



Services Contract - Terms and Conditions

Hardware Service Agreement

BY ACCEPTING THE SERVICES AND SUPPORT DESCRIBED ON YOUR INVOICE, YOU AGREE TO BE BOUND BY AND ACCEPT THE TERMS AND CONDITIONS HEREIN. THESE TERMS AND CONDITIONS (THE "AGREEMENT") WILL SUPPLEMENT THE TERMS AND CONDITIONS OF ANY APPLICABLE OVERRIDING SIGNED PURCHASE AGREEMENT BETWEEN YOU AND DELL (INCLUDING WITHOUT LIMITATION, DELL'S STANDARD CUSTOMER PURCHASE AGREEMENT) OR, IN THE ABSENCE OF SUCH AN AGREEMENT, DELL'S STANDARD INVOICE TERMS AND CONDITIONS OF SALE (SEE WWW.DELL.CA). IF THERE IS ANY INCONSISTENCY BETWEEN THIS AGREEMENT AND THE APPLICABLE PURCHASE AGREEMENT OR DELL'S STANDARD INVOICE TERMS AND CONDITIONS OF SALE, THEN THE TERMS OF THE APPLICABLE PURCHASE AGREEMENT OR THE STANDARD INVOICE TERMS AND CONDITIONS OF SALE SHALL PREVAIL. THIS AGREEMENT IS BETWEEN YOU AND DELL CANADA INC., FORMERLY DELL COMPUTER CORPORATION, A CANADIAN CORPORATION ("DELL", "OUR" OR "WE"). ALL CAPITALIZED TERMS AND CONDITIONS NOT DEFINED HEREIN SHALL HAVE THE MEANING SPECIFIED IN THE AFOREMENTIONED SIGNED PURCHASE AGREEMENT OR DELL'S STANDARD INVOICE TERMS AND CONDITIONS.

1. **Products Covered ("Covered Product"):** When we refer to "System(s)" in this Agreement, we mean Dell-branded hardware that is sold as new, in a standard configuration(s) at the time of purchase for the following equipment: Dell desktop and notebook computers, workstation computers, handheld computers, server systems, data storage units or certain Dell-branded peripherals as designated by Dell. Excluded from this agreement are software and any additional items sold through Dell's Software and Peripherals Division (formerly known as DellWare) or integrated by Custom Factory Integration. The System covered under this Agreement is described in your invoice.

This Agreement is valid on System(s) purchased in Canada only. The Services to be provided under this Agreement apply only to Canada.

2. **Scope of Services:**

- a. The service you have chosen is recorded on your invoice. PPM means the principal period of maintenance or the principal hours during which Services are rendered for a service level.

Next Business Day, On-Site Parts and Labour Service / At-Home Service. If you follow these procedures, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service on the next business day (during your PPM); Monday through Friday 8:00 a.m. to 5:00 p.m., excluding regularly observed holidays. If the service technician is dispatched for On-Site Service after 4:00 p.m. local time, the service technician may take an additional business day to arrive at your location.

Next Business Day, Parts Delivery Service. Dell will provide on an exchange basis replacement parts for Dell Systems covered under this Agreement when a part in a covered System requires replacement. Customer must report each instance of System failure to Dell technical support in advance to obtain Dell's concurrence that a part should be replaced and to have Dell ship the replacement part. Dell will ship parts using next-business-day delivery, shipping prepaid. Dell will include a prepaid shipping container with each part for Customer's use in returning the replaced part to Dell. Spare parts provided under this Agreement may be new, used or reconditioned. Dell may provide spare parts made by various manufacturers when supplying parts to Customer. This Parts Delivery Service does not cover damage due to external causes, including accident, problems with electrical power, servicing by untrained people or not in accordance with Dell's procedures, abuse and misuse.

