

HOLLYWOOD CINEMA STORE – TERMS & CONDITIONS

APPLICATION

The Terms and Conditions (**Terms**) apply to all contracts for the sale of goods and services by Gibben Pty Ltd (ACN 137 905 456), trading as Hollywood Cinema Store (**Company**). No modification, alteration, waiver or cancellation of the Terms is binding on the Company unless confirmed by the Company in writing. The customer agrees that no agent or employee of the Company has authority to make any representation, warranty, promise or undertaking with respect to goods or services or the sale of goods or services other than as contained in the Terms.

INCONSISTENCIES

Where the supply of goods or services purports to be made on or subject to Terms other than the Terms, the customer agrees that such other Terms are not valid or binding, and form no part of the contract between the customer and the Company unless otherwise agreed by the Company in writing.

ACKNOWLEDGMENT

The customer agrees that the obligations the customer accepts, and warranties the customer makes, are accepted and made for the benefit of the company and all of the Company's related bodies corporate.

ACCEPTING ORDERS

- a. Payments are to be made to the Company without any deduction or discount other than as stated in the Terms or in the relevant invoice or statement. All goods are the property of the Company until the goods are paid for in full, in accordance with the invoice or statement, as the case may be.
- b. A non-refundable deposit of 20% is payable upon the contract of sale being agreed to. Prior to the commencement of prewire, pursuant to the contract of sale, by the Company, an additional 10% of the total contract price is payable.
- c. Where custom made goods are ordered, or a special order is requested (the item is not otherwise stocked by the Company), a deposit of 50% must be paid by the customer.
- d. The balance of the contract price must be paid in full prior to delivery.
- e. If installation is required, the remainder of the balance of the contract of sale must be paid in full upon booking final installation.
- f. The Company can cancel an order anytime without any notice. If the Company unilaterally elects to cancel an order, a refund will be provided.

PAYMENT TERMS

Terms of payment are cash, credit card, bank deposit, bank or personal cheque. If payment is made by way of a cheque, the cheque must clear in full before ordered goods are released to the consumer.

INSPECTING GOODS

The goods are deemed to have been accepted as being in good order and condition unless, within 5 days of delivery or collection, the customer inspects the goods and provides written notice to the Company that the goods do not comply with the relevant specifications or descriptions.

DELIVERY AND RISK

- a. The Company takes delivery of goods to mean when goods are unloaded from the nominated delivery vehicle at the address for delivery, or when goods are placed on the customer's nominated carrier, or when goods are placed on the nominated carrier of an agent of the

customer.

- b. Risk in the goods passes to the consumer at the time of delivery.
- c. While the Company will use all reasonable endeavours to deliver the goods by the date specified in the contract of sale, the Company does not guarantee delivery on that date unless otherwise agreed to in writing. The Company is not liable for any Loss or damage resulting from late or early delivery. If no date for delivery has been stipulated, the goods shall be delivered to the consumer as soon as practicable after the order has been approved by the Company.

PROPERTY RIGHTS

- a. The customer agrees that legal title and property in the goods is retained by the Company until payment is received in cleared funds from the consumer of all sums owing to the Company.
- b. The customer must not sell the goods except in the ordinary course of the customer's business.
- c. If the consumer fails to pay the amount owed by the due date, the Company may (without prejudice to any of its other rights) recover and resell any of the goods in which property has not passed to the consumer. The consumer also indemnifies the Company from and against all Loss suffered and or damage incurred by the Company as a result of exercising its rights.
- d. The consumer agrees that the Company has a security interest (for the purposes of the PPSA) in the goods and any proceeds until title passes to the consumer. The consumer must do anything reasonably required by the Company to enable the Company to register its security interest with the priority the Company requires and to maintain that registration.
- e. The security interest operates to affect the goods when the consumer obtains possession of the goods.

CANCELLATIONS

No order may be cancelled, modified or deferred without the prior written consent of the Company. The Company has sole discretion with respect to the decision to provide prior written consent. Any such cancellation will incur a 25% restocking fee.

FORCE MAJEURE

The Company will not be liable for any breach of contract due to any matter or thing beyond the Company's control (including but not limited to stoppages of work outside the Company's control, transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention of public authority, explosion or accident).

