

1. GENERAL - Scope of application

ELA INNOVATION (hereinafter the "Vendor") designs, manufactures and markets electronic devices which embeds software developments such as beacons, Bluetooth sensors, tags, high performance badges and that are presented in particular on its website (hereinafter the "Site") <https://elainnovation.com> (hereinafter the "Products") and in its catalogue (see article 9 below).

In accordance with Article L 441-1 of the French Commercial Code, these General Terms and Conditions of Sale constitute the sole basis of the commercial relationship between the parties.

Their purpose is to define the conditions under which ELA INNOVATION supplies Products to professional clients ("the Purchasers") who request them, via the Vendor's website, by direct contact, via a paper or digital medium.

They apply, without restriction or reservation, to all Products sold by the Seller to Buyers in the same category, regardless of the clauses that may appear in the Buyer's documents, and in particular its general terms of purchase.

In accordance with the regulations in force, these General Terms and Conditions of Sale (GTCs) are systematically communicated to any prospect or customer who requests them, to enable them to place an order. They are also communicated to any Buyer prior to the conclusion of a single agreement referred to in Articles L 441-3 et seq. of the French Commercial Code, within the legal time limits.

Any order implies, on the part of the Buyer, agreement of these General Terms and Conditions of Sale and of the general terms of use of the Seller's website for electronic orders if this mode is activated on the Site.

The information contained in the Seller's catalogues, brochures and price lists is given for information only and may be revised at any time. The content of the GTC prevails over these documents.

The Seller is entitled to make any changes to them that it deems useful. The signature by the Buyer of an order or a quotation drawn up by the Seller implies the prior acceptance of the GTC, unless special conditions are accepted in writing.

Any modifications, amendments or changes to the terms contained in the GTC from the Buyer are expressly excluded and the GTC shall be deemed to prevail over any document produced by the Buyer. The Seller's failure to object to the terms contained in any subsequent communication from the Buyer shall never constitute a waiver, even partial, of the provisions of the GTC.

The Seller may, moreover, establish Categorical General Terms and Conditions of Sale, derogating from the present GTC, according to the type of Buyer considered, determined and based on objective criteria. In this case, the Categorical General Terms and Conditions of Sale shall apply to all Buyers meeting these criteria.

2. ORDER CONTRACT FORMATION

The Buyer's order is materialised either by an e-mail, or by an order form, or by the acceptance of a quote issued by the Seller directly or via the Site.

The sales contract is definitively and irrevocably concluded as soon as the order confirmation is issued by the Seller, acknowledging receipt of the Buyer's order or the return of a quotation issued by the Seller and signed by the Buyer. Any receipt and acceptance of Products by the Buyer is also deemed to be acceptance without reservation of the GTC.

3. CANCELLATION OR MODIFICATION ORDERS

Orders can only be modified or cancelled with the prior written consent of the Seller for standard Products and with payment of the Seller's cancellation fee (flat rate of 20% of the original price). Reduction or cancellation of orders for specific or customised Products is not possible. Products may only be returned with the prior written consent of the Seller.

If, during the execution of an order, the Buyer makes changes in the specifications or characteristics of the Products or services, the conditions of acceptance, the prices and the deadlines initially foreseen shall be automatically revised by the Seller.

4. DELIVERY - TIME LIMITS

Unless otherwise agreed, the Products are delivered to the address provided by the Buyer at the time of the order or indicated in the order confirmation. The Seller shall have the right, at its option, to make partial shipments of Products and to invoice each shipment separately. All delivery dates are indicative only and the Seller shall not be liable for any loss or damage resulting from any delay or failure to deliver for reasons beyond the reasonable control of the Seller. Where delivery requires the intervention of a Seller's technician, the Buyer undertakes to complete and comply the pre-requisite document provided, without reservation, with the general conditions for on-site intervention stipulated therein.

Any delays do not entitle the Buyer to cancel the order, to refuse the goods or to claim damages.

The Seller is automatically released from any deadline commitment in the event that the agreed payment conditions have not been observed by the Buyer, in the event that the technical information to be provided by the Buyer is not received in due time by the Seller, or in the event, in accordance with Article 1218 of the Civil Code, of force majeure or events such as industrial, epidemics, war, requisition, fire, flood, tooling accident, major scrap of parts during manufacture, interruption or delay in transport or any other cause leading to total or partial unemployment at the Seller or its suppliers.

