



**INERTIA**  
TECHNOLOGY

## GENERAL TERMS AND CONDITIONS OF SALE

**Revision** 1.3

**Date** 20 October 2022





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## **1. Formation of Contract**

This Agreement contains the terms and conditions that apply to your purchase from Inertia Technology B.V. (the “Seller”) that will be provided to you (the “Purchaser”) on orders for products and/or services and support. Any order sent to the Seller by the Purchaser shall be accepted entirely at the discretion of the Seller, and, if so accepted, will only be accepted upon these General Terms and Conditions of Sale (“General Conditions”). Each order which is so accepted shall constitute an individual legally binding contract between the Seller and the Purchaser and such contract is hereafter referred to in these General Conditions as a “Contract”. These General Conditions shall override any contrary different or additional terms or conditions (if any) contained on or referred to in an order form or other documents or correspondence from the Purchaser, and no addition alteration or substitution of these terms will bind the Seller or form part of any Contract unless they are expressly accepted in writing by a person authorised to sign on the Seller’s behalf.

## **2. Specification**

All goods and services supplied by the Seller shall be in accordance with the specifications or descriptions (if any) expressly listed or set out on the face of the Contract. No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the Contract. It is the responsibility of the Purchaser to ensure that the intended application is suitable and appropriate, before acceptance and use. This also applies to the choice of suitable materials. The Purchaser must ensure that the use of the product is appropriate.

## **3. Prices**

The price(s) are mentioned in the Offer sent by the Seller to the Purchaser and in the Proforma invoice, if applicable. Prices as posted on the website, or otherwise presented, are subject to change without notice.

## **4. Delivery / Delay**

The delivery time is specified in the Offer sent by the Seller to the Purchaser. All products will be shipped Free on Board (FOB) origin from Seller’s premises and may be so shipped in several lots. Delivery shall be made in accordance with the International Commercial Terms (Incoterms) in force at the formation of the Contract. The agreed delivery term shall begin provided: (i) the Contract has been concluded and any letters of credit, advance payments or sureties required in terms of the order confirmation have been put in place by the purchaser; and (ii) Seller is in possession of all the details required for the execution of the order; and (iii) the Purchaser has fulfilled any other contractual obligations incumbent on it. Time is not of the essence in the sale contemplated by the Contract and the Seller shall be entitled to a reasonable period of grace in the event of any delay in delivery beyond the scheduled shipping date. The happening of any contingency beyond Seller’s control shall not constitute cause for cancellation of the order but shall extend Seller’s time of delivery for a period equal to the duration of such contingency. Seller shall in no way be liable (i) for any loss of profit, business, contracts, revenues, or anticipated savings, arising from any delay in



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delivery, or (ii) for any special indirect or consequential damage of any nature whatsoever, arising from any delay in delivery.

### 5. Passing of Risk

Benefit and risk shall pass to the Purchaser when the Seller communicates to the Purchaser that the goods are at the disposal of the Purchaser. The foregoing shall also apply in the event that the delivery is carried out free of charge or that transport is organised by the Seller. In any case, benefit and risk shall pass to the Purchaser no later than when the goods are handed over to the first carrier.

### 6. Payment

Generally, goods and services supplied by the Seller require prepayment based on Proforma invoice. The Proforma invoice is issued by the Seller to allow advance payment in full. Occasionally, the Seller may provide a known and reputable Purchaser delivery of products before payment is done. In such a situation, unless otherwise agreed, the Purchaser shall pay to the Seller the full invoice price of the goods not later than fourteen (14) days after the date of each invoice. Payments made after fourteen (14) days may, at the Seller's option, be subject to interest at the rate of 1% per month on the invoiced amount. In addition, the Seller shall have the right, without notice, to set off or apply any amounts owed to Purchaser by Seller against monies that may be owed to Seller by the Purchaser. Whatever the means of payment used, payment shall not be deemed to have been effected before the Seller's account has been fully and irrevocably credited. In case of late payment the Seller may, after having notified the Purchaser in writing, suspend his performance of the contract until he receives payment. If the Purchaser has not paid the amount due within three (3) months the Seller shall be entitled to terminate the contract by notice in writing to the Purchaser and to claim compensation for the loss he has incurred. Such compensation shall not exceed the agreed purchase price. Cancellation of orders is subject to approval by Seller. A minimum of 20% restocking/service charge will be applied. Prices do not include federal, state or local taxes, including without limitation sales, use or excise taxes now or hereafter enacted, applicable to the products sold in this transaction, which taxes may, in Seller's discretion, be added by Seller to the sales price or billed separately and which taxes shall be paid by Purchaser unless Purchaser provides Seller with any necessary tax exemption certificate.

### 7. Title of Goods

The Seller shall at all times have and retain title and full ownership of all software, firmware programming routines, and documentation thereof supplied by Seller for use with the equipment, and of all copies thereof made by Purchaser (collectively "software"). Seller grants Purchaser a non-exclusive and nontransferable license to use such software solely for use with the equipment. Purchaser shall take all reasonable steps to protect Seller's proprietary interest in the software and shall not transfer or otherwise provide the software to any third party. Title to the goods comprised in each consignment shall not pass to the Purchaser until the Purchaser has paid their price to the Seller, but, even though title has not passed, the Seller shall be entitled to sue for their price once its payment has become due. The Purchaser shall at the request of the Seller assist him in taking any measures necessary to protect the Seller's title to the goods. The retention of title shall not affect the



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passing of risk under Clause 5.

