

Electronic Shelf tags Terms and Conditions

ESTags Terms and Conditions

THIS SERVICES AGREEMENT is made as of the ____ day of 2020.

In this Agreement, the following words shall have the following meanings:

“Buyer”	Means the organisation who buys goods from the Seller.
“Seller”	Means Electronic Self Tags DBA as Retail Solutions Pro, 1234 South Dixie Highway # 1234 Miami, Florida 33146
“Delivery Date”	Means the date specified by the Seller when the Goods are to be delivered.
“Goods”	Means the articles to be supplied to the Buyer by the Seller.
“Intellectual Property Rights”	Means all patents, registered and unregistered designs, copyrights, trademarks, know-how, and all other forms of intellectual property wherever in the world enforceable.
“Price”	Means the price set out in the list of prices of the Goods maintained by the Seller as amended from time to time or other such price that the parties may agree in writing plus such carriage, packing, insurance, or other charges or interest on such as may be quoted by the Seller. The Seller reserves the right to modify or amend the price listed in the list of prices of the Goods without prior notification to the Buyer.
“Condition”	Means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.

1.0 General

These conditions shall apply to all contracts for sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may seek to apply under any purchase order, order confirmation, or similar document. All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these conditions. Any purchase of Goods by the Buyer from the Seller is subjected to agreement with the Condition listed here forth in this document. Any variation to these Conditions (including special terms and conditions agreed between the parties including and without limitation as to discounts) shall be inapplicable unless agreed in writing by the Seller. Any advice, recommendation, or representation give by the Seller or its employees, representatives, or agents to the Buyer or its employees, representatives, or agents as to the storage, application, price, or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon at the Buyer's own risk. Accordingly, the Seller shall not be liable for any such advice, recommendation, or representation which is not so confirmed. Nothing in these conditions shall affect the statutory rights of any Buyer dealing as a consumer.

2.0 Price and Payment

Payment of the Price is strictly via bank transfer or online credit card with order unless a credit account has been established with the Seller in which even payment of the Price is due in 30 days, 60 days, or 90 days, whichever date is agreed upon by both parties, following the date of the invoice. The Seller is not liable to establish a credit account with any whom Buyer that requested. The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due interest to accrue from day to day, until the date of payment at a rate of 2% per annum above the base US rates from time to time. Alternatively, the Seller reserves the right of cancellation of the service provided by the Goods of Online viewing, or disable the access to the Goods and support services supplied by the Buyer for overdue payment. The seller reserves the right to grant, refuse, restrict, cancel, or alter credit terms at its sole discretion at any time.

The Seller is not responsible for the following:

- Bank charges incurred as a result of telegraphic transfer of funds to the Sellers account by the Buyer
- Delivery charges incurred for the deliverance of the Goods by the Seller to the Buyer

Failure by the Buyer to pay in the full amount due to sums subtracted as a result of bank charges incurred or delivery charges incurred are subjected to the above penalty. A penalty of charge interest on overdue invoices from the date when payment becomes due interest to accrue from day to day, until the date of payment at a rate of 2% per annum above the base rate of the Bank of England from time to time or cancellation of the service provided by the Goods of online viewing, or disable the access to the Goods and support services supplied by the Buyer.

All sums quoted under or further to the Conditions are deemed to be exclusive of Value Added Tax, Goods and Services Tax, or any and all similar taxation, tariffs, duties which will be added at the rate prevailing at the time of the invoice. The Buyer shall not be entitled to make a set off and/or counterclaim in respect of any funds owed by the Buyer to the Seller and shall pay all amounts due under or further to these Conditions without making any deduction of any kind. All Goods supplied by the Seller may be subjected to the export and import controls, restrictions, or regulations imposed by the prevailing country or governing body within the country of the Buyer. The Buyer will be responsible for all clearance of import and export regulations as imposed by their governing body in their country of operations.

3.0 Delivery

Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on, or as close as possible to the date required by the Buyer and agreed by the Seller. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. All dates supplied by the Seller for the delivery and installation of equipment and/or software shall be treated as approximate only. If the Seller is unable to deliver the Goods because of actions or circumstances under the control of the Buyer, then the Seller shall be entitled to place the Goods in storage until such times as delivery may be affected and the Buyer shall be liable for any expense associated with such storage. The Seller shall use its reasonable endeavours subject to its other contractual commitments from time to time prevailing and to the availability of Goods and personnel to comply with the delivery dates supplied by the Seller.

