

**Gryphon Pty Ltd**  
**ABN 36 117 200 361**  
**Terms and Conditions**

*The Merchant (you as purchaser) is deemed to have read, understood and accepted these terms and conditions (**Merchant Terms**) which govern the supply of any Product to the Merchant by Gryphon.*

**1. Merchant Price List**

- The 'Purchase Price' is specified in the Merchant Price List (and includes any GST or like impost) which is subject to variation by Gryphon without notice. Prior to placing orders, Merchants should satisfy themselves that they hold the correct Merchant Price List
- Payment for Products is to be made prior to or at the time of ordering. Where payment is not received, Gryphon may at its option withhold or delay delivery.
- Any Products supplied at a discount to the Purchase Price (**Discounted Products**) are done so on the basis that payment is received by the required due date, failing which the full Purchase Price for the Discounted Product will become immediately due and payable.

**2. Orders and delivery**

- Gryphon has no obligation to accept any order (or part) from a Merchant and Gryphon may specify minimum order requirements from time to time. Accepted orders are delivered to the Merchant's premises at the Merchant's cost (other than orders in excess of the minimum order amount in which case the delivery costs shall be borne by Gryphon) by a courier service nominated by Gryphon.
- Orders required for a Shelf Date must be received by Gryphon by the Order Cut-off Date. No Products are to be displayed more than 24 hours prior to the advertised Shelf Date.
- The Merchant must accept and pay for Products delivered even if delivered after the required date and Gryphon is not liable for any loss or damage of any kind whatsoever arising from late delivery or non-delivery of ordered Product.
- Gryphon may withhold or delay delivery where Merchant's account is in arrears.

**3. Applications for credit**

- Payment for Product supplied to a Merchant (subject to pre-approval) on a credit basis is due on the 25<sup>th</sup> of the month immediately following the month in which the Products were invoiced (**Credit Product Due Date**). Gryphon may grant, suspend or withdraw any credit facilities granted to the Merchant at its absolute discretion.
- Gryphon is entitled to charge interest on all amounts owing by the Merchant to Gryphon after the Credit Product Due Date at the Interest Rate, which shall accrue and be calculated on a daily basis.

**4. Title and risk**

- Ownership and title in the Products remains with Gryphon at all times until all amounts owing to Gryphon (**Amount Outstanding**) have been received by Gryphon in cleared funds.
- Where Product supplied to Merchants was done so on a credit basis and the Product has on-sold, the Merchant holds the Amount Outstanding on trust for Gryphon (and for avoidance of doubt, the Merchant holds any debt owing to it by the third party buyer upon trust for Gryphon and irrevocably appoints Gryphon as its attorney to execute any required assignment documentation to assign the debt to Gryphon).
- Gryphon is entitled to retake possession of any Products (and enter onto the premises of the Merchant to effect such repossession) which have not been paid for by the due date or where Gryphon suspects the Merchant is likely to experience an insolvency event. Gryphon may deal or dispose of any repossessed Product as Gryphon determines in its sole discretion.
- Risk of loss of (or damage to) the Products passes to the Merchant at the time the Products are delivered to the Merchant's premises.

**5. Intellectual Property**

- The Merchant acquires no right, title or interest in or to any of the intellectual property rights in the Products (including copyright or trade marks) (**Intellectual Property**) and the Merchant will immediately advise Gryphon of any illegal copying or any other Intellectual Property infringement of which it becomes aware.

- The Merchant will not misuse, show publicly, copy, duplicate, alter, edit or add to the Product nor duplicate, remove, deface, obscure or alter any packaging and promotional material relating to the Products or do any other thing which may otherwise affect the Intellectual Property of a Product.

**6. Conditions of supply**

- Subject to clause 7, Sale Products are sold on a sale or exchange basis and Rental Products are sold on a non-returnable basis unless otherwise agreed with Gryphon.

**7. Defective Product and delivery errors**

- Gryphon, its officers, employees or agents are not liable for any loss or damage including consequential (whether or not directly or indirectly and whether or not including negligence) other than in respect of Products which are defective or otherwise faulty at time of delivery or Rental Product damaged within the first 30 days of delivery (**Defective Product**), in which case Gryphon shall at its option, replace the Defective Product or credit the Merchant the Purchase Price paid (less any applicable discounts, rebates etc).
- Gryphon shall only be responsible for Defective Products where the Merchant notifies Gryphon as soon as possible after becoming aware of the defect and on the condition that the Merchant handled and stored the Product in accordance with prevailing industry standards.
- Where the Merchant makes a claim in respect of short supplies or otherwise incorrect deliveries, the Merchant shall advise Gryphon within 5 days of delivery. Gryphon will rectify any defective delivery at its own cost.

**8. Warranties**

- To the maximum extent allowed by law, these Merchant Terms exclude all warranties, conditions, liabilities or representations in relation to the Products unless required by law. However to the extent permitted by law, the liability of Gryphon and its officers, employees or agents for a breach of any such condition or warranty is limited, at Gryphon's option, to any one or more of the following:
  - (a) the replacement of those Products or the supply of equivalent Products;
  - (b) the payment of the costs of replacing those Products or of acquiring equivalent Products;
  - (c) repayment of any part of the Purchase Price of those Products which has been paid by the Merchant.

**9. General**

- Product is supplied to the Merchant on condition that the Products are made available only to retail customers within Australia and not for sale to other retail outlets or merchants.
- The parties accept the law of Victoria as the proper law of the contract and both parties submit to the non-exclusive jurisdiction of the Courts in Victoria and any court hearing appeals from those Courts.
- Gryphon may vary these Merchant Terms by giving 30 days written notice (**Variation Notice Period**) to the Merchant. Merchants are deemed to have accepted the amended terms should any order be placed after the Variation Notice Period.

**10. Definitions**

- **Gryphon** means Gryphon Pty Ltd (ABN 36 117 200 361) of Level 1, 313-315 Flinders Lane, Melbourne, Victoria 3000.
- **GST** has same meaning as in the *A New Tax System (Goods & Services Tax Act 1999)*.
- **Interest Rate** means 2% per annum above the base indicator lending rate published by the National Bank of Australia from time to time.
- **Merchant Price List** means the price list for Products published by Gryphon from time to time.
- **Order Cut-Off Date** means the date by which orders must be received by Gryphon to allow delivery by the Shelf Date.
- **Products** means Rental Product and/or Sale Product provided to the Merchant by Gryphon.
- **Rental Products** means video cassettes/DVDs sold to the Merchant for the purpose of rental by the public and **Sale Products** means video cassettes/DVDs sold to the Merchant for the purpose of retail sale to the public.
- **Shelf-Date** means the date advertised as such by Gryphon, being the date by which it will endeavour to deliver the Products to the Merchant.