

## Terms & Conditions

These Terms & Conditions (“Terms & Conditions” or “Agreement”) represent a legally binding agreement between you (“you” or “Customer”) and Gateway Exhibit Services, Inc. (“Gateway”, “we”, or “us”), and shall, in addition to the terms and conditions set forth in the (i) Warehouse and Storage Agreement; (ii) Product Sales Agreement; and/or (iii) Services Agreement, or any other agreement entered into between Customer and Gateway (“Ancillary Agreements”), govern all dealings between you and Gateway.

The Terms & Conditions are electronically published at (insert link) and may be amended by Gateway from time to time, without notice to Customer. In the event of any conflict between the Terms & Conditions and any Ancillary Agreements, the Terms & Conditions shall control.

As used herein, “Goods” shall mean goods either leased or owned by Customer which are subject to the Ancillary Agreement(s)

Customer agrees to notify all parties acquiring any interest in the Goods of the terms and conditions any Ancillary Agreement and these Terms & Conditions and Customer further agrees to indemnify and hold Gateway harmless from any claim by third parties relating to the ownership, storage, handling or delivery of Goods, or from any other services provided by Gateway under the Ancillary Agreements. Such indemnification shall include any legal fees or costs incurred from any claim by a third party, regardless of whether or not litigation is actually filed.

- 1. Storage.** If contracted to do so, Gateway shall store the Goods at 13314 Lakefront Drive, Earth City, MO 63045 (“Facility”) at a location of its discretion. Unless specifically agreed to in writing, Gateway shall not be responsible for storage of the Goods in a temperature or humidity controlled environment. Customer knowingly accepts that the Goods will be warehoused in a non-temperature/humidity controlled environment. Gateway will not be responsible for any loss or damage to the Goods that result from fluctuations in temperature range or in humidity levels of the Facility.
- 2. Pricing and Payment.** If it becomes necessary for Gateway to utilize a collection agency and/or an attorney to collect any unpaid amount owed to Gateway by Customer or to assist in effectuating the lien provisions herein, Customer shall be obligated to pay the collection agency fees and/or attorney fees, and expenses including court costs incurred, regardless of whether litigation is actually filed.
- 3. Shipped Goods.** Customer agrees not to ship goods to Gateway as the named consignee. If, in violation of this Agreement, goods are shipped to Gateway as named consignee, Customer agrees to notify carrier in writing prior to such shipment, with a copy of such notice to Gateway, that Gateway named as consignee is a warehouseman under law and has no beneficial title or interest in such property. Customer further agrees to indemnify and hold harmless Gateway from any and all claims for unpaid transportation charges, including undercharges, demurrage, detention, or charges of any nature, in connection with goods so shipped. Customer further agrees that, if it fails to notify carrier as required by the preceding sentence, Gateway shall have the right to refuse such goods and shall not be liable or responsible for any loss, injury or damage of any nature to, or related to, such goods.
- 4. Tender for Storage.** All Goods tendered for storage shall be delivered at the Facility in a segregated manner, properly marked and packaged for handling, unless otherwise agreed by Gateway. Customer shall furnish or cause to be furnished at or prior to such delivery, a manifest showing the Goods to be kept and accounted for separately. In the event that Goods tendered to Gateway do not conform to the

description provided to Gateway by Customer, Gateway may refuse to accept such goods. If Gateway accepts such goods, Customer agrees to pay the rates and charges as set forth in the Ancillary Agreements and/or any invoices delivered by Gateway to Customer. Gateway is not a guarantor of the condition of such Goods under any circumstances including but not limited to hidden, concealed, or latent defects in the Goods. Concealed shortages, damage or tampering will not be the responsibility of Gateway. In no event will Gateway be liable for loss or damage caused by the events set forth in the Force Majeure section of this Agreement or the inherent vice or nature of the goods.