4.0 Support

A basic level of maintenance is covered by the Warranty for the first 12 months of the life of the Goods. The 12 months warranty coverage will be initiated at the point when the tags are connected and installed. The Buyer may enter into an agreement with the Seller to increase the level of support and pro activity of the support in monitoring the system. After a period of 12 months, a maintenance agreement must be signed for the continued support of the system. Details of the maintenance agreement are available by the employees, staff, representatives, or agents of the Seller when requested.

5.0 Equipment Liability

Risk will pass to the Buyer when equipment is delivered to the Buyer's premises. The Buyer hereby undertakes to accept liability for any equipment supplied by the Seller, whilst it is on the clients' premises, be it prior to or after installation is complete.

6.0 Warranty

Where and to the extent that the Seller is requested by the client and agrees to the recommended or advice regarding the choice and suitability of equipment and/or Goods. The Seller recognises that it will provide such advice to the client with reasonable skill and care subject to the Conditions. The Buyer acknowledges that any other circumstances it is reliant on its own skill and judgement in determining the suitability of the equipment and/or Goods. The Buyer alone shall bear responsibility for the accuracy and validity of any information supplied by the Buyer. The Seller shall at the cost of the Buyer pass on when called upon to do so by the Buyer, so far as it is reasonably able, the benefit of all warranty contained in any contract for the supply of equipment to the Seller. The total liability of the Seller to the Buyer in respect of all claims pursuant from the Conditions shall be limited to the Price as outlined in the initial invoice. Notwithstanding anything to the contrary herein, the liability of the Seller to the Buyer for:

- Death or personal injury resulting from negligence of the Goods
- Damage suffered to the Client as a result of breach by Electronic Shelf Tags of the condition as to the title or the warranty as to possession as implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Goods & Services Act 1982
- Damage for which ESL tags is liable under part 1 of the Consumer Protection Act 1987 shall not be limited

The Seller reserves the right to charge the Buyer at a reasonable rate for any work carried out that has been deemed to be caused by accidental, malicious, negligent damage to the Goods by the Buyer, its representatives, its employees, or its agents. The Seller will endeavour to configure the system to maximise its accuracy, subject to environmental conditions. The Seller will not be liable under the warranty in respect of the followings:

- Any defect arising from fair wear and tear, wilful damage, incorrect movement, misuse, alteration, or maintenance of the system arising due to negligence and care for the Goods
- Failure to follow the Seller's instruction whether in both oral or writing format
- Any Goods for which the total price has not been paid by the due date
- Any defect arising from the design, specifications, or materials supplied by the Buyer
- Any defect arising from the installation of the system, unless such installation was carried out by the Seller, its employees, its representatives, or its agents

The Seller will take all reasonable care to maintain the confidentiality of any data supplied by the Buyer, but shall not be liable for any external breach resulting in the access or loss to such data.

7.0 Force Majeure

Neither the Seller, nor any of its servants, agents or subcontractors shall be under any liability whatsoever to the Buyer for non-performance, or delay in performance of the delegation to be performed by the Seller hereunder directly or indirectly caused by or resulting from an Act of God, outbreak of hostility (whether or not war is declared), insurrection, riot, civil disturbance, government act or regulation, fire, flood, accident, theft, strike, lockout or trade disputes, delays affecting shipping or delays affecting the supplies of equipment or suitable and adequate material or any other event or circumstances whatsoever outside the control of the Seller in relation to the Condition.

8.0 Consequential Loss

Neither the Seller nor any of its agents, servants or subcontractors shall be liable in any manner for any indirect or consequential loss, damage or injuries (which expression shall mean pure economic loss, loss of profit, loss of business and like loss suffered by the Buyer, nor shall they be liable to the Buyer for any loss or corruption to data or programs held or used by or on behalf of the Buyer in relation to or arising out of this Condition.

