

Screen Queensland Terms of Trade

Effective 1 July 2015



TERMS OF TRADE

Effective 1 July 2015
(see page 15 for change log).

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INTRODUCTION

Screen Queensland supports a creative, innovative and successful screen industry through development and investment; secures production to Queensland; and delivers an active screen culture across Queensland.

Funding decisions are determined in accordance with these Terms of Trade, the applicable program guidelines and available funding for the relevant program and by the number and quality of competing qualifying applications. Eligibility requirements apply to both applicants and projects for which funding is sought.

These Terms of Trade align with Screen Australia's unless otherwise stated. For clarity, any requirements specific to Screen Queensland are highlighted in red.

These Terms of Trade broadly outline the core terms on which the organisation will transact its business. **These Terms of Trade do not apply to Screen Queensland's Revolving Film Finance Fund and its Incentive programs.**

Successful applicants are required to enter into a legally binding contract with Screen Queensland. Contracts reflect both these Terms of Trade and the specific requirements relating to each program as set out in program guidelines.

These Terms of Trade and Screen Queensland program guidelines must not be relied upon as an offer capable of acceptance by any person or as creating any form of contractual, quasi contractual, restitutionary or promissory estoppel rights, or rights based on similar legal or equitable grounds, whether implied or otherwise.

Screen Queensland reserves the right to vary its Terms of Trade and/or program guidelines at any time, to exercise its discretion to make an exception under the Terms of Trade or program guidelines in exceptional circumstances, and to terminate any program at any time.

The Terms of Trade and program guidelines in effect at the time an application is received by Screen Queensland apply to the application.

1. GENERAL MATTERS

This section applies to all Screen Queensland funding programs, **except for the Revolving Film Finance Fund and the Incentive programs.**

1.1 General eligibility for Screen Queensland funding

In the following provisions:

- (1) “broadcaster” means a company providing television broadcasting services in Australia (including subscription television services) under the *Broadcasting Services Act 1992 (Cth)*.
- (2) “related party” means:
 - (a) a director or other officer of an applicant company; or
 - (b) the holding company or a subsidiary of an applicant company; or
 - (c) any company of which an individual applicant is a director or other officer; or
 - (d) any other company of which a director or other officer of an applicant company is a director or other officer.

1.1.1 Applicant eligibility

The following paragraphs set out eligibility provisions specific to individual applicants and company applicants, and then ‘common eligibility rules’ applicable to both individuals and companies (and, to the extent indicated, to related parties). It should be noted that the eligibility rules will also apply to the contracting entity or entities (if different from the original applicant) including any special purpose rights holding and/or production services companies.

An individual applicant must be:

- (a) an Australian citizen; or
- (b) an Australian resident, being a person who is lawfully domiciled in Australia, and who has actually been in Australia, continuously or intermittently, for more than **six (6) months** immediately preceding the application,
with preference given to a “Bona Fide Queenslander”.

An individual applicant may not be:

- (a) an employee of a broadcaster; or
- (b) enrolled full-time in a film, television or interactive digital media course at a film school or other tertiary educational institution. Applications from part-time students will be assessed on a case-by-case basis.

An applicant that is a company must be:

- (a) incorporated and carrying on business in Australia, and have its central management and control in Australia.

An applicant that is a company may not be:

- (a) a broadcaster;
- (b) a holding company or subsidiary of a broadcaster; or
- (c) jointly owned by one or more companies referred to in (a) or (b).

All applicants must also:

- (a) not be in breach of any obligation under any agreement they have with Screen Queensland or any of Screen Queensland’s predecessors;

- (b) always act 'in good faith' in all their dealings with Screen Queensland (see 1.2 below);
- (c) have the capacity and resources to carry out the project or proposal that is the subject of the application;
- (d) have the right to carry out the project or proposal that is the subject of the application (including any relevant copyright and appropriate clearances from all significant participants). If the application is based on an underlying work, Screen Queensland will expect, at the least, an appropriate option; and
- (e) have meaningful creative control of the project that is the subject of the application.

