



established at Ridderkerk Traderegister Rotterdam no. 24281273  
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#### Article 1 General

Unless otherwise agreed in writing, the present conditions shall apply to all offers submitted and orders or contracts concluded by us. The customer's purchase conditions shall only form part of the contract in to the extend accepted in our order confirmation.

#### Article 2 Quotations

Our quotations are without obligation unless explicitly stated otherwise. Orders, changes therein and all subsequent orders and/or contracts shall only be binding to the extend confirmed in writing by us.

#### Article 3 Information

All designs, drawings, illustrations, catalogues and all further technical or other information, including dimensions, weights, consumption figures etc. supplied by us for and in connection with the quotation shall only be binding on us if an explicit statement to this effect has been given in writing.

All information thus supplied by us, whether or not free of charge, shall remain our property unless explicitly agreed to the contrary. It shall not be copied or shown or made available to third parties without our prior written consent unless such is necessary in connection with the completion of the order, such after or prior written approval, and it must be returned immediately if we so request. Construction and production drawings need not be furnished by us.

#### Article 4 Prices

1. Unless otherwise agreed in writing, our prices are ex-factory and are exclusive of value added tax and packaging. They are based on the salesprices in effect on the date of the quotation. Should the salesprices increase after the quotation date the salesprices are amended in conformity with the price adjustment clause as per article 18.
2. Additional costs arising from work done outside the normal working hours at the customer's request or resulting from circumstances for which we cannot be held responsible shall be charged to the customer.
3. The charges quoted by us for installation and repair are based on the charges laid down in the CAO (Collective Wage Agreement) or in the absence thereof, the general conditions of employment in effect on the date of the order. Unless agreed otherwise we shall charge any increase in costs.

#### Article 5 Currency exchange fluctuations

If our quotation is in currency other than Netherlands Guilders or Euro, and the order has been awarded after the duration of the validity of the quotation, we may, without prejudice to our rights under article 2, determine the orderprice according the currency exchange rate valid at the date of our order acceptance.

#### Article 6 Packaging

The method of packing shall be determined by us. Packaging materials cannot be returned to us unless otherwise agreed in writing.

#### Article 7 Delivery time

1. The delivery time, which is specified by us as accurately as possible, shall commence as soon as we have confirmed the order in writing, are in the possession of all information and any goods to be provided by the customer and have, where applicable, received an instalment payable by the customer when the order is placed, or have received corresponding security.
2. The delivery time may be extended as a consequence of any changes of the goods required by the customer after commencement of the delivery time. The delivery time may also be extended by the length of time during which the customer has failed to pay any amount he may owe as well as by the period of force majeure as defined in article 16.
3. We shall have complied with all our obligations as regards the delivery time either if the goods have been inspected by the customer in our factory or if, in the event of the goods not being inspected in our factory, they are ready for take-over or despatch.
4. Unless otherwise agreed in writing, exceeding the specified delivery time shall not give the customer the right to compensation, nor to suspend or cancel the contract. If a penalty or liquidated damages for delay has been agreed, our liability for delay is restricted to it.

#### Article 8 Testing and inspection

1. Before being delivered, the goods shall be carefully checked and/or tested by us. If such has been agreed in writing, the customer or his representative shall have the right, for his own account and risk, to inspect the goods prior to delivery and to be present at any such inspection at the time and place to be determined by us. An additional charge shall be made for the costs of any examination and/or final inspection inside or outside the factory.
2. Should the customer or his representative not be present at the examination and/or final inspection, despite having made known his wish to be present and despite having been notified by us in good time, such inspection shall be deemed to have been carried out in his presence and the reports drawn up by us shall be binding.

