

**TERMS AND CONDITIONS
FOR GATEWAY CUSTOM INTEGRATED SOLUTIONS**

This Agreement sets forth the terms and conditions of that apply to the order placed with Gateway Companies, Inc. or any of its subsidiaries or affiliates (“Gateway”) by you (sometimes referred to herein as “You”, “Your”, or “Buyer”) for custom goods or services from Gateway (“Order”). Upon its acceptance of your Order, Gateway will provide the services set forth in your Order and accepted by Gateway (“Services”) on the terms in this Agreement and the terms in Gateway’s Standard Terms of Sales and Limited Warranty Agreement in effect at the time of performance of the Services (the “Terms of Sale”), which are incorporated herein by reference, and which together are the complete agreement between you and Gateway with respect to Your Order.

1. **DEFINITIONS.** “Custom Software and Hardware” means software and hardware not listed on Gateway’s standard product list. Custom Software and Hardware may be sourced from a third-party or it may be Gateway branded products that have been customized to meet Buyer’s specifications. “Buyer Furnished Property” means Custom Software and Hardware purchased by or on behalf of Buyer and supplied to Gateway for the performance of Services. “Custom Applications” means one or more computer software applications received by Gateway from Buyer for installation on Gateway-branded computer products purchased by Buyer.

2. **BUYER’S OBLIGATIONS.** Buyer agrees to (a) provide to Gateway written authorization to place orders for Customer Software and Hardware with hardware and software suppliers, including Gateway, for and on behalf of Buyer and to be solely responsible for all costs and expenses therefor and/or provide Gateway written authorization to install Custom Applications on Gateway-branded computer products purchased by Buyer; (b) be solely responsible for system compatibility testing of Custom Software and Hardware and Custom Applications ; (c) obtain a valid and enforceable license to have Custom Software and Custom Applications loaded on Gateway’s products and use of the Custom Software and Custom Applications in a legal and appropriate manner; and (d) perform all other Buyer obligations as set forth in this Agreement.

3. **RETURN POLICY.** You may return Custom Software and Hardware only to the extent permitted by the supplier of the Custom Software and Hardware. Gateway’s sole obligation to You regarding the return of Customer Hardware and Software will be to facilitated the return of such Custom Hardware or Software to the supplier to the extent permitted by such supplier and remitting to Buyer any refund actually received from such supplier for such Custom Hardware or Software, less any sums due and owing by Buyer to Gateway. The amount of any refund from Gateway, if any, for Gateway-branded products that have been customized to Buyer’s specifications, will be reduced by the greater of (a) 20% of the purchase price of such customer products, or (b) costs Gateway incurs to eliminate custom features reasonably necessary to render such products commercially salable. 4. **GATEWAY’S OBLIGATIONS.** Gateway will use commercially reasonable efforts to procure on Your behalf and as Your agent the Custom Software and Hardware and integrate Custom Software and Hardware and Custom Applications with Gateway products as specified in the Order. Gateway agrees to support Gateway-branded products as provided in the Terms of Sale applicable to that product. Such support shall not apply to any Custom Software and Hardware or Custom Applications, whether integrated into a Gateway system or sold as a stand-alone item, and Buyer agrees to look solely to the maker(s) and/or licensors of such Custom Software and Hardware or Customer Applications for support for such Custom Software and Hardware or Customer Applications. Gateway may, as a service to its customers, and solely as an accommodation to Buyer, assist Buyer in its efforts to replace defective Custom Hardware or Software covered under the maker(s) warranty, through facilitation of orders for replacement parts. Gateway shall not be responsible for any damages or losses that occur as a result of installation/integration of Custom Software or Hardware or Custom Applications. Gateway shall not be obligated to install or integrate Custom Software and Hardware or Customer Applications on systems repaired or replaced at Buyer’s location or at Gateway’s service facility. In order to perform the Services relative to Custom Applications, Buyer hereby grants to Gateway and its affiliates a non-exclusive, non-transferable, paid-up license and right to internally manufacture, use and reproduce copies of the Custom Applications. If necessary to fulfill Buyer’s instructions, such grant shall also include the right to modify, create and reproduce computer derivative works, which works shall belong to the licensor of the Custom Applications.

5. **PERIOD OF PERFORMANCE.** Unless a longer time is set forth in the Order and accepted by Gateway, the period of performance of the services by Gateway under this Agreement shall be the not less than one (1) year from date of award. Gateway and Buyer shall have the option to extend the period of performance upon mutual agreement.

6. **BUYER FURNISHED PROPERTY.** Buyer Furnished Property and Custom Applications shall be supplied to Gateway in sufficient time to enable Gateway to perform the custom order or Custom Applications integration services and meet delivery schedules. Buyer shall provide a monthly forecast of expected purchases and Orders under this Agreement

shall be issued with adequate lead-times to meet such forecasts. All Buyer Furnished Property shall be assigned a custom part number. The Buyer Furnished Property shall be segregated from standard Gateway inventory. Gateway shall not order Buyer Furnished Property for and on behalf of Buyer until receipt of an authorized Purchase Order from Buyer. Title to all Buyer Furnished Property shall remain in Buyer or Buyer's licensors of the Furnished Property; provided, however, that title to all Buyer Furnished Property paid for by Gateway will remain with Gateway until Gateway receives the purchase price for such Buyer Furnished Property from Buyer. Title or license to copyrights and patents in Custom Applications (and the source and object code associated with the Custom Applications) are and shall remain the property of the Buyer or Buyer's licensors. All copies of the Customer Applications made by or for Gateway, as well as any and all Customer Applications developed by Gateway for Buyer's benefit, shall remain the property of Buyer. Gateway will only install Custom Applications on Buyer designated product.

