



GOLD RUSH

MADE IN **VINYL** AUSTIN, TX

Terms and Conditions of Orders **Last updated November 2019**

Your submission of any materials to Gold Rush Vinyl LLC (“GRV”) for media reproduction or other services, or the ordering of any services or other materials from GRV, constitutes an agreement between you (the “Customer”) and GRV on the following Standard Terms and Conditions of Sale (the “T&Cs”).

I. General Conditions:

A. Formation of Contract:

1. Any order sent to GRV by the Customer, or received on the Customer’s behalf at the Customer’s request, shall be accepted entirely at the discretion of GRV. GRV reserves the right to refuse acceptance of any order for any reason.
2. Each accepted order (the “Order”) will be accepted by GRV only upon written confirmation from an authorized representative of GRV, or shipment by GRV of the goods related to the Order.
3. Each Order constitutes an individual legally binding contract between GRV and the Customer. Based on the Order, GRV shall supply products and services, including but not limited to replication of the vinyl records (in miscellaneous packaging, incl. printed parts, henceforth referred to as “Vinyl”), mastering services, printing and packaging, fulfillment and/or distribution (collectively, the “Products”).
4. In the event of a conflict between these T&Cs and any contrary or additional terms or conditions contained on or referred to in an order form or other documents or correspondence from the Customer, the former shall apply and no addition alteration or substitution of these terms will bind GRV or form part of any Order unless expressly accepted in writing by a person authorised to sign on GRV's behalf.

5. These T&Cs shall also govern all future supplies and transactions between GRV and the Customer, unless expressly accepted in writing by a person authorized to sign on GRV's behalf. Any new order or replication of the Order constitutes a new agreement, per these T&Cs.

B. Right of Refusal:

1. GRV reserves the right to refuse service or terminate an Order for any reason at any time. If cost has been incurred, the Customer is responsible for payment to cover incurred cost(s), as detailed below in Paragraph III.
2. Customer may also choose to terminate an Order, in which case the Customer is still responsible for incurred cost(s) as well as a cancellation fee for services rendered. All costs and fees will be documented and submitted to the Customer by GRV and are subject to the payment terms set forth in Paragraph III of these T&Cs.

II. Intellectual Property:

A. Customer Warrants and Representations:

1. The Customer warrants that they possess all necessary rights and/or licenses to reproduce all aspects of the Order, and that all fees and royalties due to holders of relevant copyrights in connection with the Products have been paid or will be paid when due.
2. The Customer warrants that no parts of the Order infringe upon any copyright or any other intellectual property right of any third party.
3. The Customer warrants that there are no claims, disputes, suits or other legal action pending or anticipated in connection with the Order that may affect the Customer's representation of rights and/or licenses.

- B. Indemnification:** The Customer agrees to defend, indemnify and hold harmless GRV and shall not under any circumstances hold GRV or its subsidiaries liable for any claim, dispute, loss, expense, damage, fine, penalty, suit or cost (including attorney fees) arising from or related to

infringement or alleged infringement of any copyright or proprietary right of any third-party in connection with the Order and the Products.

C. Confidentiality:

1. GRV reserves all rights, title and interest in all intellectual property rights including but not limited to patents or copyright.
2. The Customer agrees to keep any and all cost estimates, quotations and other documents prepared and/or provided by GRV confidential.
3. The Customer shall not, without the prior consent in writing of GRV, disclose to any third-party any technical or commercial information which it has acquired from GRV as a result of discussions, negotiations and other communications between them relating to the Order, including any tours of the GRV production facilities in Austin, Texas.

III. Pricing and Payments:

A. Quotes:

1. All prices in cost estimates, quotations and invoices are in United States Dollars (USD).
2. Quotations for orders are valid for fourteen (14) days from the date of issue.

B. Payment:

1. A deposit must be *received* by GRV prior to any work beginning on an Order.
2. 75% deposit is due upfront for any Order before GRV begins to procure any materials needed to create the Products and complete the Order.
3. The remaining 25% balance on any Order is due upon test press approval for any Vinyl product. If the Order does not include Vinyl, the balance is due upon artwork approval or at GRV's discretion.

4. GRV may offer a 5% discount on any Order that is paid in-full upfront.
5. GRV reserves the right to collect full payment upfront at GRV's discretion.

C. Shipping Fees:

1. GRV may charge an estimated shipping fee at the start of the Order, to be reconciled if the Customer makes changes to either the type of delivery, speed of delivery or final shipping address.
2. GRV will communicate any and all shipping and handling fees associated with the Order to the Customer.
3. GRV has no obligation to release Products prior to receiving Customer payment for shipping and handling fees.
4. The Customer is responsible for any and all fees, duties, import charges, taxes or other charges related to the Order.

D. Cancellation:

1. In the event of a canceled order, GRV will provide an invoice to the Customer with applicable Product costs detailed, including any change or cancellation fees.
2. The Customer is responsible for any shipping charges related to the retrieval of parts or Products from the Order.

E. Defective Products:

1. Customer-provided materials and supplies deemed defective by GRV may require replacements. In the event that Customer-provided materials or supplies are deemed defective by GRV, GRV will inform Customer within two (2) business days of defect.
2. Procurement and payment for any and all replacements (such as lacquers, stampers, center labels, inserts, jackets, stickers, etc.) are solely the responsibility of the Customer and will result in increased lead time(s) for delivery of the Products.

