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empowering the south australian film production industry to achieve success



South Australian Film Corporation Standard Terms of Trade

Prologue

The South Australian Film Corporation (SAFC) Standard Terms of Trade apply to all Screen Industry Program initiatives and schemes.

Applicants should read the Standard Terms of Trade, along with the General Guidelines and specific program guidelines prior to submitting an application form.

Richard Harris
Chief Executive Officer
South Australian Film Corporation

Defrim Isai
Manager Industry Development
and Production
South Australian Film Corporation

3 November 2009



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The South Australian Film Corporation’s Standard Terms of Trade should be read in conjunction with the relevant South Australian Film Corporation program guidelines, General Guidelines and the program application form.

All guidelines and application forms, along with the contact details of the appropriate project officer, can be found at www.safilm.com.au.

01 Standard Terms of Trade

01.01 Overview

The South Australian Film Corporation's standard terms of trade provide guidance on how the South Australian Film Corporation will conduct its business. They supplement the South Australian Film Corporation's guidelines applying to particular South Australian Film Corporation funding programs and also underpin the terms set out in South Australian Film Corporation contracts.

The South Australian Film Corporation reserves the right at its sole discretion to vary any of its terms of trade without notice.

02.01 South Australian Film Corporation guidelines and assessment process

Applicants should note that South Australian Film Corporation guidelines are intended for guidance only. In exceptional circumstances the South Australian Film Corporation reserves the right to waive certain Guidelines when, in its reasonable opinion, a particular application is considered to fit in with the spirit rather than the letter of the Guidelines or where there may be exceptional benefits for the local industry.

The final interpretation of the Guidelines and the decision to approve applications rests solely with the South Australian Film Corporation Board. If appropriate, unsuccessful applicants may discuss any legitimate concerns with the Manager Industry Development and Production. However, the South Australian Film Corporation's decision in respect to any funding application is final and is not subject to appeal.

Under no circumstances will the South Australian Film Corporation discuss publicly its reasons for or against funding applications except with the applicant concerned.

Approval of funding does not imply an obligation of subsequent funding by the South Australian Film Corporation. For example approval of development funding in a project does not automatically guarantee approval of production investment.

01.03 Minimum requirements

Chain of title

The successful applicant must be able to demonstrate a clear chain of title in their project. This will usually involve providing a series of documents which establish that the applicant owns or controls all necessary rights in order to fully develop, produce and market their project.

For example, where the applicant is not the originator of the underlying work, the applicant must be able to demonstrate an option on the work giving the applicant the right to deal in the work for a minimum of two years, renewable for a further extended one year period by the applicant on terms to be agreed by the South Australian Film Corporation. Other examples may include agreements for the services of writers, script editors, producers and/or directors (as applicable).

All relevant chain of title documents should ideally be provided to the South Australian Film Corporation for approval at the time of application as South Australian Film Corporation contracting will often be contingent on such approval.

Completion guarantee and insurance

In general applicants must have all the necessary insurances in place, including but not limited to workers compensation, public liability and negative risks and error and omissions insurance (where relevant).

A reputable completion guarantor must be attached where the South Australian Film Corporation is providing production financing, however the South Australian Film Corporation may at its discretion waive the need for a Bond where it is the majority investor.

Australian Business Number (ABN)

Successful applicants are required to have an ABN otherwise the South Australian Film Corporation will be obliged by law to withhold an amount of tax (currently at a rate of 46.5%) from amounts due to the applicant, and to remit those amounts to the Australian Tax Office (ATO).

02 Working with the South Australian Film Corporation

02.01 Service charter

One of the South Australian Film Corporation's primary operational directives under its Strategic Plan is to operate with integrity and communicate openly.

The South Australian Film Corporation is committed to conducting its business in a timely and professional manner, while striving for objectivity and transparency at all times. In order to help promote and maintain a culture of accountability, underpinned by a policy of fair and reasonable dealing, the South Australian Film Corporation is currently developing a Service Charter that will aim to inform its clients of:

- / our commitment to quality service
- / our service standards
- / relevant information and services
- / ways to help us to help you and
- / how to provide feedback or ask questions.

The Service Charter will be available on the South Australian Film Corporation website in due course.

03 Applicant rights

03.01 Creative process

The South Australian Film Corporation recognises the importance of the producer's role in delivering according to their contractual obligations, and therefore their right to manage all aspects of the creative process without undue interference from investors. Subject therefore to the South Australian Film Corporation's right of meaningful consultation at various key points of the development and/or production process, the producer will be given full autonomy in all such matters.

03.02 Producer Equity Scheme

The South Australian Film Corporation believes that producers should have the opportunity to share in the first financial returns from the success of their films, rather than waiting until all other investors have recouped their costs.

To this end the South Australian Film Corporation has devised the Producer Equity Scheme (PES) under which successful applicants will not only enjoy an increased level of investment from the South Australian Film Corporation, but also other key benefits such as a share of the South Australian Film Corporation's copyright and recoupment position. More details about the PES Guidelines are attached at the end of this document.