5. TRANSPORT

Except when the carrier is chosen by the Seller, our goods travel at the risk of the recipient Buyer, regardless of the mode of transport. The transfer of risks to the Buyer occurs when the Products are handed over to the carrier. It is the responsibility of the Buyer to check the deliveries on arrival and to make any reservations to the carrier within the legal time limits. In the event of damage or partial loss, attention is drawn to the need to make all reservations to the carrier on the consignment note, the CMR consignment note or the delivery note. The verification and control, in quality and quantity, may not exceed 3 days after receipt. ANY CLAIM RELATING TO A DELIVERY MUST BE NOTIFIED OR CONFIRMED BY REGISTERED LETTER WITH ACKNOWLEDGEMENT OF RECEIPT WITHIN EIGHT DAYS OF DELIVERY.

In the case of international sales, delivery is subject to INCOTERMS EXWORKS or DAP depending on what is agreed at the time of the order.

The Product whose delivery has not been complained about within the above-mentioned period cannot be returned to the seller unless the seller accept it in writing, and the delivery is deemed to be in conformity. However, the return of the material does not exempt the Buyer from paying the invoice amount on the agreed due date. In no case may the Buyer make a deduction from the invoice without prior written agreement.

6. PRICES

The prices invoiced are, except in the following cases, those appearing on the proforma estimate and the order confirmation. However, they may be revised according to economic and currency fluctuations that may arise during an order on the sole basis of the following references: increase in raw materials, imported products, taxes relating to the goods delivered, and transport rates and variations in currency rates.

They are established in principle by an estimate which is valid for a maximum of 30 days. They are firm and non-revisable for a first order. The Seller reserves the right to modify them in the event of new orders for any reason whatsoever without the Buyer being able to claim any prejudice.

Prices are expressed in euros or, by agreement with the Seller, in US dollars, exclusive of tax, without discount, postage and packing not included, and are also payable in euros or, by agreement with the Seller, in US dollars, unless otherwise agreed in the order confirmation.

Prices do not include customs procedures or the payment of related duties.

7. TERMS OF PAYMENT

7.1 Only the payment conditions indicated on our price quotations or acknowledgements of receipt shall be valid. Otherwise, the price is payable in cash before delivery. A deposit of 50% of the estimated price may also be required to validate the order.

7.2 In the event of non-compliance with the payment deadline and without the need for a prior formal notice, the Buyer shall be liable for the following late payment penalties. Pursuant to Article L 441-10 of the French Commercial Code, the interest rate for late payment penalties shall be equal to the interest rate applied by the ECB to its most recent refinancing operation plus 10 percentage points. The rate applicable during the first half of the year concerned is the rate in force on 1 January of the year in question. An additional amount of €40 per payment incident will be charged as a fixed recovery fee.

7.3 Failure to meet a due date shall automatically result in all sums due becoming payable. Furthermore, the Seller reserves the right to suspend or cancel orders in progress without prejudice to any other remedy.

The Buyer waives the right to invoke set-off or the exception of non-performance which is not confirmed by an agreement with the Seller or an enforceable court decision.

7.4 Partial deliveries shall be invoiced in part.

8. RETENTION OF TITLE

The transfer of ownership of the Products is subject to full payment of the price by the Buyer, in principal and accessories, even in the event of the granting of payment deadlines. By express agreement, the Seller may enforce its rights under this retention of title clause, for any of its claims, on all the Products in the Buyer's possession, said Products being conventionally presumed to be those unpaid, and the Seller may take them back or claim them as compensation for all its unpaid invoices, without prejudice to its right to terminate the sales in progress. The Buyer is prohibited from pledging the Products and from transferring ownership of the Products by way of security. In the event of resale of the Products, the Buyer undertakes to pay the Seller immediately any part of the purchase price still due. This clause does not prevent the risk of loss of the Products from passing to the Buyer upon delivery. It is understood that the ownership of any embedded software in or forming part of the Products will always be retained by the Seller or its licensee(s), as the case may be.

9. GENERAL PRODUCT DESCRIPTIONS

9.1 All advertising documents (by way of example and not limitation: catalogues, leaflets, brochures, websites, etc.), commercial documents (by way of example and not limitation: price lists, etc.), technical documents (by way of example and not limitation: notices, diagrams, etc.) are only informative descriptions of our equipment intended to make it known.

9.2 This description does not in any way constitute a binding offer and, consequently, the seller expressly reserves the right at any time to make any modifications that the seller considers necessary or that are likely to improve our equipment which does not give any right to the Buyer to request sale cancellation or its condition update. Only the drawing up of a quotation or an order confirmation shall bind the terms of the order.

10. LIMITATION OF LIABILITY

Acceptance of the material delivered shall relieve us of all liability for any damage suffered by the Buyer if the material, whether integrated into a package or not, should cause quality, reliability or commercial issues to the Buyer.

