

GATEWAY 90 DAY LIMITED WARRANTY AGREEMENT

This Agreement ("Agreement") is between you and Gateway Manufacturing LLC ("Gateway") and applies to Gateway and eMachines branded products ("Products") and services purchased in the U.S. or Canada by you from Gateway, Inc. or any of its subsidiaries or affiliates or a Gateway authorized reseller ("Reseller"), unless you enter into a separate written agreement with Gateway. The limited warranty does not cover software or non-Gateway or non-eMachines branded products (e.g. printers, scanners). **THIS AGREEMENT APPLIES TO YOU UNLESS YOU NOTIFY GATEWAY IN WRITING THAT YOU DO NOT AGREE TO THIS AGREEMENT WITHIN 15 DAYS AFTER YOU RECEIVE THIS AGREEMENT AND YOU RETURN YOUR PRODUCT OR CANCEL SERVICES UNDER EITHER GATEWAY'S OR THE RESELLER'S RETURN POLICY, AS APPLICABLE. THIS AGREEMENT CONTAINS A DISPUTE RESOLUTION CLAUSE. PLEASE SEE SECTION 7 BELOW.**

The term of this Limited Warranty is ninety (90) days (the "Limited Warranty Period"). For products purchased directly from Gateway, the Limited Warranty Period begins when the product is shipped to you; for products purchased from an authorized reseller, the Limited Warranty Period begins on the date of purchase.

1. Technical Support. During the Limited Warranty Period, Gateway will provide product technical support. Please note that when contacting Gateway via telephone, long distance and other charges may apply, depending upon your calling area. The scope of technical support consists of helping you diagnose and resolve problems with defects in Products covered by this Agreement, and, for PC Products, reinstalling the factory-installed operating system and software to restore it to the original factory configuration. Gateway may provide technical support via on-line, telephone and other methods. Gateway may change the means through which it provides technical support at any time. **Gateway is not the manufacturer of the software or operating system and does not guarantee that software or operating system will be free from errors, either in isolation or in combination with hardware.**

Additional Support for server and server storage Network Operating Systems ("NOS"): for thirty (30) days from the purchase of a NOS, Gateway will assist the original end user with (i) installation of any NOS purchased from Gateway; (ii) configuration of the NOS software so that it works with the networked Gateway computers purchased by the original end user ; (iii) setup of the NOS software so that it is fully integrated with other products the original end user purchased from Gateway; and (iv) troubleshooting issues associated with the NOS software and assistance with NOS error messages.

2. Product Limited Warranty. Gateway warrants that its Products will be free from defects in materials and workmanship for the Limited Warranty Period. During the Limited Warranty Period, Gateway will, at its option: (i) provide replacement parts necessary to repair the product, (ii) repair the product or replace it with a comparable product, or (iii) refund the amount you paid for the product, LESS DEPRECIATION, upon its return. Replacement parts and products will be new or serviceably used, comparable in function and performance to the original part and warranted for the remainder of the original warranty period or, if longer, 90 days after they are shipped to you.

THIS LIMITED WARRANTY DOES NOT COVER MISUSE OR MINOR IMPERFECTIONS IN UNITS THAT MEET DESIGN SPECIFICATIONS OR IMPERFECTIONS THAT DO NOT MATERIALLY ALTER FUNCTIONALITY.

THIS LIMITED WARRANTY DOES NOT COVER AND GATEWAY IS NOT RESPONSIBLE FOR:

- DAMAGES CAUSED BY MISUSE, ABUSE, ACCIDENTS, FIRE, THEFT, DISAPPEARANCE, MISPLACEMENT, POWER SURGES, VIRUSES, RECKLESS, WILLFUL, OR INTENTIONAL CONDUCT.
- DAMAGES CAUSED BY SERVICING NOT AUTHORIZED BY GATEWAY.
- DAMAGES CAUSED BY USAGE THAT IS NOT IN ACCORDANCE WITH PRODUCT INSTRUCTIONS.
- DAMAGES CAUSED BY FAILURE TO FOLLOW THE PRODUCT INSTRUCTIONS OR FAILURE TO PERFORM PREVENTIVE MAINTENANCE.
- DAMAGES CAUSED BY THE COMBINATION OF GATEWAY OR EMACHINES BRANDED PRODUCTS WITH OTHER NON-GATEWAY BRANDED, OR NON-EMACHINES BRANDED PRODUCTS, ACCESSORIES, PARTS OR COMPONENTS.
- SOFTWARE, INCLUDING THE OPERATING SYSTEM AND SOFTWARE ADDED TO YOUR PRODUCT THROUGH OUR FACTORY-INTEGRATION SYSTEM, THIRD-PARTY SOFTWARE, OR THE RELOADING OF SOFTWARE.
- ANY EQUIPMENT OR COMPONENTS THAT WERE NOT INCLUDED IN YOUR PRODUCT AS ORIGINALLY SOLD TO YOU.
- NORMAL WEAR AND TEAR
- COSMETIC DAMAGE THAT DOES NOT AFFECT FUNCTIONALITY.
- PRODUCTS WHERE THE GATEWAY SERIAL NUMBER IS MISSING, ALTERED OR DEFACED.