#### **5. Transfer of Goods.**

- a. Gateway may move Goods within the Facility in which they are stored as Gateway deems necessary to maintain storage and handling efficiencies. Gateway may move Goods to another warehouse other than the Facility with the prior written consent of Customer.
- b. If, as a result of a quality or condition of the Goods of which Gateway had no notice at the time of deposit, the goods are a hazard to other property or to the Facility or to persons, Gateway shall immediately notify Customer and Customer shall thereupon claim its interest in the said Goods and remove them from the Facility. Pending such disposition Gateway may remove the goods from the Facility and shall incur no liability by reason of such removal.

**6. Excusable Delay.** Gateway shall not be liable for delay in the performance of services or provision of the Goods due to: (1) causes beyond its reasonable control, or (2) acts of God, acts of Customer, prerequisite work by others, acts of civil or military authority, government priorities, fires, strikes or other labor disturbances, floods, epidemics, war, riot, delays in transportation or car shortages, or (3) inability to obtain or delay in obtaining, due to causes beyond its reasonable control, suitable labor, materials, or facilities. In the even to any such delay, the time of performance shall be extended for a period equal to the time lost by reason of the delay.

**7. Taxes.** Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder.

**8. Intellectual Property.** All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product and other materials that are delivered to Customer under this Agreement, the Ancillary Agreements or prepared by or on behalf of Gateway in the course of performing the services described in the Ancillary Agreements (collectively, the "Deliverables") [except for any Confidential Information of Customer or customer materials] shall be owned by Gateway. Gateway hereby grants Customer a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicenseable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.

**9. Confidential Information.**

- a. All non-public, confidential or proprietary information of Gateway, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, “Confidential Information”), disclosed by Gateway to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential,” in connection with the provision of the services per the Ancillary Agreements and this Agreement is confidential, and shall not be disclosed or copied by Customer without the prior written consent of Gateway. Confidential Information does not include information that is:
  - i. in the public domain;
  - ii. known to Customer at the time of disclosure; or
  - iii. rightfully obtained by Customer on a non-confidential basis from a third party.
- b. Customer agrees to use the Confidential Information only to make use of the services provided and Deliverables.
- c. Gateway shall be entitled to injunctive relief for any violation of this Section.

**10. Disclaimer of Warranties. GATEWAY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES OR GOODS PROVIDED TO CUSTOMER, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

**11. Standard of Care and Liability, Limitation Of Damages.**

- A. **IN NO EVENT SHALL GATEWAY BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT [OR LOSS OF DATA OR DIMINUTION IN VALUE], OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT GATEWAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
- B. **IN NO EVENT SHALL GATEWAY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE ANCILLARY AGREEMENTS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF: (I) THE ACTUAL COST TO CUSTOMER OF REPLACING OR REPRODUCING DAMAGED GOODS TOGETHER WITH TRANSPORTATION COSTS TO WAREHOUSE; (II) THE FAIR MARKET VALUE OF THE GOODS ON THE DATE GATEWAY IS NOTIFIED**

**OF LOSS, DAMAGE OR DESTRUCTION, OR (IV) TWO (2) TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO GATEWAY PURSUANT TO THE SPECIFIC PURCHASE ORDER AS RELATES TO THE SERVICES PERFORMED GIVING RISE TO CUSTOMER'S CLAIM.**