7. **MATERIALS AND WORKMANSHIP; MODIFICATIONS.** Buyer warrants, covenants and agrees that all Buyer Furnished Property provided to Gateway by or on behalf of Buyer shall be new and of most suitable grade for the purpose intended. Reference to any product by trade name, make or catalog number shall only be regarded as establishing a standard of quality, and Gateway may substitute, upon written approval by Buyer, and without abrogating in any way the terms of Paragraph 9 hereof, any item, material, or process which in Gateway's judgment is equal to that named.

8. **CHANGES TO ORDERS.** Changes within the scope of this Order shall be made by written notice from Buyer to Gateway. Change notices shall be provided fifteen (15) days prior to the requested change. All changes shall be evaluated for equitable adjustment and the prices shall be adjusted accordingly. Gateway reserves the right not to accept changes in its sole discretion.

9. **DISCLAIMER OF WARRANTIES.** IN ADDITION TO THE DISCLAIMER OF WARRANTIES SET FORTH IN THE TERMS OF SALE, GATEWAY (FOR ITSELF AND ON ITS BEHALF AND OF ITS LICENSORS) DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO THE CUSTOM SOFTWARE AND HARDWARE, BUYER FURNISHED PROPERTY, AND CUSTOM APPLICATIONS, INCLUDING ALL IMPLIED CONDITIONS OR WARRANTIES OF TITLE AND NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, DEFECTS IN DISKETTES OR OTHER PHYSICAL MEDIA AND DOCUMENTATION, OPERATION OF THE CUSTOM SOFTWARE AND HARDWARE, AND ANY PARTICULAR APPLICATION OR USE OF THE CUSTOM SOFTWARE AND HARDWARE.

10. **ADDITIONS TO PRICE.** Any tax, fee, duty, levy, or other charge that Gateway may be required by federal, state, municipal, or other law now in effect or hereafter enacted, to withhold, collect or pay with respect to the sale, delivery, or use of goods or services provided under this Agreement shall be added to the price of such goods or services.

11. **EXPORT CONTROLS.** Buyer shall comply with export laws and regulations of the Government of the United States that may apply to goods and services provided to Buyer, and to obtain any licenses required for export.

12. **INDEMNITY.** Buyer shall indemnify and hold harmless Gateway and its suppliers and licensors against any and all demands, claims, actions or causes of action, losses, damages, liabilities, costs and expenses, including, without limitation, judgments, interest, penalties, settlement amounts, court costs and attorneys' fees and expenses, whether at law or equity, asserted against, imposed upon or incurred by Gateway or its licensors arising out of or relating to any misrepresentation, breach of warranty or covenant by Buyer under this Order, infringement of any patent, trademark, copyright, trade secret or other intellectual property right or any actual or alleged act or omission of Buyer related to its performance of its obligations hereunder.

13. **PAYMENT TERMS.** Unless otherwise specified on the front of this Order, the terms of payment for purchases made under this Order are net thirty (30) days from the date of Gateway's invoice to Buyer.

14. **FORCE MAJEURE.** Gateway shall not be liable by reason of any failure or delay in the performance of its obligations hereunder (except for the mere payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, earthquakes, act of God, war, governmental action, supplier problems, or any other event that is beyond the reasonable control of Gateway.

15. **REPRESENTATIONS AND WARRANTIES.** Buyer represents and warrants that (a) it has full power and authority to enter into this Agreement and to perform its obligations hereunder; (2) it has all rights, title, and interest into the Custom Applications and the right to copy or have copies made for its own use, and such rights can be conveyed to Gateway without restriction for the purposes contemplated herein; (c) modifications that Buyer requests Gateway to make to the Custom Applications do not and will not infringe upon or misappropriate any copyright, patent, trade secret, or other proprietary rights of any third party; (d) the media upon which that Custom Applications are provided to Gateway by Buyer is free from all defects and viruses, and (e) installation of the Custom Applications shall not, by itself, result in any performance problems or degradation of the Gateway Products.

16. **INDEMNIFICATION.** To the fullest extent permitted by law, Buyer agrees to indemnify, hold harmless and defend Gateway, its officers, directors, agents, contractors, employees and suppliers from and against any assertions, claims, causes of action, liabilities, costs, losses, and damages, including, but not limited to, direct, indirect, or consequential damages arising out of or relating to any (a) breach of any warranty or representation of Buyer under this Agreement or breach by Buyer of any of its obligations under this Agreement; (b) alleged infringement or violation of any trademark, copyrights, trade secret, right of publicity or privacy, patent or other proprietary right with respect to the Custom Software and Hardware or Custom Applications; (c) any possession or use of confidential or proprietary information or trade secrets Buyer has obtained from sources other than Gateway; and (d) any failure by Buyer to comply with federal, state or local law (including notice of any ITAR encryption requirements).

17. **GENERAL.** You may not assign this Agreement without Gateway's written consent. If there is any inconsistency between this Agreement, the Terms of Sale and/or any other agreement included with or relating to products or services purchased from Gateway, the Terms of Sale shall govern. This Agreement may not be modified, altered or amended without the written agreement of Gateway. Any additional or different terms attached to your Order or in any other forms delivered by Buyer are hereby deemed to be material and notice of objection to them and rejection of them is hereby given.