

## TERMS AND CONDITIONS OF SALE

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This Sales Agreement (“**Agreement**”) is a legal contract between you (“**you**,” “**your**,” or “**Purchaser**”) either individually or on behalf of a legal entity and **eAgile, Inc.** (“**we**,” “**us**,” or “**eAgile**”) for eAgile’s sale and your purchase of eAgile’s IoT and RFID tags and any related equipment (the “**Products**”). The business terms applicable to the sale of the Products are contained in Purchaser’s purchase order for the Products that eAgile accepts as evidenced by the issuance of its sales order.

**You are bound by this Agreement by either (a) your payment for or acceptance of the Products; or (b) your failure to promptly object to eAgile’s sales order. In no event will the pre-printed provisions of your purchase order or any associated documentation constitute a binding agreement between the parties or serve to modify the provisions of this Agreement, regardless of eAgile’s failure to object to your purchase order or associated documentation.**

**You and eAgile agree as follows:**

### **1. Price and Payment Terms.**

- a. Freight Terms; Quantities.** All sales are F.O.B. eAgile’s plant that ships the Products. You are responsible for freight costs. Product prices are those in effect on the shipment date and are subject to change without prior notice. Shipments that vary from the actual quantity ordered will be deemed conforming if the difference does not exceed ten percent. eAgile may also ship a quantity of Products greater than the quantity ordered to compensate for expected non-functioning products present in a roll. You will not be required to pay for these additional Products, but they will not make the shipment non-conforming.
- b. Payment Terms.** Payment in U.S. Dollars is due and payable in accordance with the terms provided in eAgile’s invoice. If payment is not received by the due date, then you shall pay eAgile an additional sum equal to 1.5% per month until all unpaid amounts are fully paid. If eAgile determines that your financial condition does not justify continuance of Product manufacturing or shipment on the payment terms specified, eAgile may require that you pay for the Products in advance. You shall pay the attorney’s fees and collection costs that eAgile incurs in collecting any unpaid amounts.
- c. Taxes; Duties.** The amount of any federal, state, local, or other taxes applicable to the sale of the Products will be added to the price and paid by you unless you provide eAgile with an acceptable exemption certificate issued by the appropriate taxing authority. If you are a foreign resident, you shall be liable for all customs and other duties related to the sale of the Products, their exportation outside of the U.S., and their importation into your country.

d. **Security Interest.** You hereby grant eAgile a security interest in the Products sold until payment of the purchase price and all other amounts due eAgile. You shall promptly sign and deliver any documents as eAgile requests to perfect this security interest.

2. **Shipment and Transportation Terms.** eAgile reserves the right to specify routing of shipments. eAgile will attempt to ship the Products within the time specified on the sales order, if indicated, and if not, then within a reasonable time. You acknowledge that no claim may be made for shipment delays. Unless otherwise specified in the applicable sales order, freight charges will be prepaid and billed. If you specify a carrier who is not an eAgile approved carrier, the shipment will be made to you Freight Collect.

3. **Title and Risk of Loss.** Title and risk of loss for Products will pass to you on eAgile's delivery to the carrier, regardless of the freight terms or payment method of the transportation charges.

4. **Transit Damage Claim Procedure.**

a. **Inspection.** You are solely responsible to inspect the entire shipment of Products as tendered and file a claim with the carrier if any portion is missing or damaged. Your inspection obligations include all non-pressure-sensitive roll inlays, pressure-sensitive inlays, and RFID-enabled labels.

b. **Reporting.** If you discover any Product loss or damage on delivery, you must note such loss or damage on the delivery receipt. You must report any concealed Product damage to the carrier within 15 days of receipt. Retaining the entire Product package is necessary until after the carrier issues a concealed damage inspection report.

c. **Claims.** Time is of the essence. Prompt inspection of the Products and the prompt filing of the loss and damage claim with all necessary documents will facilitate the carrier's fast settlement. All claims must be accompanied by the following documents:

- Original paid freight bill.
- Certified copy or original bill of lading.
- Duplicate of invoice covering shipment.
- Duplicate of destination inspection report, if available, or duplicate of delivery receipt noting the shortage or damage.
- The freight bill and bill of lading can be obtained by emailing [orders@eAgile.com](mailto:orders@eAgile.com). Retain copies for your files.

d. **Assistance.** If you have a problem obtaining the carrier's payment of a valid freight claim, you may contact us at [orders@eAgile.com](mailto:orders@eAgile.com) for assistance.