IV. Production and Delivery:

A. Turnaround times:

1. All turnaround times provided by GRV are estimates, based on historic business data and future forecasting, and are not guaranteed.
2. Factors that will impact turnaround times include but are limited to:
 - a) Customer submission of final music files, lacquers or stampers;
 - b) Confirmation of final track listing, including clarification on where the side breaks are (ex: Side A ends with Track 5);
 - c) Customer submission of all artwork files (for center labels, sleeves, inserts, jackets, etc.);
 - d) Artwork proof approval by Customer;
 - e) Color and availability of vinyl material that is selected by Customer;
 - f) Test press approval by Customer; and,
 - g) Receipt of applicable payment (either deposit or paid-in-full balance) from Customer to GRV.
3. GRV cannot guarantee a turnaround time or achieve a Customer-provided delivery date for a job if the Customer is supplying some or all materials needed to complete the Order (such as the lacquers, stampers, center labels, inserts, sleeves, jackets, etc).

B. Delivery of Product:

1. GRV cannot, under any circumstances, be held responsible in any way for delayed delivery of Product or delivery of product past the estimated turnaround time provided on the Order.

2. GRV is not required to release and/or ship Product if full payment (including any shipping and handling charges) has not been *received*. Any delays in payment may result in delayed product delivery.
3. The Customer agrees to provide GRV with all information necessary to complete delivery of finished Products.
4. Changes in delivery address and/or method of shipment or pickup will result in additional handling fees at the discretion of GRV, including reboxing of goods.
5. GRV reserves the right to make partial shipments when necessary.
6. For any shipments, GRV will use its preferred carrier of choice. Any and all requests to use alternative shippers or carriers are not guaranteed and will result in additional charges to the Customer.

C. Risk of Loss:

1. GRV reserves the right to charge a holding fee, not to exceed 5% of the price of the Order, on a weekly basis for all Orders where delivery information is not provided by the Customer.
2. If Customer does not take delivery of finished Products within thirty (30) days of Order completion, GRV reserves the right to discard Products at their discretion.

V. Additional Warranty, Disclaimer and Limitation of Liability:

A. Product Quantity:

1. GRV agrees to fulfill *at least* the total quantity ordered by the Customer. Customer may also receive overage from the production run (that is, more than the quantity ordered) but will not be billed for more than the total quantity in the Order.
2. GRV will consider an Order complete so long as at least 90% of the quantity ordered arrives in acceptable condition (ex: if no more than 10% of a run is damaged/missing upon arrival GRV reserves the right to consider the job fulfilled).

3. In the event that GRV does not deliver the agreed upon quantity in the Order, the Customer must notify GRV within two (2) business days of accepting delivery or pickup of the Products.
4. Any refund or repressing is at the discretion of GRV.
 - a) For any Products shortage <50 units, GRV will refund the Customer the prorated cost charged, excluding the costs of the stampers, lacquers and set-up fees.
 - b) For any shortage >100 units of Product, GRV will offer the customer the opportunity to reproduce the Product at GRV's expense, or to receive a refund at the prorated cost charged for the pressing and packaging, excluding the cost of the stampers, lacquers and set-up fees.

B. Product Weight:

1. GRV guarantees finished opaque Vinyl to be within ten (10) percent of the weight requested in the Order.
2. GRV guarantees finished translucent Vinyl to be within fifteen (15) percent of the weight requested in the Order.

C. Inspection:

1. Customer (or Customer-designated third-party or affiliate recipient for product) is responsible for inspecting product upon delivery or receipt of finished Products.
2. In the event of product damage, Customer is responsible for notifying GRV upon initial receipt. Photos along with total damaged count must be sent to GRV immediately, solely at the responsibility of the customer. GRV will conduct an internal investigation and ultimately determine remedy on a case-by-case basis.
 - a) GRV is not required to take action if the findings of the investigation do not warrant Products to be replaced or repaired.

- b) GRV will, at their discretion, repair or replace any and all damaged Products up to thirty (30) days from the date of final product shipment or pickup.

D. Liability:

1. GRV shall not be liable for:
 - a) Minor physical defects that do not significantly impair use or consumption of the Products;
 - b) Unsubstantial product deviations from Order specifications;
 - c) Natural wear and tear of Products;
 - d) Negligent storage and handling of Product;
 - e) Opportunity costs around missed deliveries or extended turnaround times.
2. GRV shall, under no circumstances, be liable for any reason for more than 100% of the cost of the Order.
3. GRV is not liable for any third-party expenses incurred by the Customer in connection with the Order, including but not limited to storage, handling or drop shipping.
4. GRV agrees to store Customer-provided materials onsite (when applicable) to complete a customer order. GRV shall not be liable to the Customer for any direct, indirect or consequential damage of loss or stored materials.
5. GRV recommends all orders be completed with proper protection, such as jackets and shrinkwrap. GRV is not liable for damage where customer requests goods to be shipped or picked-up with improper protection (ex: records that are only sleeved and not jacketed).

- E. Force Majeure:** GRV will not be responsible for failure to fulfill its obligations under the T&Cs if such failure is caused by circumstances beyond the reasonable control of GRV or its suppliers, including, but

not limited to acts of God, unavailability of materials or services, equipment failures, freight interruptions, strikes or other labor disturbances.

- VI. **Governing Law:** This Purchase Agreement shall be governed by and constructed in accordance with the laws of the State of Texas. Any suit or action by Customer against GRV shall be brought exclusively in the state or federal courts in Austin, Texas.
- VII. **Arbitration:** Any controversy or claim arising out of or relating to the T&Cs, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any such arbitration shall take place in Travis County, Texas, and the parties specifically waive any claims as to venue, jurisdiction or forum for non-convenience.

BY AGREEING TO THIS DOCUMENT THE CUSTOMER REPRESENTS THAT THEY HAVE READ THE FOREGOING TERMS AND CONDITIONS OF DOING BUSINESS AND AGREE THAT SERVICES RENDERED AND MATERIALS FURNISHED SHALL BE GOVERNED BY THE ABOVE TERMS AND CONDITIONS.