### **8. Guarantee / Warranty**

The Seller is liable only for defects in the goods, which appear under the conditions of operation provided for in the Contract or in the User Manual, and under proper use of the goods. Since the Seller has no control or knowledge under which conditions the goods are operated or stored by the Purchaser, no warranty is given for the time period during which the goods remain in accordance with the technical specifications. The Seller's liability does not cover defects which are caused by faulty maintenance, incorrect erection or faulty repair by the Purchaser, or by alterations carried out without the Seller's consent in writing. The warranty is void if the Purchaser opens or tampers with the enclosure of the goods. The Seller's liability does not cover normal wear and tear or deterioration. The Seller shall free of charge either repair or, at its option, replace defective goods where the defects appear under proper use within 12 months from the date of delivery, provided that (i) notice in writing describing the defects complained of shall be given to the Seller within fourteen (14) days after their appearance; and (ii) such defects shall be found to the Seller's reasonable satisfaction to have arisen from the Seller's faulty design, workmanship or materials; and (iii) the defective goods shall be returned to the Seller's factory at the Purchaser's expense. The Purchaser shall at his own expense arrange for any dismantling and reassembly of equipment other than the goods, to the extent that this is necessary to remedy the defect. Any repaired or replaced goods shall be redelivered by the Seller free of charge to the original point of delivery but otherwise in accordance with and subject to these General Conditions save that the period of twelve (12) months shall be replaced by the unexpired portion of that period only. The Seller shall be free of any liability to the Purchaser whether contractual, tortious or otherwise for defects in the goods or for any loss or damage to or caused by the goods, in particular, but without limitation of the foregoing, loss of production, loss of profit and other indirect loss.

### **9. Division of Liability for Damage Caused by the Goods**

The Seller shall not be liable for any damage, including but not limited to damage to property, caused by the goods after having been delivered and whilst they are in the possession of the Purchaser. Nor shall the Seller be liable for any damage to products manufactured by the Purchaser, or to products of which the Purchaser's products form a part. The Seller is not liable, does not warrant, guarantee or make any representations regarding the use or the results of the use of the goods or written materials in terms of correctness, accuracy, reliability, safety, performance or otherwise. The Seller shall have no liability for delays or failures beyond its reasonable control. Any liability of the Seller with respect to the goods or the performance thereof under any warranty, negligence, strict liability or other theory will be limited exclusively to the repair of the goods, the replacement or, if replacement is inadequate or, in the Seller's opinion, impractical, to refund the price paid by the Purchaser for the goods.

If the Seller incurs liability towards any third party for such damages as described in the preceding paragraph, the Purchaser shall indemnify, defend and hold the Seller harmless. If a claim for damage as described in this Clause is asserted by a third party against one of the parties, that party shall



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forthwith inform the other party thereof in writing.

#### **10. Research, Evaluation and Testing**

In case the Seller supplies the goods for Research, Evaluation and Testing purposes only, the Purchaser may use the goods only for those specific purposes. The Purchaser shall have no right to, and shall not, directly or indirectly: (a) rent, lend, lease, or otherwise distribute the Goods to any other person or entity; (b) use the Goods on unauthorized equipment; (c) breach any applicable law or regulation through the use of Goods; (d) copy or reverse engineer the Goods; (e) modify, alter or create derivative works of the Goods; (f) use the Goods for purposes of competing with the Seller, including for competitive analysis, benchmarking or marketing; (g) use the Goods except in accordance with the documentation published by the Seller.

Notwithstanding with the above, the Seller disclaims all warranties and liabilities relating to Goods supplied for Research, Evaluation and Testing purposes only, express or implied, including, without limitation, any warranties against infringement of any applicable law or regulation, infringement of third-party rights, merchantability and fitness for a particular purpose. The Seller has not authorized any party to make any representation, warranty or obligations on behalf of the Seller. In no event does the Supplier warrant that the products meet any applicable national or local regulatory requirements. The Seller shall not be liable of any breach of the applicable national or local regulatory requirements.

#### **11. Force Majeure**

The Seller shall not be under any liability for any failure to perform any of its obligations under the Contract due to Force Majeure. Following notification by the Seller to the Purchaser of such cause, the Seller shall be allowed a reasonable extension of time for the performance of its obligations. For the purposes of this General Conditions, Force Majeure means fire, explosion, flood, lightning, Act of God, act of terrorism, war, rebellion, riot, sabotage, or official strike or similar labour dispute, or other events or circumstances outside the reasonable control of the party affected thereby.

#### **12. Economic Loss**

Notwithstanding anything contained in these General Conditions or the Contract, the Seller shall in no circumstances be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof (i) for any loss of profit, business, contracts, revenues, or anticipated savings, or (ii) for any special indirect or consequential damage of any nature whatsoever.

#### **13. Confidentiality**

Both the Seller and the Purchaser shall each keep confidential and shall not without the prior consent in writing of the other disclose to any third party any technical or commercial information which it has acquired from the other as a result of discussions, negotiations and other communications between them relating to the goods and the Contract.



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#### **14. Applicable Law**

Any dispute arising under or in connection with the Contract shall be governed by and construed in accordance with the laws of the Netherlands, to the exclusion of the UN Convention on the International Sale of Goods.

#### **15. Jurisdiction**

Any dispute arising under or in connection with the Contract shall be subject to the exclusive jurisdiction of the courts of the Netherlands. The Seller reserves however the right to initiate court proceedings against the Purchaser in any other court of competent jurisdiction.