Advanced Exchange Service. If Dell has determined that your System has experienced a qualified failure, Dell will ship a replacement System to your location. If you call prior to 5:00 p.m. customer local time, in most cases the replacement System will be shipped the next business day. Upon receipt of the replacement System, you must return your defective System to Dell by taking the defective System to the designated carrier location within the next 3 days. You must package the defective System in the material provided with the replacement System, and ship the defective System to Dell's repair facility. **This procedure applies to modular Systems only (i.e. Software & Peripheral items such as projectors, printers or handheld computers); do not attempt ship back your computer system or monitor using this procedure. When returning your System for replacement, do not send external parts (such as cords, cables, controls, or lens caps).** This contract does not apply to Systems returned to Dell's facility using procedures other than those set forth herein, and neither Dell nor the carrier can be responsible for damage caused during transit of the System to the carrier. Dell will pay standard shipping charges, for shipping your System in for replacement and for shipping a

replacement System to you. Dell reserves the right to send you an identical or comparable replacement for the System. If this Advanced Exchange Service covers a projector, you are obligated to return the projector bulb with the System. You will be obligated to pay, at the current retail price(s), if you retain the projector bulb. If the defective System is not returned within ten (10) days, you agree to pay Dell for the replacement System upon receipt of invoice. Failure to honor the invoice within ten (10) days after receipt will cause the cancellation of this Agreement and may result in other legal steps.

Return-to-Depot Parts and Labour Service / Express Depot Service. After it is determined that your System (defined as a Dell notebook computer purchased in Canada only containing a processing unit (CPU) and Dell specified optional hardware products that were factory-installed in the notebook computer prior to delivery to you) requires Return-to-Depot Service, a carrier will be dispatched to your site with proper packaging the same day if you call prior to 12:00 p.m. local time to pick up your System and return it to Dell with shipping charges prepaid. Your System will be repaired or replaced, and delivered to the carrier for return shipping to you using overnight delivery, generally within one (1) business day after receipt of the System at the repair facility. Standard overnight shipping charges for shipping your System in for repair and for shipping it back to you will be paid by Dell. If non-Dell options added to your System are found to be the cause of your reported problem, a service charge may be applied. Dell reserves the right to send you a whole replacement for the System or a replacement for portions of the System rather than repairing and returning the System that you sent for repair. All parts removed from your System become Dell's property. You will be obligated to pay, at the current retail price(s), for any parts you wish to retain.

4-Hour Response, 5x9, On-Site Parts and Labour Service. If you follow these procedures, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service within four (4) hours after dispatch (during your Principal Period of Maintenance (PPM)), Monday through Friday 8:00 a.m. to 5:00 p.m., excluding regularly observed holidays. If the service technician is dispatched after 4:00 p.m. local time, the service technician may not arrive at your location until the following business day. This service is only available if you are located within a radius of 100 kilometers from a Dell stocking location.

8-Hour Response, 7x24, On-Site Parts and Labour Service. If you follow these procedures, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service within eight (8) hours after dispatch, twenty-four (24) hours a day, seven (7) days a week (including holidays). This service is only available if you are located within a radius of 100 to 200 kilometers from a Dell stocking location.

4-Hour Response, 7x24, On-Site Parts and Labour Service. If you follow these procedures, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service within four (4) hours after dispatch, twenty-four (24) hours a day, seven (7) days a week (including holidays). This service is only available if you are located within a radius of 100 kilometers from a Dell stocking location.

2-Hour Response, 7x24, On-Site Parts and Labour Service. If you follow these procedures, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service within two (2) hours after dispatch, twenty-four (24) hours a day, seven (7) days a week (including holidays). This service is only available if you are located within a radius of 50 kilometers from a Dell stocking location.

2-Hour Response/6-Hour Fix, 7x24, On-Site Parts and Labour Service. If you follow these procedures, a service technician will, in most cases, be dispatched to arrive at your location for On-Site Service within two (2) hours and complete repair of your Dell-branded hardware product within six (6) hours after dispatch, twenty-four (24) hours a day, seven (7) days a week (including holidays). This service is only available if you are located within a radius of 50 kilometers from a Dell stocking location.