WARRANTIES

- a. All goods sold under this invoice are supplied new, unless otherwise stated, and carry a warranty provided by the manufacturer of the goods. The duration of the warranty may vary depending upon the manufacturer. For information with respect to the specific warranty applying to the goods purchased, please ask our staff.
- b. The benefits of a manufacturer's warranty are additional to the other rights and remedies that you may have under any laws applying to the supply of the goods. The goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or a refund for a major failure and for compensation for any other reasonably foreseeable Loss or damage. You are also entitled to have the goods repaired or replaced should the goods fail to be of acceptable quality and the failure does not amount to a major failure.

YOUR LEGAL RIGHTS

Your purchase of goods will be subject to certain laws including, without limitation, the

Australian Consumer Law. The Australian Consumer Law provides you with certain rights that cannot be excluded, including that the goods must be of acceptable quality, reasonably fit for the purpose that Company represents they will be fit for, and that the goods will correspond with any relevant description. Nothing in the Terms shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Australian Consumer Law) which cannot by law be excluded, restricted or modified.

INSTALLATION

- a. The remainder of the balance of the contract of sale must be paid in full upon booking final installation, not less than 14 days prior to installation.
- b. While the Company takes care throughout the installation process, a need may arise for the creation of access holes to facilitate the running of cables and speakers. The Company is not responsible for any restoration work if access holes are created.
- c. The Company must be contacted if additional installation work is required on site beyond what has been agreed to, as soon as reasonably practicable after the consumer becomes aware of the need.
- d. The Company is not responsible for any electrical work and all power points must be delivered by a qualified and licenced electrician.

INTELLECTUAL PROPERTY

Any technical information, knowledge or processing methods at any time transmitted or communicated by the Company to the consumer shall remain the property of the Company and is absolutely confidential. The consumer shall not use them for any purpose nor sell transfer or divulge them in any manner to anyone without the prior written consent of the Company. The consumer warrants that the use by the Company of any designs, drawings or instructions produced or supplied by the consumer will not infringe the patents, trademarks, designs or copyright of any other person, and the consumer indemnifies the Company against any claim relating to or arising from the infringement of any intellectual property of any other person. If, at any time, a claim is made against the Company or the Company becomes aware that a claim is likely to be made against the Company for infringing any intellectual property or contributing to any such infringement by the Company or any other person as a result of supplying goods, the Company may, at its sole discretion, immediately terminate or suspend this Contract.

TAX AND DUTIES

- a. The consumer is liable for all taxes (including GST), duties, levies and other government fees and charges in respect of the goods.
- b. Unless otherwise specified, prices quoted do not include such taxes (including GST).
- c. The price for the goods will be increased to include GST payable by the Company in respect of the supply if, and to the extent, any supply of goods under the contract of sale is a taxable supply within the meaning of law.
- d. All rebates, discounts and other reductions in price will be calculated on the GST exclusive price.
- e. The parties to the contract of sale agree that:
 - (a) the Company must produce tax invoices and if applicable adjustment notes to the consumer in the form prescribed by law;
 - (b) the parties to the contract of sale must be registered persons within the meaning of the law; and
 - (c) costs required to be reimbursed or indemnified excludes all amounts, which represent GST for which an input tax credit within the meaning of the law can be claimed.

TRANSPORTATION

Should the consumer request delivery by means other than the means normally used by the Company, the consumer must pay all additional costs associated with their request. If, after a 4 weeks after the goods have been available for dispatch, the Company is unable or finds it impractical to transport the goods by the means chosen, the Company may transport the goods by any means it considers reasonable. The Company reserves its rights to recuperate its costs in this regard.

RELATED DELIVERY TERMS

Whilst the Company endeavours to deliver all products in one instalment, delivery may be made in one or more instalments and at different times and by separate deliveries or shipments. Each instalment must be accepted and paid for, notwithstanding any late delivery or non-delivery of any other lot. If the Company allows the consumer to nominate a delivery date, such date may not be more than 60 days after the expected date of manufacture of the goods, as stipulated by the Company.

SPECIFICATIONS AND DESIGN MODIFICATIONS

The Company may make any modifications or improvements to the design or specifications of the goods at any time without giving prior notice to the consumer.