Where a related party to an applicant is in breach of an obligation under an agreement with Screen Queensland or any of its predecessor agencies, Screen Queensland reserves the right to regard the applicant as ineligible.

Screen Queensland also reserves the right not to accept an application where a **Key Principal (including a Key Creative)** on a project is a person who would be ineligible by reason of a breach of agreement with Screen Queensland or its predecessor agencies by that person or a related party.

1.1.2 Project eligibility

All applications must demonstrate that the project will produce significant cultural or economic benefits to Queensland and the Queensland screen industry.

Screen Queensland is unable to accept applications for projects:

- (a) that are infotainment, how to, sports telecasts, news, current affairs, corporate or promotional media, training videos, or community television shows;
- (b) that will be developed as part of a course of study;
- (c) that will contribute to credits for a course of study; or
- (d) that do not satisfy the applicable program guidelines.

1.1.3 Application Eligibility

Screen Queensland is unable to accept:

- (a) late or incomplete applications;
- (b) applications for funding that is retrospective;
- (c) applications that have previously been through the assessment process and rejected for funding, unless the application is substantially reworked (at the discretion of Screen Queensland's);
- (d) applications for projects that have twice been declined for funding; or
- (e) applications from applicants who have a number of concurrent or outstanding projects in development that may impact on quality or hamper timely delivery of the project.

1.2 Acting in good faith

Screen Queensland acts in the public interest and must exhibit the highest levels of propriety in its dealing with applicants. Screen Queensland requires applicants to act in the same way in their dealings with Screen Queensland. Applicants must be honest and open in all dealings with Screen Queensland. They must not mislead or deceive Screen Queensland by act or omission.

In addition Screen Queensland expects that communications between its staff and funding applicants will be courteous and respectful. Screen Queensland reserves the right to not

accept applications for funding from any person who Screen Queensland forms the view persistently treats our staff in a discourteous, hurtful or intimidating fashion, nor will Screen Queensland enter into correspondence with any such person.

Screen Queensland also expects all recipients of funding support to act fairly and reasonably in relation to third parties involved in the funded project. Fairness and reasonableness include:

- (a) paying at least award minimum rates or, where applicable, any minimum agreed between the relevant guilds, for all work performed by third parties on their project, including Key Creatives, cast and crew; and
- (b) respecting the rights of all relevant persons, whether those rights be copyright or other intellectual property rights, moral rights or Indigenous Cultural and Intellectual Property Rights.

1.3 Fees

Screen Queensland does not charge application fees for applications for development or production funding.

1.4 Audit rights

Screen Queensland may require funding recipients to provide an independent audit report in relation to expenditure of Screen Queensland funds.

Where an independent audit report is not required, Screen Queensland may require the funding recipient to provide a statutory declaration verifying the expenditure report(s). In all cases, Screen Queensland reserves the right to carry out an audit of the expenditure of its funding support to ensure compliance with contract requirements.

1.5 GST

Generally, GST is payable on Screen Queensland's funding and fees. Screen Queensland requires the applicant to have an Australian Business Number (ABN), and to register for GST if required by law. Where GST is payable, Screen Queensland will require the applicant to issue a Tax Invoice as a precondition to drawdown of the Screen Queensland funds.

1.6 ISAN

All projects in which Screen Queensland holds copyright are required to have an International Standard Audiovisual Number (ISAN).
See www.australasia-isan.org/

1.7 Reporting and information provision

For all projects and activities with funding from Screen Queensland (whether by way of recoupable equity investment or grant), the recipient will be required to provide some form of reporting/acquittal.

The information requirements will be set out in the relevant funding agreement.

1.8 Application Assessment

Applications for finance made to any other source in relation to the project must be disclosed in the form available on the Screen Queensland website. Where other finance has been obtained, the conditions attached to that finance must also be provided.

All applications will be acknowledged within three (3) business days of receipt.

Applicants will be advised of the outcome of their application by the published date or, where there is no published date, within eight (8) weeks of the date of submission.