#### Article 9 Delivery

1. Unless otherwise agreed in writing, the goods shall be delivered ex-factory. From that moment onwards the goods shall be for the customer's risk and expense.
2. If owing to circumstances for which we are not responsible goods which are ready for despatch cannot be despatched immediately, we shall be entitled, at the customer's expense and risk, to store them in our factory or elsewhere and the goods are considered delivered.
3. Delivery may, at our option, also be made in parts. In the event of partial delivery, the customer shall be obliged to pay the relevant invoices in accordance with the applicable conditions of payment as if a separate transaction was involved.
4. Ownership - in the widest sense - of the goods supplied by us shall only pass to the customer when the latter has completely fulfilled all his obligations.
5. Any other delivery conditions shall be defined in accordance with the from time to time ruling Incoterms.

#### Article 10 Payment

1. Unless otherwise agreed, all payments shall be remitted within 30 days of the invoice date and with no discount or set-off, to a bankaccount to be designated by us.
2. Failure to pay by the due date shall make the customer legally in default. In such case we shall have the option, without further notice of default and without legal proceedings being required, either to terminate the contract or to require its performance, in which case the customer shall also owe us interest equal to the discount rate of "De Nederlandse Bank" effective at the time that failure to pay occurred, but increased by two percent, such from the due date, and all this without prejudice to our rights to compensation of damage and costs.
3. All judicial and other costs involved in the collection of any amount owed by the customer shall be borne by the customer. The non-judicial costs shall be set at 15 percent of the principal part thereof that is owed on the date that the demand for collection is issued, yet without us being obliged to prove that such costs have actually been incurred.

#### Article 11 Warranty

##### Goods

1. We warrant the good workmanship of the goods supplied by us for a period of 12 months after commissioning, but not longer than 18 months after delivery in accordance with article 9, provided that commissioning has taken place under our supervision and provided that the customer can prove that observed defects in the goods are the result of the use of defective materials, poor workmanship or defective construction.
2. Defects resulting from external causes are explicitly excluded. The customer shall reimburse all costs incurred with respect to inspection, repair or otherwise not covered by our warranty.
3. Not covered by our warranty are the replacement costs of spare parts which are subject to normal wear and tear and damage due to incorrect use or improper maintenance.
4. In case of an acknowledged claim under our warranty, we will remedy the defect at our choice, in consultation with the customer, either by delivering a new part to replace the defective part, or to repair the goods free of charge in our factory or to despatch personnel to execute or supervise such repairs at the customer's factory. Costs of transportation of the goods are for the account of the customer. The costs of board and lodging and travelling expenses of our personnel will be charged to the customer.
5. Parts replaced under our warranty shall become our property and must be returned to us by the customer if we so request.
6. Our guarantee will become invalid in the event the customer undertakes repairs either himself or with or by third parties during the warranty period without our prior written consent.

##### Services

7. With respect to the installation and repair activities regarding existing apparatus, machinery or installations whether or not in the customer's factory, no warranty is given other than the assurance that these activities will be carried out by skilled personnel to the best of their ability; Goods delivered in connection with an installation/repairorder are covered by the above mentioned warranty.

#### Article 12 Liability

1. Our contractual liability towards the customer is limited to the correct fulfilment of our delivery and warranty obligations of the goods. Any claims, legal or otherwise, regarding our contractual obligations are only valid if made before the expiration of the warranty period.
2. Any further liability for whatever damage (including indirect or consequential loss or damage) is excluded.
3. The customer shall indemnify us against all claims from third parties in excess of the liability as described hereabove.

#### Article 13 Installation/repair/commissioning

1. If installation and/or repair and/or commissioning outside our factory has been agreed the customer shall provide the following:

- a. The customer shall ensure that, from the time that our personnel arrives, our activities can be started without hindrance and without delay and can be continued without interruption. This shall mean amongst others the provision by the customer of good access roads and transport facilities, the requisite ground-, foundation, building-, and scaffolding work, hoisting- and similar equipment, auxiliary and working materials, (data)communication facilities, energy, water and lighting as well as other tools necessary than the tools supplied by our personnel.
- b. In addition, the customer shall place at our disposal in good time any further labour equipped with tools etc. that we consider necessary. Such auxiliary workers shall receive instructions from our personnel as regards the work to be performed, but the customer shall be liable in full for them and shall indemnify us against any claims that may arise as a result of their work.
- c. The customer shall further ensure that adequate and suitable storage space is available for the storage of goods and materials, equipment and tools supplied by us in connection with our work and that suitable facilities are available for our personnel in the immediate vicinity of the location where the work is being undertaken.