FOREIGN CONSUMERS

If the consumer does not live in Australia, or is not company with its registered office in Australia, and delivery is to be made outside of Australia, payment will only be accepted by bank deposit. For delivery of goods outside Australia, the consumer must arrange transportation. The consumer is liable for all taxes, duties, levies and other government fees and charges in relation to the goods. The consumer indemnifies the Company for any Loss or damage that occurs, once delivery has been effected. See **Delivery and Risk** for the meaning of delivery in the Terms.

SERVICING WARRANTIES

The Company is not responsible for the dismantling or removal of any installed products for the purpose of the consumer making a claim on warranty. The consumer is solely responsible for any installed equipment to be taken with respect to any claims on warranty. The consumer is solely responsible for the re-installation of any such equipment.

THE PARTIES

- a. Except as explicitly stated in a contract of sale, nothing in a contract of sale is intended to create, or gives effect to, a fiduciary relationship, agency relationship, partnership or trust, as between the parties to the contract of sale.
- b. No party to the contract of sale has authority or power to bind any other party.

DEPOSITS

All deposits are not refundable.

MISCELLANEOUS

- a. Any of the terms may be modified in writing by the Company unless otherwise agreed between the parties. Any modification to the terms will only regulate orders made after the modification has taken place.
- b. The Company may set-off any amounts owed by it to the consumer under the contract of sale against amounts owed by the consumer to it, on any account the Company chooses.
- c. A waiver by the Company of any term, or breach of any term of a contract of sale is not a waiver of any other term or a breach of any other term, or further breach of the same or any other term of the contract of sale.
- d. If any term of the contract of sale is unenforceable or void either in whole or in part for any reason, then that term or part thereof is severed without affecting the validity or enforceability of any other term.
- e. The contract of sale constitute the entire agreement between the consumer and the Company and no modification is binding with respect to the contract of sale unless agreed to in writing by the Company, which is at the absolute discretion of the Company.
- f. Any dispute arising out of, or in relation to, the contract of sale is governed by the laws of the State or Territory of Australia where the order is received by the Company, and the consumer submits to the jurisdiction of and agrees to be bound by courts of that State or Territory, as the case may be.
- g. The following words have the following meanings in the Terms:
 - a) "GST" has the same meaning as in the GST Law;
 - b) "GST Law" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - c) "Loss" means any loss, liability, damage, expense or cost whatsoever and includes (without limitation) indirect or consequential loss or damage, loss of profits or business opportunity, and damage to equipment or property;

d) "PPSA" means the *Personal Property Securities Act 2009* (Cth); and e) "Related Bodies Corporate" has the meaning given to it in the *Corporations Act 2001* (Cth).

PURCHASE POLICY

Refund and Returns

- a. The Company will exchange defective goods for a new like-for-like goods at no cost to our customers as per our DOA policy. However, returns for non-defective goods may attract a 25% restocking fee. This fee covers any delivery, redirection, financial and handling costs that we incur as a result of the return of non-defective goods. All goods must be returned with a valid Returned Merchandise Authorization (RMA) number which will be provided to you by the Company. This number must be clearly written on the return label when returning the goods.
- b. In accordance with industry practice and custom, if the purchased goods have been used or have been removed from their original packaging, no refunds or exchanges will be approved (unless the return has been authorised by the Company's personnel).
- c. In cases where the Company approves a return, we recommend that you return the product via Registered post and that you pre-pay all postage. The consumer assumes any risk of lost, theft or damaged goods during transit. The Company therefore advises you opt for shipment registration and insurance with your postal carrier. The Company will not be responsible for parcels lost or damaged in transit if you choose not to take out insurance in respect of the goods.
- d. The consumer must notify the Company as soon as reasonably practicable via our website or by telephone if you intend to cancel your order. Any cancellation after a product has been ordered from our Company, is being held by us, or has been shipped by our warehouse may result in the consumer being required to pay a 25% restocking fee. This fee covers any delivery, redirection, financial and handling cost that the Company incurs as a consequence of the cancellation.