- c. The limitation of liability referred to in paragraph (b) above shall be Customer's exclusive remedy against Gateway for any claim or cause of action whatsoever relating to loss, damage, and/or destruction of the Goods and shall apply to all claims including inventory shortage and mysterious disappearance claims unless Customer proves by affirmative evidence that Gateway converted the goods to its own use. Customer waives any rights to rely upon any presumption of conversion imposed by law. In such event Customer shall not be entitled to incidental, special, punitive or consequential damages.
- d. Customer acknowledges and agrees that Gateway is not an insurer or guarantor of any goods placed in its possession by Customer pursuant to this Agreement or the Ancillary Agreements.
- e. Where loss or injury occurs to Customer's goods, for which Gateway is not liable, Customer shall be responsible for the cost of removing and disposing of such goods, as well as the cost of any environmental cleanup and/or site remediation resulting from the loss or injury to such goods.
- f. The Parties acknowledge that it is the intent of this Agreement to limit Gateway's liability in connection with loss or damage to Customer's product resulting from Gateway's negligence and covered by Gateway's legal liability insurance carried by Gateway. Customer and its insurers hereby waive their rights of recovery against Gateway for claims in excess of Gateway's liability as expressed in this section.
- g. In no event shall Gateway be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of goods serviced or caused by the use of goods by Customer.
- h. If Company furnishes Customer with advice or assistance concerning any Good or service which is not required pursuant to the Agreement or the Ancillary Agreements, the furnishing of such advice or assistance will not subject Company to any liability whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

**12. Indemnification.** Customer shall indemnify, defend, and hold Gateway, its shareholders, officers, agents, and assigns harmless from and against any and all claims, demands, damages, losses, liabilities, costs or expenses, whether for personal injury, property damage, patent, trademark or copyright infringement or any other claim whatever, brought by or incurred by any person, including without limitation reasonable attorneys' fees (collectively, "Claims"), with respect to:

- a. Any actual loss, damage to or destruction of tangible property, and/or illness, injury or death to any person, arising out of Customer's acts or omissions, negligent or otherwise;

- b. Any violation by Customer of applicable laws or regulations, or breach of any terms of this Agreement or the Ancillary Agreements

**13. Notice Of Loss And Damage, Claim And Filing Of Suit.**

- a. Gateway agrees to notify Customer promptly of any loss or damage, however caused, to goods handled under the terms of this Agreement.
- b. Claims by Customer must be presented in writing to Gateway not longer than either ninety (90) days after delivery of goods by Gateway or ninety (90) days after Customer is notified by Gateway that loss or injury to part or all of the goods has occurred, whichever time is shorter. Each claim must contain information necessary to identify the goods affected, the basis for liability and the amount of the alleged loss or damage, as well as all appropriate supporting documentation which must include: a summary of claims for both damaged and shortages of items, a report of individual carton ID's and their appropriate claims designation, including claim value, and individual claim forms for each claim that is supported by the report also provided.
- c. No action may be maintained by the Customer or others against the Gateway for loss or injury to the goods stored unless timely written claim has been given as provided in paragraph (b) of this section and unless such action is commenced either within nine months after date of delivery by Gateway or within nine months after Customer of record is notified that loss or injury to part or all of the goods has occurred, whichever time is shorter.

**14. Mysterious Disappearance.** Gateway shall not be liable for loss of goods due to inventory shortage or unexplained or mysterious disappearance of goods unless Customer establishes such loss occurred because of Gateway's lack of reasonable care. Any presumption of conversion imposed by law shall not apply to such loss and a claim by Customer of conversion must be established by affirmative evidence that Gateway converted the goods to Gateway's own use.

**15. Force Majeure.** Neither Customer nor Gateway shall be liable to the other for default in the performance or discharge of any duty or obligation under this Agreement when caused by acts of God, hurricanes, tidal waves, flood, tornadoes, cyclone, wind storm, earthquake, public enemy, civil commotion, strikes, labor disputes, work stoppages or other difficulties within the workforce, failure to provide power by the utility provider, intentional or malicious acts of third persons or any other organized opposition, corruption, depredation, accidents, explosions, fire, water sprinkler leakage, moths, vermin, insect, seizure under legal process, embargo, prohibition of import or export of Goods, closure of public highways, railways, airways or shipping lanes, governmental interference or regulations, or other contingencies, similar or dissimilar to the foregoing, beyond the reasonable control of the affected Party. Upon the occurrence of such an event the Party seeking to rely on this provision shall promptly give written notice to the other Party of the nature and consequences of the cause. If the cause is one which nevertheless requires Gateway to continue to protect the Goods, Customer agrees to pay the storage or similar charges associated with Gateway's obligation during the continuance of the force majeure. All Goods are stored, handled, and transported at Customer's sole risk of loss, damage, or delay caused by any of the above.