2. CREDITING SCREEN QUEENSLAND

Screen Queensland requires acknowledgement of its support, for example by way of a credit on the project and its publicity materials. Credit requirements vary according to the nature of the support provided by Screen Queensland and are detailed in the funding agreement.

For more information see [Credit Schedule](#).

3. INDIGENOUS CONTENT

Where there is Indigenous content or participation in any production, the producer is required to comply with Screen Australia's protocols, including those related to treatment of 'Indigenous Cultural and Intellectual Property Rights'. For more information, see 'Indigenous Content and Participation' in Screen Australia's program guidelines and *Pathways & Protocols: a filmmaker's guide to working with Indigenous people, culture and concepts* available from:
www.screenaustralia.gov.au/funding/business/Indigenous_Content.aspx

4. TERMS OF FUNDING

4.1 Grants

Screen Queensland does not require a share of copyright in projects that it funds under a grant.

Screen Queensland does not take a share of receipts from projects funded under a grant. This means funding provided under a grant does not have to be repaid other than:

- (a) in case of breach by the recipient of the grant; or
- (b) where not all of the grant is required; or
- (c) where further funding is provided by way of a recoupable investment (equity) in relation to the same project.

The application and assessment process is the same where funding is provided as a grant as it is for other production funding. However, the contracting process for grants is generally faster and requires less contractual documentation than for equity investments.

Screen Queensland will provide production grant funding to successful applicants subject to the terms and conditions of Screen Queensland's standard production grant agreement (PGA). Screen Queensland will not enter into negotiations with grant recipients in respect of the Core Conditions of the PGA other than in exceptional circumstances.

4.2 Equity investment

For production funding provided by way of recoupable equity investment, Screen Queensland requires an initial recoupment entitlement to participate in gross receipts commensurate with its investment. The recoupment structure for a project will be determined on a case-by-case basis taking into account Screen Queensland's investment and the investment of others, both equity and non-equity investors.

Producers will receive the recoupment position associated with the Producer Offset and any other equity contributed by the producer. Once all equity investment is repaid, the producer's profit share will be 50%. All equity investors (including the producer in relation to the Producer Offset equity and any other producer equity) will share the remaining 50% *pro rata, pari passu*.

4.3 Development funding

Development funding must be repaid no later than when principal photography commences on the project. Development funding will not be 'rolled over' into production funding. Production budgets must accommodate the amount to be repaid.

A recipient must warrant to Screen Queensland that, upon completion of development, a substantial and agreed part of the project will be produced or post produced in Queensland. If this cannot be achieved, the recipient must seek prior approval from Screen Queensland.

4.4 Subordination

Generally, Screen Queensland will not subordinate its recoupment right to other equity investors. Screen Queensland expects to participate in gross receipts *pro rata and pari passu* with other equity investors.

4.5 Screenrights

Screen Queensland does not require Screenrights revenue to form part of Screen Queensland's gross receipts.

4.6 Recoupment

The producer is ultimately responsible for the collection and disbursement of all gross receipts. For feature films, Screen Queensland will generally require the appointment of a collection account manager (CAM) for all territories other than Australia and New Zealand; a CAM is not required for Australia and New Zealand but approval is required over the terms of any disbursement and collections agreement entered into.

4.7 Official co-productions

In relation to official co-productions, the above provisions apply only to the Australian producer, and only to the Australian components of budget and revenue.

4.8 Outstanding obligations

Screen Queensland reserves the right to withhold payment due to an applicant if the applicant or a related party has not complied with any terms under an agreement with Screen Queensland.

4.9 Contracting timeframe

Screen Queensland may revoke its funding unless contracting is completed within, the following timeframes (unless otherwise agreed) so to ensure that funds are available to support the Queensland screen industry in a timely manner:

- a) Grants and development funding – thirty (30) days from the date of approval of funding application; and
- b) Production funding – ninety (90) days from the date of approval of funding application.

4.10 Delivery Timeframe

Funding recipients are required to provide all deliverables to Screen Queensland by the contracted dates, unless otherwise agreed in writing by Screen Queensland. Failure to do so will enable Screen Queensland to immediately revoke any outstanding funding.