DOA RETURNS

- a. If the good that you have purchased is within the manufacturer's DOA period (this is often 14 days), the Company will offer a replacement following the good's return.
- b. All goods must be returned with a valid Returned Merchandise Authorization (RMA) number which will be provided by the Company. This number must be clearly written on the return label when returning the goods.
- c. The Company will arrange, within 14 days, for the faulty goods to be delivered by courier at no cost to the customer. It is the consumer's responsibility to ensure that they are available to be picked up during this period.
- d. If returning under the DOA policy, and the goods are not directly replaceable, the Company will replace the item with a similar product or offer a refund at our absolute discretion.
- e. Once an item has been returned, and it is confirmed as being faulty by the Company, a replacement will be shipped to you at no extra cost.

CLAIMS ON WARRANTY

- a. If your goods are within the warranty period but do not fall within the DOA period (usually 14 days), please contact the Company on (03) 9704 6044 for instructions.
- b. You may be required to return your goods to the Company or the closest authorised service centre for repair (or replacement if necessary).
- c. It is the consumer's responsibility to return the item to a local authorised service centre, or to the Company, as advised by our customer service representative.
- d. All warranties are valid within Australia upon display of the Company's tax invoice.

OTHER RETURNS

- a. Please get in contact with the Company on (03) 9704 6044 before returning any goods.
- b. All goods must be returned with a valid Returned Merchandise Authorization (RMA) number which will be provided to you by the Company. This number must be clearly written on the return label when returning the goods.
- c. In accordance with the industry practice and custom, if the purchased goods have been used or have been removed from original packaging, no refunds or exchanges will be approved (unless the return has been authorised by the Company's personnel).

- d. If the goods that are received are not as ordered, please advise the Company within 24 hours of receiving the goods. Do not remove the goods from its packaging, as this may constitute an acceptance of the goods by you and those goods will not be approved for returns.
- e. The Company does not offer refunds, credit or exchanges if a consumer simply changes their mind. Accordingly, please select your goods carefully prior to placing your order. We offer comprehensive advice and can assist you when making your purchase.
- f. In line with the industry standard and custom, shipping costs or any financial charges are not refundable.
- g. Cancellation of specially ordered goods will result in a restocking fee of 25%. h. The consumer must inform the Company as soon as reasonably practicable via our website or by telephone should you wish to cancel your order. Any cancellation after goods have been ordered from the Company, is being held by the Company, or has been shipped by our warehouse may result in the consumer paying a 25% restocking fee. This fee covers any delivery, redirection, financial and handling cost that the Company incurs as part of the cancellation.
- i. The Company reserves its rights and title of ownership to any goods shipped as a result of our error, or where payments have not been made in full.

COMPANY SECURITY POLICY

The Company utilises the eWAY Payment Gateway for its online credit card transactions. eWAY processes online credit card transactions a considerable number of Australian merchants, delivering a safe, secure and protected means of collecting payments online. All online credit card transactions performed on this website using the eWAY gateway platform are secured payments. The benefits of this digital platform are as follows:

- a. Payments are fully automated with an immediate response.
- b. Your complete credit card number cannot be seen by the Company or other third parties.
- c. All transactions are performed pursuant to the 128 Bit SSL Certificate.
- d. All transaction data is encrypted for storage within eWAY's bank-grade data centre, thereby further protecting your credit card data.
- e. eWAY is an authorised third party processor for all the major financial institutions.
- f. eWAY does not touch your funds. All monies are directly transferred from your credit card to the merchant account held by the Company.

DELIVERY POLICY

- a. The Company is focused on providing you with fantastic customer service and quality goods. After you order online, you will receive an email confirmation from the Company detailing your order details (if you provided us with your email address). Normally, we will confirm receipt of your order immediately after you have completed your order.
- b. We strive to ensure that all goods advertised on our website are available for purchase, and our pricing is true and correct. Should an ordered item be found to not be available, or for any other reason we cannot fulfil your order, we will notify you within 3 working days.
- c. We will endeavour to ship in-stock goods by way of an insured courier service, or insured postal service within 3 working days. Once your goods have been sent by the Company, it may take up to 7 working days for you to receive them depending on the delivery location. Most deliveries to metropolitan areas take approximately 1 to 2 working days,
- d. If you have any queries regarding a delivery please do not hesitate to contact us at sales@hollywoodcinemastore.com.au or on (03) 9704 6044.