03.03 Rights Reversion

Successful applicants for South Australian Film Corporation production investment, but who are not eligible (or do not wish to apply) for investment under the PES, will still enjoy the benefits of the South Australian Film Corporation's Rights Reversion policy. Under this policy, for all production investments approved by the South Australian Film Corporation after 1 January 2009, the South Australian Film Corporation's copyright interest and recoupment entitlements will revert in favour of the producer five years after delivery of the project.

03.04 South Australian Film Corporation contracting process

All funding decisions are subject to a fully executed contract based on the South Australian Film Corporation's Standard Terms of Trade.

It is expected that applicants will be responsible for their own legal and other costs associated with the contracting process, including preparing the required chain of title documentation (which should ideally be in place before applying). Contact details for film industry lawyers can be found via the Encore Directory or assistance can be sought through Arts Law Centre of Australia (<http://www.artslaw.com.au/LegalInformation/04FAQ.asp>)

Contracting can be expected to take anything up to six weeks after the funding decision dependant on the complexity of any given project and/or the overall workload at that time. It should be noted that extensive amendments to the South Australian Film Corporation's pro forma documents will generally be resisted and that prolonged negotiation may delay the contracting process.

04 Rights of the South Australian Film Corporation

04.01 South Australian Film corporation credit

It is a material contractual condition that South Australian Film Corporation funded projects must include a pre-approved credit acknowledging the support of the South Australian Film Corporation in the titles of the production and/or on any scripts or other documentation developed and/or produced with the South Australian Film Corporation funds.

Acknowledgment should also be given in any promotional material (including advertising, editorial, websites) associated with a funded project or activity. Depending on the project the South Australian Film Corporation may request other forms of acknowledgement on a case-by-case basis.

Examples of approved South Australian Film Corporation credits can be provided on request.

04.02 Copyright share

In return for its investment and subject to the its Rights Reversion policy, the South Australian Film Corporation will require a copyright interest in the production commensurate with its overall investment and *pari passu* with other investors.

04.03 Recoupment

For finance provided by way of investment the South Australian Film Corporation requires an initial recoupment entitlement to participate in gross returns commensurate with its investment pro rata *pari passu* with other investors subject to its Rights Reversion policy..

04.04 Expenditure incurred prior to contracting

Any expenditure incurred by the applicant prior to the completion of the contracting process will be the sole responsibility of the applicant, unless pre-approved by the South Australian Film Corporation.

04.05 Promotional materials

The South Australian Film Corporation will require a non-exclusive right to use excerpts from the production and other promotional materials as delivered by the producer for its corporate, promotional and educational purposes. However where the production is still to be released the South Australian Film Corporation will seek approval of the production company.

04.06 South Australian Film Corporation right of approval

The South Australian Film Corporation will require right of approval and/or consultation over certain aspects of the production, which will be outlined in the relevant South Australian Film Corporation contract.

04.07 South Australian Film Corporation access to set

The South Australian Film Corporation will require reasonable access to production sets, locations and/or studios while ensuring that it does not cause any undue interference.

05 Usual business terms

Deliverables

The applicant must provide the South Australian Film Corporation with its standard delivery items in relation to the production, a list of which is available on request.

Audit rights

The South Australian Film Corporation reserves the right to audit expenditure of its investment to ensure compliance with contractual requirements. In relation to production investment, the South Australian Film Corporation reserves the right to audit costs and receipts.

A full audit is required of all production expenditure at project completion. A statement of receipts should be provided as per the terms and conditions of collections and sales agreements.

The South Australian Film Corporation also reserves the right to undertake audits of receipts when reasonably required.

Reporting

Status reports at key points during the development and/or production process may be required on request.

The applicant must provide all necessary material reasonably requested by the South Australian Film Corporation in relation to the project and commit to meetings with South Australian Film Corporation management as reasonably requested.

Goods & Services Tax (GST)

GST is payable on all South Australian Film Corporation development and production investments and administration fees.

South Australian Film Corporation loans are not subject to GST, however the administration fees applied to South Australian Film Corporation loans will attract GST.

Confidentiality

The applicant and the South Australian Film Corporation must not divulge any confidential information (other than as published by the South Australian Film Corporation) relating to the application process to any third party (other than those of their respective employees or authorised agents) without prior written consent. In this context the term "confidential information" shall be given its everyday meaning.

Freedom of Information

The Freedom of Information Act 1991 provides the South Australian public a legal right to seek access to documents in the State Government's possession. Access is limited only by exemptions that protect essential public interests and the private and business affairs of people about whom departments and statutory authorities hold information.

Members of the public seeking access to documents that may be held by the South Australian Film Corporation should consult the FOI section on the South Australian Film Corporation website.