5. RIGHTS FOR DEVELOPMENT AND PRODUCTION FUNDING

5.1 Copyright and underlying rights

Screen Queensland requires the producer to have, or be in a position to acquire on appropriate terms, all underlying rights required to make and exploit the project.

In relation to production funding, Screen Queensland requires the producer to provide a satisfactory chain of title opinion letter from an appropriately qualified solicitor. This requirement may also apply in relation to film and television development funding where the chain of title is particularly complex or Screen Queensland considers there to be exceptional circumstances.

For development funding, Screen Queensland will hold a 10% copyright interest until investment plus a 10% premium has been repaid. Once repaid, the copyright interest will revert to the recipient.

For projects that Screen Queensland funds through a recoupable investment Screen Queensland requires a 1% copyright interest for the duration of the project's copyright subject to the reversion set out in 6 below.

5.2 Sequels, Spin-offs and Remakes

Screen Queensland is not entitled to any sequel, spin-off or remake fees from projects.

5.3 NFSA rights

Screen Queensland will require the producer to enter into a Delivery Deed with the NFSA, whereby the producer agrees to deliver certain items to the NFSA.

5.4 Other rights

In addition to the other rights set out in these Terms of Trade and the program guidelines, Screen Queensland requires the following rights:

- (a) the right to use the project and promotional materials for corporate and promotional purposes, including promotion of the Australian and Queensland film, television, and digital media industries (as applicable); Screen Queensland's rights extend to online use of excerpts of the project including on Screen Queensland's websites and social media platforms;
- (b) approval or meaningful consultation rights as set out in the project's funding agreement;
- (c) in the case of recoupable production funding:
 - 1) of TV drama and feature films, prior approval over any Major Territory deal (see glossary for definition of Major Territory);
 - 2) of feature films only, prior approval over any non-Major Territory deal which is under the take price for the relevant territory approved by Screen Queensland (in the sales agency agreement).

6. REVERSION

Screen Queensland's copyright interest is to revert back to the producer after five (5) years from the first to occur of either, the first commercial release or first disbursement of gross receipts. Screen Queensland's entitlement to gross receipts to also revert at this five (5) year mark. This will apply to all production funding.

7. COMPLETION GUARANTEE

Generally Screen Queensland requires the appointment of a completion guarantor for film and television projects that receive production funding. This requirement will depend on the experience and track record of the producer, on the nature of the project, **on the level of budget and investment**, and on Screen Queensland's assessment of the risk of completion of the project.

8. ACCESSIBILITY OF SCREEN CONTENT

Screen Queensland requires feature films that it funds to be captioned and audio described to provide access for the hearing and/or visually impaired, for cinemas and DVD. The producer will need to budget for these requirements. Feature film producers are also required by Screen Queensland to use reasonable endeavours to ensure that all Australian distribution agreements include access for the hearing and/or visually impaired via captioned and audio-described theatrical screenings and DVDs.

Screen Queensland also encourages producers of all non-feature film content to budget for captioning and audio description, and for accessible web or game design, to provide access to their projects for both hearing and visually impaired audiences.

9. DELIVERY ITEMS FOR SCREEN QUEENSLAND AND NFSA

9.1 Deliverables for Screen Queensland

As a condition of production funding, **the producer must deliver the items specified in the Delivery Schedule together with any other items specified in the contract.**

For development funding and all other forms of funding, the delivery items specified in the contract must be delivered to Screen Queensland within the agreed timeframes.

9.2 Deliverables for the NFSA

For all film and television projects, the materials specified in the Delivery Deed between the producer and the NFSA (see 5.3 above) are to be delivered directly to the NFSA (at the best quality available and at the completed resolution).

NFSA deliverables must be included in the project budget.

GLOSSARY

BONA FIDE QUEENSLANDER

Means:

- (a) in the case of a Queensland-based applicant, where the applicant lived and worked in Queensland for at least six (6) months immediately preceding the application; and
- (b) in the case of a Queensland-based Key Creative, where the Key Creative lived and worked in Queensland for at least six (6) months immediately preceding the application.