9.0 Title

Property of the Goods shall not be passed to the Buyer until the following:

- The purchase price of the Goods has been paid in full
- Payment of the price is made to the Seller of any sum which is at the date of the agreement or may thereafter become due or owing from the Buyer to the Seller

Until the title of the Goods has been passed to the Buyer, the Buyer will hold the Goods in a fiduciary capacity. The Buyer will not obliterate any identifying marks on the Goods, nor its packaging and will keep the Goods separated from other products. The Seller may reserve the right at any time after the payment for the Goods has become due exercise the right to demand for itself or any of its authorised agents to enter

the Buyer's premises to repossess the Goods. The Seller reserves the right to maintain an action against the Buyer for the price of the equipment and any further costs ensuing, notwithstanding that property has not been passed. If the Buyer sells the equipment to a third party before or after title has been passed to the client, any such sale shall be done by the Buyer and on no account shall the Seller be responsible to the terms of such sale. The Buyer shall require with written permission from the Seller to undertake any negotiations or sale(s) of any part of the Goods which the Goods is held in fiduciary capacity.

10.0 Installation

Installation of Goods at the Buyer's site may be provided by the Seller, or by its agent, representative, or employees, at the Seller's prevailing rates, or without further charge, if the price quoted for the Goods is inclusive of installation services. The installation shall consist of the Seller or approved agency personnel successfully completing the manufacturer's standard installation diagnostic test programs and procedures applicable to the Goods. The Buyer shall have the site prepared to the agreed pre-requisites prior to the arrival of the site of installation personnel (without limitation the provision of all necessary electricity, wiring, telecommunications and broadband facilities, consumable materials and apparatus). Failure to do so will result in chargeable delays to the installation of the Goods. In the event that the Buyer has removed the Goods from its original cartons or packaging prior to the arrival of installations personnel without guidance from the Seller, the Buyer shall be charged for installation and any repairs necessary to the Goods at the prevailing rates. The Buyer acknowledges that it is responsible for maintaining its premises as a suitable and safe operating environment for the Goods and their installation personnel.

11.0 Substitutions and Modifications

The Seller reserves the right to make improvements or modifications in the specifications of the Goods supplied by the Seller provided that such improvements, substitutions, or modifications will not materially worsen the overall performance of the Goods.

12.0 Cancellation

In the event of the Buyer cancelling less than 90 days before scheduled installation, the Buyer shall be liable for a fee according to the following schedule:

Days prior to delivery	% of total free
90-61	5
60-45	10
44-31	25
30 or less	40

13.0 Disputes & Governing Law

Any dispute arises between either the Buyer or the Seller concerning the Conditions shall be determined as follow:

- If the dispute shall be of a technical nature concerning matters of computing or data processing or any similar related matter, then such dispute shall be referred for final settlement to an expert nominated jointly by the Seller and the Buyer, or failing such nomination within 14 days after either parties request to the other therefore nominated at the request of either party by the Director for the time being of the British Computer Society such expert shall act as an expert and not an arbitrator. Their decision shall be final and binding on the parties
- In any other cases the dispute shall be determined by the English Courts, and the parties hereby submit to exclusive jurisdiction of such Courts for such purpose
- In any dispute between contracts, this set of Conditions shall prevail
- This Condition shall be formed and constructed by English law

14.0 Software License

The Seller provides the software package in accordance with the terms set out in the software license detailed below:

- Subject to payment for the System, the Seller grants the Buyer a non-exclusive, perpetual, non-transferable license for the Buyer to use the software in machine readable object code at the site on a single processor (unless a greater number of processors is specified in the invoice or subsequent agreements) for its own internal business purposes and in accordance with this Conditions
- The Seller may make available to the Buyer upgrades of software at prices to be determined by the Seller, but the Buyer will be under no obligation to acquire or use such upgrades
- The Seller may from time to time supply free upgrades to improve the performance of the software. The Buyer hereby undertakes to accept such modifications
- The Buyer acknowledges that the intellectual property rights in the software (including any customisations and updates) belong to the Seller

The Buyer undertakes the following:

- not to copy, publish or distribute, decompile, reverse engineer, translate, adapt, vary or modify the software except as expressly permitted by this Conditions
- not to transfer, assign, sub-license, charge, or otherwise deal in the software other than in accordance with the terms of this Condition
- to maintain all copyright notices on all copies of software
- to notify the Seller immediately it becomes aware that any person may have unauthorised knowledge, possession, or use of the software

The Buyer shall use its best endeavours to ensure its employees and agents do not disclose, communicate, copy, or reveal for any purpose whatsoever the software or any part thereof. The Buyer accepts liability for any breach of this Conditions by its employees, representatives, staffs, personnel, or agents.

15.0 Confidentiality

The Buyer will treat all information communicated in confidence under or in connection with this Condition as confidential.