**16. Customer Insurance.** Customer shall at its sole cost and expense, maintain in full force and effect the following types and amounts of insurance, or Customer shall elect to self-insure any portion thereof:

- a. All-Risk Property Damage insurance insuring the Goods in an amount not less than the actual Replacement Cost thereof, subject to any commercially reasonable deductible amounts as determined solely by Customer; and
- b. Cargo Insurance on an all risk basis for any and all transportation exposures, whether related to an owned vehicle or a third-party contract or common carrier, in an amount not less than the actual replacement value thereof, subject to any commercially reasonable deductible amounts as determined solely by Customer. Upon Gateway's request, Customer shall provide Gateway a certificate of insurance showing that such insurance coverage has been obtained and procured by Customer.

**17. Gateway Insurance.** Goods are not insured by Gateway for loss or injury however caused, and the limitation of liability set forth in Section 11 shall apply in all circumstances where Gateway is legally liable for such loss or damage.

**18. Right To Store Goods and Liens.**

- a. Customer represents and warrants that Customer is lawfully in possession of the goods and has the right and authority to contract with Gateway for the services contemplated by this Agreement relating to those goods. Customer agrees to indemnify and hold Gateway harmless from all loss, cost and expense (including reasonable attorneys' fees) which Gateway pays or incurs as a result of any dispute or litigation, whether instituted by Customer or others, respecting Customer's right, title or interest in the goods covered by this Agreement.
- b. On goods in Gateway's possession, it shall have a general Warehouseman's lien for any unpaid charges and associated expenses. Gateway shall not permit any lien or other encumbrance to be placed against the goods while they are in Gateway's possession other than its general warehouseman's lien or any other lien as described herein.
- c. Gateway shall have a general and continuing lien on any and all property of Customer coming into Gateway's actual or constructive possession or control for monies owed to Gateway with regard to any services or goods provided to Customer per this Agreement or the Ancillary Agreements.

**19. Severability.** The provisions of this Agreement are to be considered as independent obligations. Therefore, should one provision be determined to be void and not be legally enforceable, its invalidation shall not excuse compliance with and adherence to the remaining provisions of this Agreement by the Parties.

**20. Waiver.** Compliance with any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) by the Party entitled to enforce such term, but any such waiver shall be effective only if in a writing signed by the Party against which such waiver is to be asserted. Except as otherwise provided herein, no failure or delay of any Party in exercising any power or right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power preclude any other or further exercise thereof or the exercise of any other right or power.

**21. Independent Contractor.** It is hereby agreed and understood that Gateway is entering into this

Agreement as an independent contractor and that all of Gateway's personnel engaged in work to be done under the terms of this Agreement are to be considered as employees of Gateway and under no circumstances shall they be construed or considered to be employees of Customer. Gateway shall supervise the performance of its own employees in providing services for Customer and shall have control over the manner and means by which its services are performed, subject to the terms of this Agreement as well as any written and mutually agreed upon amendments thereto. Nothing in this Agreement will be interpreted as creating any relationship of principal and agent, partnership or joint venture between the Parties. Neither Customer nor Gateway will represent in any manner to any third Party that Gateway is an agent of, or affiliated with, Customer in any capacity other than as an independent contractor, and nothing in this Agreement shall be construed to be inconsistent with such status.