Notwithstanding anything to the contrary contained in the GCS or any other document, the Seller's liability under these terms and conditions (whether for breach of contract, tort, indemnity or otherwise) shall not exceed an amount equal to the total purchase price paid by the Buyer to the Seller for the Product(s) giving rise to such liability.

Notwithstanding anything to the contrary, in no event shall Seller be liable for any property damage or personal injury, whether indirect, special, consequential or incidental (including, without limitation, damages for loss of use of facilities or equipment, loss of revenue, loss of data, loss of profits or loss of goodwill), whether or not Seller was advised of the possibility of such damages or was negligent except in cases of gross negligence or wilful misconduct.

The Buyer shall ensure and take responsibility for the collection and elimination of waste electrical and electronic equipment (WEEE) under the conditions provided for in Articles 21 and 22 of Decree No. 2005-829 of 20 July 2005 as amended by the Order of 8 October 2014. When expressly agreed in the sales contract, the organisation of the removal and treatment of the EEE placed on the market after 13 August 2005 may be entrusted to the Seller in accordance with Article 18 of Decree n°2005-829. In this case, the Buyer undertakes to notify the Seller at the end of the life of his equipment, to decontaminate it and to deposit it, together with the certificate of non-contamination, at the collection point indicated to him.

The financing of the removal and treatment of the equipment shall be borne by the Buyer.

11. WARRANTY

11.1 The Seller warrants the products against all latent defects in material or construction which appear under conditions of proper use within 24 months of shipment (except where otherwise specified). Provided that the Buyer is up to date with all such payments to the Seller and has properly used the products and kept and maintained them in good condition, the Seller warrants that the products supplied, subject to the above reservations, will be free from defects for 24 months after the date of shipment. This warranty excludes tag's battery and does not cover cases where the life cycle of the RFID Active Tag would be shorter than the warranty period, due to the user's specific settings, such as the very short cycle of the tag's frame transmission. The Seller may, at its option, repair or replace the Products concerned, provided that these Products or their defective parts are returned to the Seller, carriage paid and suitably packaged, before the expiry of this 24-month period or within one month of its expiry, accompanied by a written claim specifying the date of purchase.

It is expressly stated by the Seller and accepted by the Buyer that the Seller does not warrant that the computer programs supplied will operate without error or defect, nor does the Seller have any obligation of result in this respect. No product may be returned for credit, except by prior agreement.

11.2 Before returning the Products in the event of a claim under the warranty, the Buyer shall remove all elements that he has added or incorporated. The Seller shall not be liable for any loss or damage suffered by such elements because they have not been so removed. The fact that the Buyer returns the Products authorises the Seller to remove these elements from the Products, without any liability on his part.

11.3 The warranty set out in this clause is accepted by the Buyer in lieu of any representations, conditions or warranties, express or implied, statutory or otherwise, as to the condition, fitness for purpose or performance of the Products (or any materials used in connection therewith) or as to the workmanship of such Products. All such representations, conditions and warranties are hereby expressly excluded.

11.4 With the exception of any liability we may incur for death or personal injury resulting from negligence, we shall in no event be liable for any indirect, incidental or consequential damage to property or personal injury arising directly or indirectly from the supply of our products, irrespective of the cause of such damage, and irrespective of the basis of liability involved (contractual liability, quasi-liability, misinterpretation of our statements or otherwise).

12. EXPORT RESTRICTIONS

Buyer acknowledges that each Product and any associated software or technology, including technical information provided by Seller or contained in documents, are subject to applicable export controls. Buyer shall comply with all applicable laws, regulations, treaties and conventions relating to the export, re-export and import of any Product. The Buyer shall not, without first obtaining the necessary authorisation from the appropriate governmental body, :

- export or re-export any Product, or

- export, re-export, distribute or supply any Product to a restricted or embargoed country or to a person or entity whose right to participate in the export has been denied or restricted by the relevant authority.

Buyer shall cooperate fully with Seller in any official or unofficial audit or inspection relating to applicable export or import control laws or regulations, and shall indemnify and hold Seller harmless for or in connection with any violation of this section by Buyer or its employees, consultants, agents or customers.

13. ATTRIBUTION OF COMPETENCE

The Commercial Court of Montpellier -(Hérault-France) has sole jurisdiction to settle any dispute that may arise between the parties in the context of the GTC (including but not limited to their interpretation or execution).

These GTC and the contracts between the parties arising from them, whatever their form, are governed by French law and interpreted accordingly, both regarding the rules of substance and form.

14. LANGUAGE AND INTERPRETATION

The original language of these GTC is French. The original language of any contract concluded between the parties below is French. In the event of a dispute, the French version of the GTC shall prevail, even if a foreign language version has been drawn up for the purposes of the Buyer's understanding. All interpretations shall be made solely regarding this French version.