- b. Limits of Services THIS AGREEMENT IS OF LIMITED DURATION AND COVERAGE. This Agreement extends only to original purchasers of the System located within Canada as determined by Dell, and to any person who buys the System and this Agreement from the original purchaser or a subsequent transferee, as long as all transfer procedures have been complied with. This Agreement extends only to uses for which the System was designed. Except as stated below, the services Dell agrees to provide under this Agreement are repair services that are necessary because of any existing defect or because a defect occurs in materials or workmanship in the System or in any System component covered by this Agreement. Preventive maintenance is not included. Installation, de-installation, or relocation services and operating supplies are not included. **Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than Dell (or its representatives) are not included.** Dell is not obligated to repair any System or System component which has been damaged as a result of: (i) accident, misuse, or abuse of the System or System component (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Dell (or its representatives), (ii) an act of God such as, but not limited to, lightning, flooding, tornado,
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earthquakes, fire, and hurricanes, or (iii) the moving of the System from one geographic location to another or from one entity to another.

LIMITATION OF LIABILITY. DELL (INCLUDING DELL'S PARENTS, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS) DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING ANY LIABILITY FOR PRODUCTS NOT BEING AVAILABLE FOR USE, LOST OR CORRUPTED DATA OR SOFTWARE, PRODUCTS SOLD THROUGH DELL'S SOFTWARE AND PERIPHERALS DIVISION, OR THE PROVISION OF SERVICES OR SUPPORT. DELL WILL NOT HAVE ANY LIABILITY FOR ANY DAMAGES ARISING FROM THE USE OF THE PRODUCTS IN ANY HIGH RISK ACTIVITY, INCLUDING, BUT NOT LIMITED TO, THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, MEDICAL SYSTEMS, LIFE SUPPORT OR WEAPONS SYSTEMS. DELL WILL NOT BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS, OR OTHER INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN.

CUSTOMER AGREES THAT FOR ANY LIABILITY RELATED TO THE PURCHASE OF PRODUCTS OR SERVICES, DELL IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AGGREGATE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE PURCHASE OF PRODUCTS AND/OR SERVICES UNDER THIS AGREEMENT.

THE FOREGOING LIMITATIONS APPLY REGARDLESS OF THE CAUSE OR CIRCUMSTANCES GIVING RISE TO SUCH LOSS, DAMAGE OR LIABILITY, EVEN IF SUCH LOSS, DAMAGE OR LIABILITY IS BASED ON NEGLIGENCE OR OTHER TORTS OR BREACH OF CONTRACT (INCLUDING FUNDAMENTAL BREACH OR BREACH OF A FUNDAMENTAL TERM).

NEITHER DELL NOR CUSTOMER MAY INSTITUTE ANY ACTION IN ANY FORM ARISING OUT OF THIS AGREEMENT MORE THAN EIGHTEEN (18) MONTHS AFTER THE CAUSE OF ACTION HAS ARISEN, OR IN THE CASE OF NONPAYMENT, MORE THAN EIGHTEEN (18) MONTHS FROM THE DATE OF LAST PAYMENT.

SOME PROVINCES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF (i) INCIDENTAL OR CONSEQUENTIAL DAMAGES OR (ii) IMPLIED WARRANTIES OR CONDITIONS, SO THE ABOVE EXCLUSIONS MAY NOT APPLY.

With regard to any services that are not within the coverage of this Agreement, it will be within Dell's discretion whether to perform the services, and, if Dell elects to perform the services, the services will be subject to an additional charge to be paid by you.

3. Your Responsibilities.

To receive Service, you are responsible for complying with the following:

- a. **Valid Service Contract:** Dell must have received payment for Service within thirty (30) days of the date of invoice. Customer shall pay an additional interest fee of 1.5% per month (19.56% per year) for invoices not paid within such thirty (30) day period. If you are currently not entitled to Service, then you should submit a valid credit card number to purchase appropriate Service for your System.
- b. **Prepare for the Call.** You will help the technician serve you better if you have the following information and materials ready when you call: your System's invoice and serial numbers; service tag number; model and model numbers; the current version of the operating system you are using; and the brand names and models of any peripheral devices (such as a modem) you are using.
- c. **Call For Assistance.** For Service and support call the following toll free number. These phone lines are answered twenty-four (24) hours a day, seven days a week, including regularly observed holidays:

