of events arising out of the same or substantially the same cause;

9.8 The Company shall not be liable to the Customer for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party or parties) even if such loss was originally foreseeable or the Company had been advised of the probability of the Customer incurring the same and/or (for the avoidance of doubt) any loss cost damage or expense arising out of any product recall;

9.9 The Company shall not be liable to the Customer by reason of any delay in performing or any failure to perform any of its obligations, if the failure or delay was due to any cause beyond the Company's reasonable control.

## 10. CUSTOMER'S PROPERTY

All property supplied to the Company by or on behalf of the Customer which is held by the Company for the purposes of the Contract or in transit to or from the Customer, shall be deemed to be entirely at the Customer's risk and the Company shall not be liable for any loss of or damage to such property whilst in the possession of the Company or in transit as aforesaid unless such loss or damage is due directly to the negligence of the Company, its servants or agents. In no circumstances whatsoever will the Company be liable for any consequential loss or damage arising therefrom. The Customer shall insure all such property for all risks.

## 11. LIEN

Without prejudice to any other rights and remedies which the Company may have under the Contract, the Company shall in respect of all debts due and payable by the Customer have a general lien on all goods and property belonging to the Customer in its possession (whether worked on or not) and shall be entitled upon the expiration of fourteen days notice to the Customer, to dispose of such goods or property as it thinks fit and to apply any proceeds of sale thereof towards the payment of such debts.

## 12. INSOLVENCY AND BREACH OF CONTRACT

In the event that:-

12.1 the Customer shall commit any breach of the Contract other than a breach of clause 7.3 and shall fail to remedy such breach (if capable of remedy) within a period of thirty days from receipt of notice in writing

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from the Company, requesting such breach to be remedied; or

12.2 any distress or execution is levied upon any of the goods or property of the Customer; or

12.3 the Customer (or where the Customer is a partnership any partner thereof) offers to make any arrangements with or for the benefit of its or his creditors or commits any act of bankruptcy; or

12.4 the Customer (being a limited company) has a Receiver Administrative Receiver or Manager appointed over the whole or any part of its undertaking property or assets or an order is made or a resolution is passed or analogous proceedings are taken for the winding up of the Customer (save for the purpose of reconstruction or amalgamation without insolvency and previously approved in writing by the Company)

12.5 the Company shall thereupon be entitled, without prejudice to any other rights which it may have against the Customer hereunder, forthwith to suspend all further deliveries and/or Services until the default has been made good or to determine the Contract or any unfulfilled part thereof or at the Company's option to make partial supplies of Goods and/or Services. Notwithstanding any such termination, the Customer shall pay to the Company at the Contract rate for all work done materials used and Goods and/or Service delivered up to and including the date of termination.

### 13. COPYRIGHT AND INTELLECTUAL PROPERTY

13.1 Save as otherwise provided in writing in the Contract, the ownership of the copyright in all Intellectual Property remains with the Company and the Customer will not reproduce or transmit them to any third party without the Company's written consent;

13.2 Save as otherwise provided in writing in the Contract, the right to apply for patents or register trade marks or designs in respect of any goods remains with the Company. If it is provided in writing in the Contract that the Customer has the right to apply, then the Customer shall apply for such patents or register such trade marks or designs in respect of the goods supplied to him by the Company at his own expense and the Company shall have no responsibility financial or otherwise in connection therewith;

13.3 The Customer is informed that the Company does not have the capacity to investigate third party Intellectual Property Rights arising out of the production of Goods (including Special Goods) and/or designs produced in the course of Services, nor does the Company carry insurance against claims for infringement of third party Intellectual Property Rights. It is the responsibility of the Customer to satisfy itself that the Intellectual Property Rights of the third party are not infringed by the Goods or in the course of the provision of the Services and the Customer undertakes to indemnify the Company against, and hold the Company harmless from and against all actions, proceedings, claims, costs, loss, damage or expense whatsoever and

howsoever arising in respect of any infringement or alleged infringement by the Company of any third party Intellectual Property Rights which the Company may suffer or incur in connection with the performance of the Contract without prejudice to the generality of the foregoing, the Company undertakes not to knowingly infringe the Intellectual Property Rights of any third party.

### 14. DRAWINGS AND SPECIFICATIONS

Care is taken to ensure that all drawings specifications figures or statements relating to the Company's products issued by the Company are accurate but they are given for general information only and must not be treated as binding unless specifically confirmed in writing by the Company. All dimensions and materials are, unless otherwise stated, subject to reasonable variations resulting from the raw materials available or arising in the ordinary course of manufacture. Any performance figures which may be given are based upon experience and reflect what the Company expects to achieve. The Company accepts no liability if those figures are not obtained.

### 15. THIRD PARTY RIGHTS

For the purposes of The Contracts (Rights of Third Parties) Act 1999, these conditions do not create any right or remedy enforceable by any person other than the Customer and the Company. This condition does not affect any right or remedy of a third party that exists or is available apart from that Act.

### 16. SEVERANCE

16 If at any time any one or more of the provisions of these Conditions becomes invalid, illegal or unenforceable in any respect under any law, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

### 17. WAIVER

17 The rights and remedies of the Company under the Contract shall not be diminished waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company nor by any failure of or delay by the Company in asserting or exercising any such rights or remedies.

### 18. ASSIGNMENT

18 The benefit of the Contract shall not be capable of assignment by either of the parties without the consent in writing of the other party.

### 19. OBSOLESCENCE

19 Any notice of obsolescence relating to any product or service will be served 3 months prior to Heber ceasing to make that product or service available. Any repair service to that product will only be guaranteed to be available 12 months after this notice.

### 20. LAW

These Conditions and each and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with the Laws of England

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and the Customer hereby submits to the jurisdiction of the English Courts.

HEBER'S TERMS & CONDITIONS OF SALE – JANUARY 2013.