

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

*In the Matter of*

**GATEWAY 2000, INC., a corporation.**

**FILE NO. 932 3275**

**AGREEMENT CONTAINING  
CONSENT ORDER TO CEASE AND DESIST**

The Federal Trade Commission having initiated an investigation of certain acts and practices of Gateway 2000, Inc., a corporation, and it now appearing that Gateway 2000, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

IT IS HEREBY AGREED by and between Gateway 2000, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Gateway 2000, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 610 Gateway Drive, North Sioux City, SD 57049-2000.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.
3. Proposed respondent waives:
  - a. Any further procedural steps;
  - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
  - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in such complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order, addressed to the attention of the general counsel, Gateway 2000, Inc., at 610 Gateway Drive, North Sioux City, SD 57049-2000, shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

## ORDER

### DEFINITIONS

1. The definitions of terms contained in § 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, and in Rules 701 and 702, 16 C.F.R. Parts 701 ("the Disclosure Rule") and 702 ("the Pre-Sale Availability Rule"), promulgated thereunder, shall apply to the terms used in this order.

2. "On-Site Service" shall mean the provision of the services of a qualified technician at the location of a defective or allegedly defective product sold or supplied by Gateway 2000, Inc. ("respondent") in an attempt to repair, replace, or otherwise correct a problem described by a purchaser to the respondent.

3. "Clearly and conspicuously" shall mean that the disclosure must be given in: (1) twelve point type where the representation that triggers the disclosure requirement is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure requirement where that representation is given in a type size that is smaller than twelve point type.

I.

IT IS ORDERED that respondent Gateway 2000, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale or offering for sale of any consumer product for which the respondent offers a written warranty, do forthwith cease and desist from:

- A. Excluding liability for any incidental or consequential damages arising from any consumer injury without clearly and conspicuously disclosing, as provided by section 701.3(a)(8) of the Disclosure Rule, 16 C.F.R. § 701.3(a)(8), that some states do not allow for such exclusion;
- B. Failing to disclose, as provided by section 701.3(a)(9) of the Disclosure Rule, 16 C.F.R. § 701.3(a)(9), that certain states may give the consumer legal rights in addition to those provided by the warranty;
- C. Disclaiming any implied warranty, except as provided by Section 108 of the Warranty Act, 15 U.S.C. § 2308;
- D. Failing to make the text of any written warranty on a consumer product readily available for examination by prospective buyers prior to sale through utilization of one or more means specified in section 16 C.F.R. § 702.3(c) of the Pre-Sale Availability Rule, 16 C.F.R. § 702.3(c).

II.

IT IS FURTHER ORDERED that respondent, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale or offering for sale of any consumer product, do hereby cease and desist from failing to provide a full refund of the purchase price of a product, including any shipping costs, insurance, handling or any other fee or charge paid by the consumer, within seven (7) business days of the respondent's acceptance, after a reasonable opportunity for inspection, of the merchandise returned by the consumer for a refund pursuant to any money-back guarantee offer made by respondent; provided, however, that respondent may deduct a service charge or other fees such as shipping and handling costs only if respondent has disclosed that such deductions will be made, clearly and conspicuously and in close proximity to the money-back guarantee offer made by respondent.

III.

IT IS FURTHER ORDERED that respondent, its successors and assigns, shall pay to the Federal Trade Commission, by cashier's check or certified check made payable to the U.S. Treasury and delivered to Commission counsel, Cleveland Regional Office, 1111 Superior Avenue, Suite #200, Cleveland, OH 44114, the sum of Two Hundred Eighty Nine Thousand Four Hundred Twenty Nine and 05/100 (\$289,429.05) Dollars. Respondent shall make this payment on or

before the tenth day following the date of service of the Order. In the event of any default on any obligation to make payment under this section, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment. No portion of the respondent's payment shall be deemed payment of any fine, penalty, or punitive assessment.

IV.

IT IS FURTHER ORDERED that respondent, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale or offering for sale of any consumer product, do forthwith cease and desist from representing, in any manner, directly, or by implication, that it shall provide On-Site Service unless respondent discloses, clearly and conspicuously and in close proximity to the representation, any material limitations on obtaining On-Site Service.

V.

IT IS FURTHER ORDERED that respondent, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale or offering for sale of any consumer product, for which the respondent offers a written warranty, do forthwith cease and desist from misrepresenting a consumer's remedies under its warranties for claims based upon incidental or consequential damages.

VI.

IT IS FURTHER ORDERED that respondent shall, within thirty (30) days of the date of service of this order, deliver to each of the respondent's current directors and officers, and to all managing employees, agents, and representatives having any sales, advertising, customer service, or policy responsibility with respect to the subject matter of this order, a copy of this order to cease and desist. For a period of three (3) years thereafter, respondent shall distribute the same to all future directors and officers, and to all future managing employees, agents, and representatives within thirty (30) days after the inception of their affiliation with respondent.

VII.

IT IS FURTHER ORDERED that respondent shall, within thirty (30) days of the date of service of this order, provide written instructions to all current managing employees, agents, and representatives having any sales, advertising, customer service, or policy responsibility on behalf of respondent as to respondent's specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. § 2301, et seq.), including, but not limited to, Section 108 (15 U.S.C. § 2308), thereof, and Rules 701 and 702, 16 C.F.R. Parts 701 ("the Disclosure Rule") and 702 ("the Pre-Sale Availability Rule"), promulgated thereunder, and this order. For a period of three (3) years thereafter, respondent shall provide said instructions to all future such managing employees, agents, and representatives within thirty (30) days after the inception of their affiliation with respondent.

## VIII.

IT IS FURTHER ORDERED that respondent shall, for a period of not less than five (5) years from the date of service of the order, maintain and upon request make available to the Federal Trade Commission for inspection and copying (i) copies of all written instructions provided by respondent to its supervising employees, agents, and representatives having any sales, advertising, customer service, or policy responsibility on behalf of respondent pursuant to Part VII., above; (ii) all warranties on consumer products costing more than \$15 for which the respondent is the warrantor; and (iii) exemplars of all advertising by the respondent.

## IX.

IT IS FURTHER ORDERED that respondent and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporate entity that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

## X.

IT IS FURTHER ORDERED that this order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any paragraph in this order that terminates in less than twenty years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such

complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XI.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days after service of this order on it, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Signed this day of , 1997.

Gateway 2000, Inc., a corporation,

BY:

WILLIAM M. ELLIOTT  
Senior Vice President, General  
Counsel and Corporate Secretary  
Gateway 2000, Inc.

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APPROVED:

JOHN M. MENDENHALL, Acting Director  
Cleveland Regional Office  
Federal Trade Commission