5. **Product Modification; Converting.** eAgile reserves the right to modify the Products as determined in our sole discretion unless agreed upon in writing before the sale. If eAgile issues guidelines for converting any RFID Products, you must only convert the Products pursuant to those guidelines. eAgile is not responsible for any RFID Product failure caused by the converting process.

**6. Purchase Order Cancellation; Product Returns.** You shall not cancel a purchase order after it is received by eAgile. All Products are returnable only in accordance with the limited warranty stated in section 7. Before returning any Product, you shall obtain eAgile's return authorization and shipment instructions.

**7. Warranties; Exceptions; Remedy.**

- a. Title.** eAgile warrants that it has good title to the Products and the right to sell them to Purchaser.
- b. Limited Product Warranty.** Subject to the limitations stated below, eAgile warrants that for six months after delivery or such other period as specified in the applicable Product Data Bulletin (the "**Warranty Period**"), the Products will be in material compliance with eAgile's specifications stated in the applicable Product Data Bulletin. This limited warranty will only apply if you are not in breach of this Agreement and you have notified eAgile of the Product non-conformity in writing before Warranty Period expiration.
- c. Exceptions.** This limited warranty will not apply to (i) your negligence, abuse, misapplication, or misuse of the Products; (ii) any Products that eAgile determines were defective at shipping (such as non-pressure-sensitive roll inlay products) if you were not charged for those Products; or (iii) your use of the Products other than as specified in the applicable Product Data Bulletin. All statements, technical information, and recommendations about the Products are based upon tests believed to be reliable but do not constitute a guarantee or warranty. The Products are sold with the understanding that you have independently determined the suitability of the Products for your business. No salesperson, representative, or agent of eAgile is authorized to give any guarantee, warranty, or make any representation contrary to the above limited Product warranty.
- d. Sole Remedy.** Your sole remedy and eAgile's sole liability for breach of this limited Product warranty is, at eAgile's discretion, the prompt replacement of the non-conforming Product or the issuance of a Product credit in such amount as eAgile considers reasonable.

**8. Disclaimer of Warranties.** The express warranties in section 7 are in lieu of all other warranties, express, implied, or statutory, regarding the Products, including any warranties of merchantability and fitness for a particular purpose. You acknowledge that you have not relied on any warranties other than those stated in section 7. eAgile does not warrant that your use or operation of the Products will be compatible or work with Third-Party Products, except as expressly stated in the applicable Product Data Bulletin. "Third-Party Products" means application software or hardware products provided by third-party vendors, including operating system and application software with which the Products interface that may provide functionality essential to their operation.

**9. Installation and Support Services Not Included.** eAgile will not provide you with any Product installation or support services under this Agreement.

**10. Export Restrictions.** You acknowledge that the Products may be subject to U.S. export jurisdiction. You shall comply with all applicable international and national laws that apply to the Products, including the U.S. Export Administration Act and associated regulations.

**11. Exclusion of Incidental, Consequential, and Certain Other Damages.** To the maximum extent permitted by law, eAgile and its suppliers are not liable for any special, incidental, punitive, indirect, or consequential damages, including for any of the following that arise out of or are any related to the use of the Products or any related services, regardless of the liability theory and even if eAgile or any supplier was advised of the possibility of these damages: (a) loss of profits; (b) loss of confidential or other information; (c) business interruption; (d) personal injury or death; (e) loss of privacy; (f) failure to meet any duty, including of good faith or reasonable care; (g) negligence; or (h) any other pecuniary loss.