PRODUCER EQUITY SCHEME (PILOT)

- › Encourage the creation of a sustainable production industry within South Australia by providing a mechanism that will assist the development of South Australian production companies and support South Australian producers to work with their counterparts from other Australian states.

what is the scheme?	<p>The Producer Equity Scheme (PES) aims provide copyright and recoupment benefits to South Australian producers in a manner that will enable them to share in the rewards from the success of their films and to build their production businesses within the State.</p> <p>For successful applicants PES delivers:</p> <ul style="list-style-type: none">/ an increased level of production investment from the South Australian Film Corporation than would otherwise be available; and/ direct benefits to resident South Australian producers in the form of:/ a share of the South Australian Film Corporation 's copyright and recoupment position;/ an opportunity to build relationships with producers from other Australian states; and/ a framework for assisting South Australian producers to build sustainable production companies.
what projects are eligible?	<p>In order to be eligible for consideration under PES, projects must:</p> <ul style="list-style-type: none">/ be produced by a South Australian resident producer (South Australian producer); and/or/ be a genuine co-production between a South Australian producer and a non-South Australian producer and/ meet all of the South Australian Film Corporation's general eligibility criteria in terms of format and economic, cultural and creative contribution to South Australia./ meet the general criteria of the South Australian Film Corporation Production Investment scheme
who is eligible?	<ul style="list-style-type: none">/ South Australian resident producers or co-producers that engaged in the business of producing, and that have an ongoing business plan and slate of projects in development.
how does it work?	<ul style="list-style-type: none">/ The PES is designed to encourage favourable terms of trade for South Australian production companies./ At the same time as a South Australian producer applies to the South Australian Film Corporation for standard production investment, they may also apply for consideration under the PES./ If the South Australia producer is unsuccessful with the PES application, they will still be eligible for the South Australian Film Corporation's standard production investment./ If the South Australia producer is successful with both applications the project will automatically be classed as a PES-qualifying film. In such cases the amount of

PES awarded is deemed to be commensurate with the amount of the South Australian Film Corporation's standard production investment (up to a maximum of \$300k for each investment).

- / Under PES the South Australian Film Corporation is still classified as an investor in the film in keeping with normal industry practice; and the standard South Australian Film Corporation investment is governed by a Production Investment Agreement (PIA) on terms approved by the South Australian Film Corporation.
- / In addition to the PIA, the South Australian Film Corporation and the South Australian producer will on completion of the film execute a PES agreement prepared by the South Australian Film Corporation, pursuant to which the South Australian Film Corporation's rights in the film are assigned to the South Australia producer (subject to certain criteria having been met), except for one per cent (1%) of the film's copyright which the South Australian Film Corporation will retain for five years.
- / The South Australian producer is able to recoup its costs from the South Australian Film Corporation's share of the film's revenue from "first dollar" until such time as the film moves into profit, at which point the South Australian Film Corporation will share this revenue 50/50 with the South Australia producer.

Assessment process

In addition to the assessment criteria detailed in the General Guidelines, the applications will be assessed on:

- / the viability of the producer's business plan and the related budget and supporting documents demonstrating how the funds would be applied to progress the producer's slate of projects;
- / the producer's creative and business relationships, especially in relation to the slate of projects in development.
- / PES will be provided to the project in line with the amount approved by way of production investment (i.e. if a project is approved for \$200,000 South Australian Film Corporation investment, successful PES applicants would automatically receive this amount as PES. The cap for this is \$300,000).

Application process

- / Applications for PES are made at the same time as application for production investment.
- / The South Australian Film Corporation will consider applications for PES subsequent to investment decisions in exceptional circumstances.

Application materials

- / At the time of application for production investment all formal applications must include the following:
 - a completed PES application form;
 - if the project's initiating producer is not a South Australian resident, the applicant must provide a one page statement from each of the initiating producer and the South Australian producer describing how they intend to collaborate on the project and the nature of their respective roles;
- / for projects presented by an South Australian producer for funding in any twelve month period, the maximum aggregate amounts that the South Australia producer can receive is limited as follows:
 - where the initiating producer is not a resident of South Australia, the maximum production investment that the South Australia producer can obtain is \$300,000.

	<ul style="list-style-type: none"> - where the South Australian producer is the initiating producer, the maximum production investment that the South Australian producer can obtain is \$600,000. - the maximum aggregate amount of production investment that an South Australian producer can obtain in any twelve month period is \$700,000.
how do I apply?	<p>The application process is detailed in the General Guidelines.</p> <p>Application forms are available online at www.safilm.com.au</p> <p>After reading the General Guidelines and confirming eligibility, applicants are asked to discuss their applications with an Industry Development and Production project officer prior to submitting an application.</p>
when can I apply?	<p>PES applications are open all year round and are considered by the board at the subsequent board meeting.</p> <p>Applications must be submitted including any Production Investment application that are to be received no later than 20 working days before a Board meeting.</p> <p>Refer to the www.safilm.com.au for Board dates.</p>
where do I submit my application?	<p>South Australian Film Corporation 3 Butler Drive Hendon South Australia 5014</p>
where can I find more information?	<p>/ Read the South Australian Film Corporation General Guidelines</p> <p>/ Visit www.safilm.com.au</p> <p>/ Contact an Industry Development and Production project officer on +61 8 8348 9300</p>

The fine print

As with all South Australian Film Corporation programs, the following guidelines must be read in conjunction with the South Australian Film Corporation General Guidelines, Terms of Trade and application form. Applicants are required to discuss their applications with a South Australian Film Corporation project manager prior to submitting an application. General Guidelines and application forms can be found at www.safilm.com.au



South Australian **Film Corporation**