CHAIN OF TITLE

The set of documentation that establishes the producer's ownership of the rights to produce and exploit the film or other funded project. Examples of chain of title documents include option agreements, extension of option agreements, writer's agreements, quitclaim deeds and co-development agreements.

COLLECTION ACCOUNT MANAGER (CAM)

The organisation (usually overseas) appointed to collect international licence fees, distribution advances, etc directly from a sales agent's sub-licensees, administer the collections account, pay the sales agent's commissions and expenses and distribute the remaining gross receipts in accordance with the recoupment/disbursement schedule in the production and investment agreement for the film or interparty agreement (as applicable).

COMPLETION GUARANTOR

For either a flat fee (in the case of most documentaries) or a percentage of the below-the-line budget of a film, a completion guarantor will guarantee or 'bond' a project. This means that they will meet budget overages to ensure that the film is completed and delivered.

COPYRIGHT

The exclusive right to copy, broadcast, perform, exhibit, communicate to the public and otherwise commercially deal with and exploit works such as novels, stage plays, scripts, music, film and sound recordings. Copyright is personal property and can only be transferred in writing. Copyright assignments and licences relating to the script form part of the chain of title.

CREDIT SCHEDULE

Please refer to Schedule B.

DELIVERY SCHEDULE

Please refer to Schedule A.

GROSS RECEIPTS

All revenue from sales of a film, and all receipts from exploitation of ancillary and other underlying rights, any claims relating to the film and its underlying rights, statutory licences under the *Copyright Act* and interest on the collections account.

KEY CREATIVE

In the context of a project that Screen Queensland is looking to provide funding for includes:

- a) writer;
- b) director;
- c) producer; and
- d) any other personnel, which in Screen Queensland's opinion have the capacity to determine and influence the creative output of the project.

KEY PRINCIPAL

In the context of a project that Screen Queensland is looking to provide funding for includes:

- a) Key Creatives;
- b) heads of departments; and
- c) any other production personnel, which in Screen Queensland's opinion have the capacity to determine the outcome of decisions about a project including but not limited to the executive producer(s) or consultant producer(s).

MAJOR TERRITORY

The term 'Major Territory' is used in the context of Screen Queensland's recoupable investment funding only. In particular, it is used in the context of Screen Queensland's right to pre-approve sales or licenses of the funded program and in relation to the distribution commission rates which will be acceptable to Screen Queensland (Screen Queensland expects distributors to charge a lower rate of commission in respect of Major Territory deals).

The following territories are designated by Screen Queensland as Major Territories:

- d) Australia;
- e) North America as one territory;
- f) USA;
- g) world as one territory including or excluding Australia;
- h) Europe as one territory;
- i) UK;
- j) Italy;
- k) France;
- l) Spain;
- m) Scandinavia as one territory;
- n) Germany; and
- o) Japan.

OFFICIAL CO-PRODUCTION

A production between two or more countries that is officially approved as made under a treaty, or another form of government or quasi-government arrangement (typically, a Memorandum of Understanding or 'MOU'). In addition to meeting the requirements of the relevant treaty or MOU, in order to be approved as an Official Co-production, the project must comply with Screen Australia's International Co-production Guidelines.

PRODUCER OFFSET

The Producer Offset is a tax-based incentive based on expenditure on goods and services provided in Australia. It is available to eligible feature films at 40% of Qualifying Australian Production Expenditure (QAPE) and for eligible formats other than feature films at 20% of QAPE, as set out in the *Income Tax Assessment Act 1997* (ITAA 1997). Screen Australia is the *film authority* for the purposes of the ITAA 1997 and administers the Producer Offset scheme separately from its development, production and marketing support functions.

PRO RATA AND PARI PASSU

The expression relates to contributions to a project's budget and to recoupment of investments, and refers to the percentage and timing of contribution or recoupment. A *pro rata* contribution or recoupment is one that is provided or received in proportion to the contributor/recipient's interest in the project. *Pari passu* contributions or recoupment are made or received at the same time as contributions or recoupment of another party.