## **22. Notification Of Product Characteristics and Dangerous Article**

- a.** Customer shall notify Gateway of the characteristics of any of Customer's products that may in any way be likely to cause damage to Gateway's premises or to other products that may be stored by Gateway.
- b.** Customer, except to the extent hereinafter specified, represents that none of the goods which it now has in storage, or will store in the future with Gateway are adulterated, flammable, hazardous or dangerous materials or articles, explosives or pesticides, as defined under the regulated federal, state or local laws, statutes, ordinances, or regulations, and that any good it now has in storage, or will store in the future with Gateway which require registration, permits, licenses or similar approvals under federal, state or local laws, statutes, ordinances or regulations are guaranteed to have such registrations, permits, licenses or approvals at the time the goods are tendered to Gateway and during the time they are in Gateway's custody.
- c.** Customer represents that the goods which it now has in storage which are defined or are subject to regulation under federal, state or local laws, statutes, ordinances or regulations concerning adulterated, flammable, hazardous or dangerous materials or articles, explosives or pesticides will be individually listed on receiving/shipping document (bill of lading) naming the goods and designating which laws, statutes, ordinances or regulations apply to the storage, handling and transportation of the goods, and whenever in the future the undersigned tenders goods to Gateway for storage or handling which are defined and subject to regulation under federal, state or local laws, statutes, ordinances or regulations concerning adulterated, flammable, hazardous or dangerous materials or articles, explosives or pesticides it shall, at the time of such tender, advise Gateway, in writing, with respect to each such item which laws, statutes, ordinances and or regulations apply to the storage, handling and transportation of the goods.
- d.** Customer further represents that with respect to any goods it now has in storage, or will store in the future with Gateway which, due to such federal, state or local laws, statutes, ordinances or regulations applicable to the goods, require special handling, storage, stacking segregation of commodities, documentation, records certification, reports of other treatment beyond that normally afforded by Gateway to goods generally, it will furnish Gateway for goods now in storage in writing for each item tendered for storage in the future, with all information and instructions necessary to conform with the requirements applicable to its goods.
- e.** Customer agrees to indemnify and save Gateway harmless against any and all liabilities, laws, damages, costs or expenses which Gateway may incur, suffer or be required to pay by reason of

any failure of the aforementioned representations, agreements and guarantees of the undersigned.

- 23. Assignment.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto. Neither party may assign this Agreement or the Ancillary Agreements without written consent of the other party, except that Gateway may, without consent, assign this Agreement or the Ancillary Agreements to a subsidiary or other related company.
- 24. Prevailing Party.** In any action, suit, arbitration or proceeding brought by either Party in respect of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs in each and every such action, suit, arbitration or other proceeding, including any and all appeals or petitions therefrom. As used in this Section 24 attorneys' fees shall be deemed to mean the full and actual costs of any legal services actually performed in connection with the matters involved, calculated on the basis of the usual and customary fee charge by the attorney performing such services.
- 25. Governing Law and Venue.** This Agreement, the Ancillary Agreements and any disputes between the parties hereto shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to its conflict of laws rules. Venue of any dispute arising hereunder shall be in the District Courts of the State of Missouri in St. Louis County or in the United States District Courts for the Eastern District of Missouri, and said Courts shall have personal jurisdiction over Customer.
- 26. Entire Agreement.** This Agreement and Schedules constitute the entire understanding between Customer and Gateway, and no working arrangement, instructions, or operating manuals intended to facilitate the effective carrying out of this Agreement shall in any way affect the liabilities of either Party as set forth herein. Warehouse receipts may be issued for goods received in storage and the provisions of the warehouse receipt shall apply, provided any inconsistency between the terms of the receipt and this Agreement shall be governed by this Agreement.

**27. Notice**

- a. All notices required under this agreement directed to Gateway shall be to the attention of:

Gateway Exhibit Services, Inc.  
Attn: President  
13314 Lakefront Drive  
Earth City, MO 63045

And

McCarthy, Leonard & Kaemmerer, L.C.  
Attn: Andrew Lammert  
825 Maryville Centre Drive, Suite 300  
Town and Country, MO 63017

- b. Notices may be provided by facsimile, email, or express courier (signature required) and deemed delivered on date given.
- c. Customer hereby agrees and acknowledges that receiving notice by email is acceptable and notice shall be deemed given if Gateway sends notice to the email provided by Customer to Gateway in any invoice or Ancillary Agreement.

EXAMPLE