Technical Support/Customer Service

1-800-847-4096

- d. **Explain Your Problem to the Technician.** Now you are ready to describe the problem you are having with your System. Let the technician know what error message you are getting and when it occurs; what you were doing when the error occurred; and what steps you may have already taken to solve the problem.
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- e. Cooperate with the technician. Experience shows that most System problems and errors can be corrected over the phone as a result of close cooperation between the user and the technician. Listen carefully to the technician and follow the technician's directions.
- f. Software/Data Backup. You understand and agree that Dell is not responsible for any lost or corrupted software or data. **Dell strongly recommends that you maintain a complete data backup and disaster recovery plan.**
- g. If the technician is unable to resolve the problem over the phone and determines that Return-to-Depot Service is necessary, the following standard procedures apply. Dell regrets that it cannot accept Systems that are not returned in accordance with these shipping instructions:
 - 1). Display the Return Authorization Number. Please print the authorization number you obtain from the technician clearly and conspicuously on the outside of the prepaid packaging. Unfortunately, Dell will have to refuse to Service, and will return to you, any System that does not clearly and conspicuously display the authorization number on the packaging.
 - 2). Explain the Problem in Writing. Please enclose a brief description of the problem encountered, the error message received, and the suspected defect you discussed with the technician over the phone.
 - 3). Shipping. Following the problem diagnosis, if you call during our carrier's regular business hours, the technician will transfer you to Dell's designated freight carrier, explain the situation to the carrier and turn any further shipping actions over to the carrier. If you call outside of our carrier's regular business hours, we will provide you with information to contact our carrier during their regular business hours. Jointly you and the carrier will arrange for shipping. The System must be shipped in the Dell provided packaging to the address given to you by the technician.
 - 4). Package Your System. Dell will provide packaging through our freight carrier. You will be responsible for ensuring that the System is properly packaged and you will bear the full risk of loss or damage for any System that is returned improperly packaged.
 - 5). Other Shipping Precautions. Do not send your manuals or any non-Dell supplied options with your System. Prior to shipping, you must remove the options and components from your System as instructed by the technician.
 - 6). If You Miss The Carrier Visit. If you or your authorized representative is not at the location when the carrier arrives, he or she will leave a delivery attempt notice and will attempt redelivery. If you and the carrier are unable to coordinate the drop off, you will need to call Dell and schedule another carrier visit and you may be subject to an additional charge.
- h. Next Business Day, Parts Delivery Service Payment Procedure. If you elect not to receive Return-to-Depot Services you may receive Dell's Parts Delivery Service. Customer will pay Dell for replacement parts when the replaced part isn't returned to Dell within 15 days of the date the replacement was shipped by Dell, and for parts used to repair systems not covered by this Agreement. Parts will be priced at Dell's then-current standard prices. If a payment due from Customer is late and not because it is disputed in good faith, Dell may, in its discretion, refuse to ship parts or respond to technical and support inquiries until the late payment is made.

UNTIL YOU HAVE COMPLIED WITH THE ABOVE PROCEDURES, DELL CANNOT DISPATCH A SERVICE TECHNICIAN TO PERFORM ON-SITE REPAIRS.

Unless otherwise stated, the hours of Service shall not include regular holidays that include New Year's Day, Good Friday, Victoria Day, St. Jean Baptiste Day (Quebec only), Canada Day, Civic Holiday (outside Quebec), Labour Day, Thanksgiving Day, Christmas Day, and Boxing Day. Dell is not liable for any failure or delay in performance due to any cause beyond its control.