SUBORDINATION

A subordinated investment is one in which the investor recoups on less favourable terms than other investors, eg an investor invests 40% of the budget with another who invests 60%, but on terms that the 40% investor recoups all its money first. In this case, the 60% investor would be 'fully subordinated' to the 40% investor.

UNDERLYING RIGHTS

The bundle of rights that must be acquired in order to be able to produce and commercially exploit the project, such as rights in relation to the novel or play on which the script is based.

SCREEN QUEENSLAND TERMS OF TRADE 2015



SCHEDULE A: DELIVERY SCHEDULE

1. Two (2) DVD copies of the project supplied on the delivery date.
2. One (1) rugged-style hard drive with a H.264 compression or equivalent Quicktime mov file of the project or series supplied on the delivery date.
3. One (1) rugged-style hard drive with the following items supplied on the delivery date:
 - a. one (1) electronic press kit and written publicity pack;
 - b. at least ten (10) key images in uncompressed TIFF format;
 - c. one (1) electronic (non-PDF) copy of the full production cast and crew list, detailing names by department and Australian State or Country of residence and contact details; and
 - d. one (1) digital copy (in TIFF format or equivalent) of the poster for the project (if applicable).
4. Producer's Report (in the form available from the Screen Queensland website or otherwise agreed by Screen Queensland) supplied within three (3) months after completion, together with the following documents:
 - a. final cost report; and
 - b. the audit or audits of all production expenditure – including an audit of the Queensland Production Expenditure.
5. One (1) physical copy of the poster for the project (if and when available).
6. One (1) copy of each cross platform element of the project at the same time as such element is delivered to any other investor or contributor to the budgeted cost or under any marketing agreement (if and when available).
7. One (1) copy of the theatrical release trailer as an uncompressed Quicktime (if and when available).
8. Two (2) copies of the commercial DVD release of the project (if and when available).

SCHEDULE B: CREDIT SCHEDULE

The producer and the Production Company shall ensure that the following credit and the Screen Queensland logo (the “**Credit**”) is included in the titles of the project:

- (a) For all productions in receipt of production or development funding and not in the case of solely Development Investment or Production Incentives; a presentation credit which may be shared with any other government funding agency and is in line with other investors of a similar monetary value.

- (b) a static credit in the end titles of the Project directly before the copyright notice (but not as the last title of the Project) in the following form:

- I. If the project has received only Production Funding from Screen Queensland:

**PRODUCED WITH THE ASSISTANCE OF SCREEN
QUEENSLAND**

(Screen Queensland Logo)

- II. If the project has received both Development and Production Funding from Screen Queensland:

**DEVELOPED & PRODUCED WITH THE ASSISTANCE OF
SCREEN QUEENSLAND**

(Screen Queensland Logo)

- III. If the project has received a Production Incentive from Screen Queensland:

**FILMED IN QUEENSLAND, AUSTRALIA WITH THE ASSISTANCE
OF SCREEN QUEENSLAND**

(Screen Queensland Logo)

- IV. If the project has received only Development Funding from Screen Queensland:

**DEVELOPED WITH THE ASSISTANCE OF SCREEN
QUEENSLAND**

(Screen Queensland Logo)

The credit must:

- (a) Conform with Screen Queensland's standard artwork – available by contacting the production department;
- (b) Appear in all advertising and promotional material for the Project including all media releases, advertisements and posters (for theatrical films) but excluding theatrical trailers, television commercials and newspaper and magazine advertisements under five column centimetres in length and in material dealing exclusively with the promotion of cast members; and
- (c) Be no smaller than any other third party credit in advertising and promotional materials in which the Screen Queensland credit is to appear

Screen Queensland may, at any time upon notice in writing to the Producer, decline to require or permit its credit to be used in the Project or any advertising, promotional or publicity material for the Project.

CHANGE LOG

17 February 2017

Clause 5.1, corrected typographical error in Development funding copyright interest to 10%.