The customer shall be liable for all damage to and loss of goods, materials, equipment and tools supplied by us to the site and for personal injuries suffered by our employees or by third parties hired by us.

#### Article 14 Repairs and processing

Except as warranty work in accordance with article 11, goods received for repair or processing shall remain for the customer's risk in our factory or on our premises and are repaired or elaborated at the customer's risk. At customer's written request we shall ensure adequate insurance coverage of the goods for the normal risks and the customer shall bear the costs thereof.

#### Article 15 Intellectual property

The customer shall indemnify us in the widest sense against any damage which we might suffer if we infringe any industrial or intellectual property rights of third parties, such infringement being the result designs, specifications or other instructions supplied by the customer.

#### Article 16 Force majeure/cancellation

1. If circumstances occur which we are not responsible and directly or indirectly prevent, hinder or make more difficult the full or partial performance of the contract - such circumstances being, inter alia, war, the threat of war, civil war, natural disasters, riots, strikes, lock-outs, fire, epidemics, breakdowns in our factory, due to lengthy stagnations in the supply of electricity or gas, delayed or incorrect deliveries by our suppliers, government measures, embargoes, blockades, congestion - we shall have the right, without any further obligation on our part, either to suspend performance of the contract wholly or in part or to consider it as cancelled. Goods and materials of the customer which are in our custody at such time shall from that moment on be for the customer's account and risks.
2. We shall have the same rights in the event of the customer going bankrupt or suspending its payment obligations, but without prejudice to our right to claim full compensation, including full compensation for loss of revenue and profit.

#### Article 17 Applicable law and disputes

1. The contracts of which the present conditions of sale and delivery form part shall exclusively be governed by the law of the Netherlands. The provisions of the Vienna Treaty of April 11, 1980 are excluded.
2. All disputes arising out of the contracts of which these conditions form part shall exclusively be brought before the competent dutch court in Rotterdam.

#### Article 18 Price adjustment clause

**General:** The sales price and the final price are based on the official wages and prices of materials resulting from average indexfigures published by the Netherlands Central Bureau of Statistics (CBS).

If the wages and index figures of material as described above change after the date of quotation resp. date of contract, the price quoted or agreed shall be amended to provide for these variations according to the following formula:

$$P = P_0 (0,05 + 0,6 L_m/L_0 + 0,35 M_m/M_0)$$

<b>Explanation:</b>	P	=	Final selling-price
	P <sub>0</sub>	=	Selling price, mentioned in the quotation or the contract.
	L <sub>0</sub>	=	Average hourly earnings at HMA Power Systems B.V. of the workman according column A of the last CBS declaration i.r.o. table 8.2 "Collective Wage Agreements per month including special awards" under Class 27-35 Metal- and Electrotechnical Industry, including official rise in wages, known on the date of quotation or date of contract, received prior to the date of quotation or date of contract.
	L <sub>m</sub>	=	Arithmetical average of the average hourly earnings mentioned under L <sub>0</sub> according to the monthly indexfigures published by the CBS for the period between the date of quotation and the date of contract or the date of contract and the date the goods are ready at our works.
	M <sub>0</sub>	=	The arithmetical average of the indexfigures published by the CBS, according table 3.2.2. "Producentenprijsindexcijfer of the use by the industry of raw materials and semi-products in class 27-35.7 manufacturing of metal- and electrotechnical products" on the date of quotation or the date of contract.
	M <sub>m</sub>	=	As M <sub>0</sub> , averaged over the period between the date of quotation and the date of contract, or the date of contract and the date the goods are ready at our factory.

Drastic alterations in price of important materials or parts we have to obtain from abroad, will be settled separately, if necessary. Upon request, we will allow an accountants' investigation into this settlement.

HMA Power Systems B.V.  
May 1998