4. General Terms:

- a. Term and Renewal: Prior to the expiration of your Service contract, you may upgrade your Service level or extend your Service period based on available options then in effect. Any upgrades will not apply to conditions pre-existing the effective date of the upgrade.
 - b. Claims of Confidentiality or Proprietary Rights: You agree that any information or data disclosed or sent to Dell, over the telephone, electronically or otherwise, is not confidential or proprietary to you.
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- c. Cancellation: You may cancel this Agreement by providing to Dell at least thirty (30) days written notice of your decision to cancel. Dell will issue a refund to you for any unused portion of the Service term for which you have paid. If more than thirty (30) days have transpired for the current contract year, then a refund will not be paid for that current contract year.
 - d. Entire Agreement: This Agreement is the entire agreement between you and Dell with respect to its subject matter and none of Dell's employees or agents may orally vary the terms and conditions of this Agreement.
 - e. Assignment: Dell reserves the right to assign its right and obligations under this Agreement to a qualified third party designated by Dell without notice to you. In the event of such an assignment, Dell will no longer be responsible for any performance obligations under this Agreement or any other liability associated with this Agreement.
 - f. Warranty Exclusion. Dell makes no warranties or conditions, either express or implied, including, but not limited to, any implied warranties or conditions of merchantability and fitness for a particular purpose. Dell expressly disclaims all warranties and conditions.
 - g. Language. The parties confirm that it is their wish that this Agreement, as well as other documents relating to this Agreement, including all notices, have been and will be drawn up in the English language only. Les parties aux presentes conferment leur volonté que cette convention, de meme que tous les documents, y compris tout avis, qui s'y rattachent, soient redigés en langue anglaise.
 - h. Miscellaneous. If any provision of this Agreement is void or unenforceable, the parties agree to delete it and agree that the remainder of the Agreement will continue to be in effect. Dell is not liable for failure or delay in performance due to any cause beyond its control. If Dell's ability to render Service is impaired by circumstances beyond Dell's control, Dell may terminate this Agreement, in which event, provided that the circumstances resulting in Dell's impaired ability to provide Service did not result from your actions or inaction, you will receive a refund for any unused portion of your Service term for which you have paid. Neither Dell nor you may institute any action in any form arising out of this Agreement more than eighteen (18) months after the cause of action has arisen, or in the case of nonpayment, more than eighteen (18) months from the date of last payment.
5. **Customer Replaceable Units and Whole System Replacement**. If the telephone technician determines that the defective unit within the System is one that is easily disconnected and reconnected, such as a keyboard, monitor, hard drives in portable computers, or any other component designated by Dell from time to time as a component that may be replaced by the customer, you may receive such component to install without a service technician arriving on site. Also, if the technician determines that the System is one that should be replaced as a whole unit, Dell reserves the right to send to you a whole replacement System with a prepaid return mailing label for defective return. If a service technician delivers the replacement unit to you in person, you must relinquish the defective unit or System to the service technician. If you do not relinquish the defective unit or System to the service technician as required above, or if (in the event the replacement unit was not delivered in person by a service technician) the defective unit or System is not returned within ten (10) days, you agree to pay Dell for the replacement unit upon receipt of invoice. Failure to honor the invoice within ten (10) days after receipt will cause the cancellation of this Agreement and may result in other legal steps.
6. **Parts Ownership**. All parts removed from your System become the property of Dell. You will be obligated to pay at the current retail price(s) for any parts removed from your System and retained by you. Dell uses new and reconditioned parts made by various manufacturers in performing warranty repairs.
7. **Parts Stocked**. Based on our experience, we have stocked parts in various locations throughout Canada and other regions of the world. Selected parts may not be stocked in the location closest to your site. If a part that is needed to repair your System has to come from another location, it will be shipped using overnight delivery.
8. **Transfer of this Agreement**. Subject to the limitations set forth in this Agreement, you may transfer this Agreement to anyone who buys your entire System before the termination date of this Agreement, provided you are the original end-user purchaser of the System and this Agreement, or you have purchased the System and this Agreement from its original end-user owner (or a previous transferee) and have complied with all the transfer rules in this Agreement.

Please note that if you move your System to a geographic location in which the Service coverage is not available at the same price as you paid for this Agreement, you may incur an additional charge to maintain the same categories of Service coverage at the new location. If you choose not to pay such additional charge, your Service may be automatically changed to categories of Service that are available at such price or a lesser price in such new location with no refund available. Additionally, if (i) you transfer your Agreement to a buyer who will move the System to a

geographic location in which the Service coverage is not available at the same price as you paid for this Agreement, or (ii) if the transferee (i.e., the buyer) of this Agreement wishes to change the Service coverage, then you may incur an additional charge for such transfer fee discussed above.

TO TRANSFER THIS SERVICE AGREEMENT:

- **Using the Internet:**
Complete the On-line Transfer Form located within Dell's Service and Support section at:
http://www.dell.ca/downloads/ca/transfer_ownership_en.pdf
- **Questions in regards to an ownership transfer:**
Call the Customer Relations Department at 1-800-847-4096