**12. Liability Limitation and Remedies.** Notwithstanding any damages that you might incur for any reason (including all damages in contract, tort, or to any third-party), eAgile's and its suppliers' entire liability under this Agreement and your exclusive remedy (except for any repair or replacement elected by eAgile) is limited to your actual, direct damages up to the purchase price of the Products responsible for the loss. The foregoing limitations, exclusions, and disclaimers (including sections 7, 8, and 11) apply to the maximum extent permitted by law, even if any remedy fails of its essential purpose.

**13. Force Majeure.** eAgile is not liable for any loss, damage, delays, changes in shipment schedules or failure to deliver caused by accident, fires, floods, labor disputes or shortages, riots, civil commotion, insurrection, war, terrorism, sabotage (including computer viruses), the elements, embargo, failure of carriers, extended mechanical failure, shortages of utilities, raw materials, equipment or transportation, government action, the effect of any laws, ordinances, rules and regulations, whether valid or invalid, acts of God, or public enemy, prior orders from customers or limitations on eAgile's or its suppliers' production or marketing activities or any other causes or contingencies beyond eAgile's control.

**14. Publicity.** You hereby grant eAgile the right to publish your name, tradename, and trademark in a press release announcing the parties' business relationship or in a public list of eAgile's customers, and eAgile may post the press release or list on its website or elsewhere.

**15. Applicable Law.** This Agreement is governed by Michigan (U.S.A.) law, without regard to its choice of law principles, as applied to agreements entered into and performed entirely in the State of Michigan. Unless expressly waived by eAgile in writing for the particular instance, the state and federal courts located in Kent County, Michigan, U.S.A., have sole and exclusive jurisdiction and venue for actions related to the subject matter of this Agreement. You consent to the jurisdiction of these courts, and you also agree that the U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement or to any dispute or transaction arising out of this Agreement.

**16. Entire Agreement; Amendment; Severability.** This Agreement states eAgile's entire liability and your exclusive remedy concerning the Products and supersedes any Product communications or advertising. Except for the business terms of your purchase order for the Products if accepted by eAgile, you acknowledge that this Agreement is a complete statement of the agreement between you and eAgile for the Products, and there are no other prior or contemporaneous understandings, promises, representations, or descriptions concerning the Products. No amendment to or modification of this Agreement is binding unless made in writing and signed by eAgile's authorized officer. No failure to exercise or delay in exercising any right or any power in this Agreement will operate as a waiver. If any provision of this Agreement is held void, invalid, unenforceable, or illegal, the other provisions will continue in full force and effect, and the invalid, unenforceable, or illegal provision will be amended to achieve as closely as possible the effect of the original term. If there is any conflict or contradiction between this Agreement and your purchase order for the Products accepted by eAgile, this Agreement will control.

**17. Confidential Information.**

**a. Description of Confidential Information.** You acknowledge and agree that the Products, Product Data Bulletins, and all non-public information emanating from the Products and eAgile's business in any form are eAgile's valuable trade secrets and its "**Confidential Information.**" You shall not permit the duplication, use, or disclosure of any Confidential Information to any person (other than your employees, agents or representatives), unless eAgile specifically authorizes that duplication, use, or disclosure in writing before any disclosure. To the extent that eAgile authorizes the duplication of Confidential Information, all such copies will bear the same confidentiality notices, legends, and intellectual property rights' designations that appear in the original versions, and you shall keep detailed records of the location of all Confidential Information.

**b. Degree of Care.** You shall use reasonable diligence, and in no event less than that degree of care that you use for your own confidential information, to prevent the unauthorized disclosure or reproduction of the Confidential Information.

**c. Term.** These confidentiality obligations will survive for five years from the date of eAgile's first disclosure of any Confidential Information to you, except that Confidential Information constituting a trade secret under applicable law will survive for as long as the Confidential Information remains a trade secret under that law.

(end)