ANY WARRANTY APPLICABLE TO SOFTWARE, NON-GATEWAY BRANDED, OR NON-EMACHINES BRANDED PRODUCTS IS PROVIDED BY THE ORIGINAL MANUFACTURER.

3. Services and Service Limited Warranty. Any services provided to you by Gateway that are not within the scope of the Limited Warranty also are governed by this Agreement. For a period of ninety (90) days after services are performed, Gateway warrants that services provided by it were performed in a professional and workmanlike manner. If your problem recurs within the 90 service warranty period, Gateway will, at its option, (1) re-perform the services, (2) replace the product pursuant to the terms of this Agreement, (3) permit you to return the product and issue a refund pursuant to the terms of this Agreement, (4) refund the amount you paid for the services..

If you purchased an extended service plan, such as the Gateway Extended Service Plan, please refer to the service plan for the coverage, duration and terms of service. Extended service plans are provided by a third party and not by Gateway.

4. Instructions for Warranty Service. For specific instructions on how to obtain warranty service for your product, you can reach Technical Support by going to www.gateway.com/support or you can call Gateway's Technical Support Hotline at the number listed on your Gateway product or under the "Contact Us" link at www.gateway.com/support. Please note that when contacting Gateway via telephone, long distance and other charges may apply, depending upon your calling area. Support methods are subject to change.

To obtain warranty service:

- You must assist Gateway in diagnosing issues with your product and follow Gateway's warranty processes.
- You must obtain warranty service from Gateway or an authorized service center specified by Gateway. Gateway will not reimburse you for service performed by others.
- You may be required to deliver and retrieve your product to and from Gateway or an authorized service facility specified by Gateway at your expense. When sending a product to Gateway or the authorized service facility specified by Gateway, you must deliver the product, freight prepaid, in either its original packaging or packaging affording an equal degree of protection. You are responsible for properly packaging your product, paying all shipping costs, loss or damage to the product during shipping, and any other taxes, fees or charges associated with transporting the product to an authorized Gateway service facility. **YOU ARE RESPONSIBLE FOR ANY DAMAGE TO YOUR GATEWAY PRODUCT DURING SHIPMENT TO US.**
- Before providing your product to Gateway for service, remove any confidential, proprietary or personal information, and removable media, such as floppy disks, CDs, or PC Cards.
- If Gateway asks you to return defective parts or products, you must do so within 7 days after you receive the replacement parts or products. Gateway will charge you for replacement parts or products if you fail to do so.

IT IS YOUR RESPONSIBILITY TO BACK UP THE CONTENTS OF YOUR HARD DRIVE BEFORE SERVICES ARE PERFORMED AND REMOVE ANY DATA FROM PARTS OR PRODUCTS RETURNED TO GATEWAY, INCLUDING ANY DATA YOU HAVE STORED OR SOFTWARE YOU HAVE INSTALLED ON THE HARD DRIVE. It is possible that the contents of your hard drive will be lost or reformatted in the course of service and Gateway will not be responsible for any damage to or loss of any programs, data, or other information stored on any media or any part of any product serviced. IF DURING THE REPAIR OF THE PRODUCT THE CONTENTS OF THE HARD DRIVE ARE ALTERED, DELETED, OR IN ANY WAY MODIFIED, GATEWAY IS NOT RESPONSIBLE FOR ANY LOSS OF YOUR DATA WHATSOEVER. YOUR PRODUCT WILL BE RETURNED TO YOU CONFIGURED AS ORIGINALLY PURCHASED (SUBJECT TO AVAILABILITY OF SOFTWARE).

5. Implied Warranties. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS LIMITED IN DURATION TO THE DURATION OF THIS WARRANTY.

Commercial Purchasers: Gateway extends the above limited warranty to purchasers of Products for industrial, commercial and business use upon the same terms and conditions and exclusions applicable to consumer purchasers. **HOWEVER, WITH RESPECT TO COMMERCIAL PURCHASERS, ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXCLUDED AND DISCLAIMED.**

6. Limitation of Liability. GATEWAY SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY. GATEWAY'S AND YOUR MAXIMUM LIABILITY TO THE OTHER IS LIMITED TO PURCHASE PRICE YOU PAID FOR PRODUCTS OR SERVICES PLUS INTEREST ALLOWED BY LAW. NEITHER YOU NOR GATEWAY IS LIABLE TO THE OTHER IF YOU OR IT ARE UNABLE TO PERFORM DUE TO EVENTS YOU OR IT ARE NOT ABLE TO CONTROL, SUCH AS ACTS OF GOD OR FOR VIRUSES, PROPERTY DAMAGE, LOSS OF USE, INTERRUPTION OF

BUSINESS, LOST PROFITS, LOST DATA OR OTHER CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, HOWSOEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

Some states or jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, or allow limitations on how long an implied warranty lasts, so the above limitations may not apply to you. This Limited Warranty gives you specific legal rights and you may have other rights which vary from state to state or jurisdiction to jurisdiction.

7. Dispute Resolution. You and Gateway agree that any Dispute between you and Gateway will be resolved exclusively and finally by arbitration administered by the National Arbitration Forum (NAF) and conducted under its rules, except as otherwise provided below. You and Gateway will agree on another arbitration forum if NAF ceases operations. The arbitration will be conducted before a single arbitrator, and will be limited solely to the Dispute between you and Gateway. The arbitration, or any portion of it, will not be consolidated with any other arbitration and will not be conducted on a class-wide or class action basis. The arbitration shall be held at any reasonable location near your residence by submission of documents, by telephone, online or in person whichever method of presentation you choose. If you prevail in the arbitration of any Dispute with Gateway, Gateway will reimburse you for any fees you paid to NAF in connection with the arbitration.

Any decision rendered in such arbitration proceedings will be final and binding on the parties, and judgment may be entered thereon in any court of competent jurisdiction.

Should either party bring a Dispute in a forum other than NAF, the arbitrator may award the other party its reasonable costs and expenses, including legal fees, incurred in staying or dismissing such other proceedings or in otherwise enforcing compliance with this dispute resolution provision.

You understand that, in the absence of this provision, you would have had a right to litigate disputes through a court, including the right, if any and subject to the rules of your jurisdiction, to litigate claims on a class-wide or class-action basis, **and that you have expressly and knowingly waived those rights and agreed to resolve any Disputes through binding arbitration in accordance with the provisions of this paragraph.** This arbitration provision shall be governed by the Federal Arbitration Act, 9 U.S.C. Section 1, *et seq.* For the purposes of this provision, the term "Dispute" means any dispute, controversy, or claim arising out of or relating to (i) this Agreement, its interpretation, or the breach, termination, applicability or validity thereof, (ii) the related order for, purchase, delivery, receipt or use of any product or service from Gateway, or (iii) any other dispute arising out of or relating to the relationship between you and Gateway; the term "Gateway" means Gateway, Inc, its parents, subsidiaries, affiliates, directors, officers, employees, beneficiaries, agents, assigns, component suppliers (both hardware and software), and/ or any third party who provides products or services purchased from or distributed by Gateway; and the term "you" means you, or those in privity with you, such as family members or beneficiaries. Information may be obtained from the NAF on line at www.arbforum.com, by calling 800-474-2371 or writing to P.O. Box 50191, Minneapolis, MN, 55405.

THIS AGREEMENT AND ANY SALES THERE UNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF SOUTH DAKOTA, WITHOUT REGARD TO CONFLICTS OF LAWS RULES.

8. General. Gateway may assign this Agreement and/or any associated service plan without your consent and without notice to you. If Gateway does assign this Agreement and/or any associated service plan, the assignee will assume all obligations to you, Gateway will be released of all obligations, and you agree to look solely to the assignee for the performance of all obligations under this Agreement and/or any associated service plan. Gateway, Inc. and its subsidiaries and affiliates are intended beneficiaries of this Agreement. If there is any inconsistency between this Agreement and any other agreement included with or relating to products or services purchased from Gateway, this Agreement shall govern. This Agreement may not be modified, altered or

amended without the written agreement of Gateway. Any additional or altered terms shall be null and void, unless expressly agreed to in writing by Gateway. If any term of this Agreement is illegal or unenforceable, the legality and enforceability of the remaining provisions shall not be affected or impaired. This Agreement shall be interpreted under the laws of the State of South Dakota, without giving effect to conflicts of law rules.

9. Privacy Notice. You can review Gateway's Privacy Policy on our web site, located at www.gateway.com/privacy. Gateway will maintain and use your customer information in accordance with its Privacy Policy.

10. For Residents of Canada: This Agreement is subject to the applicable provisions of Canadian consumer protection laws that cannot be derogated from by private agreement.

11. International Support: You must comply with all applicable export laws and regulations if you export the product from the United States or Canada. Gateway does not accept for return any products purchased from a reseller. Customers outside the United States may be responsible for paying all freight charges incurred in shipping, importing/exporting and receiving replacement products and parts and for arranging and paying for the shipment of any defective part(s) back to the Gateway.

All international customers are responsible for all customs duties, VAT and other associated taxes and charges.

Please send correspondence about this Agreement to:

**Gateway Customer Service Department
Attn: Warranty Services
610 Gateway Drive
North Sioux City, SD 57049**

Current information on technical support and warranty policies, phone numbers and other service information is available on our web sites: www.gateway.com and www.emachines.com

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