

SCREEN TASMANIA

Terms of Trade

I Introduction

Screen Tasmania is the Tasmanian State Government's funding body for the Tasmanian screen industry. Screen Tasmania is a business unit within the Department of State Growth who represents The Crown Right of Tasmania.

Screen Tasmania's Terms of Trade, as set out in this document, broadly outline the core terms on which the organisation will transact its business. They apply to Screen Tasmania's eligibility requirements and funding support.

The Terms of Trade should be read in conjunction with the specific funding program guidelines. The range of Screen Tasmania's funding programs can be found at www.screentasmania.com.

Contracts entered into between Screen Tasmania and applicants reflect both these Terms of Trade and the specific requirements relating to each program as set out in the program guidelines.

Funding Information

Screen Tasmania offers funding programs covering Digital Innovation, Production Finance, Project Development, Industry and Enterprise Development and Festivals and Events.

Funding is provided by way of a grant, or pro rata equity investment (recoupable investment) depending on the type of program applied for.

Funding decisions are determined by the terms of, and available funding for, the relevant program as well as the number and quality of competing qualifying applications. Eligibility requirements apply to both applicants and projects for which funding is sought.

Screen Tasmania will usually cap the amount it invests in any one project. In some programs, Screen Tasmania may also cap the amount available to any entity in any financial year.

Due to limited funds, Screen Tasmania strongly encourages applicants to seek Screen Australia funding as an alternative source of project development funding.

Specifically, if a project has already received development funding from Screen Tasmania it is expected that applicants will apply to Screen Australia for the next tranche of development support.

Screen Tasmania will as a matter of policy facilitate producers to access Screen Australia funds wherever possible.

Tasmanian applicants are welcome to seek assistance from Screen Tasmania's Production and Investment Manager or Development Manager when preparing their submission to Screen Australia.

2 General matters

2.1 Terms of Trade applicable to your project

Screen Tasmania's Terms of Trade may change from time-to-time. The Terms of Trade in force at the time Screen Tasmania decides to invest in the project will continue to apply for the life of that project.

2.2 Fees

Screen Tasmania charges a flat two per cent administration fee of any production investment funds it invests to cover some of its legal and administration fees.

The amount charged to any one production investment is capped at \$6 000 and is to be paid prior to the second drawdown of funds. Please note second drawdown will not be made until these fees are paid.

No fees are payable on development investments or grants funds.

2.3 Acting in good faith

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

Screen Tasmania also expects all successful applicants to act fairly and reasonably to all third parties involved in their project. Fairness and reasonableness includes:

- a) paying at least award minimum rates for all work performed by third parties on their project, including cast and crew fees, and/or by offering deferrals or revenue participation; 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.

2.4 Audit rights

Screen Tasmania may require the right to audit expenditure (costs and receipts) of its investment to ensure compliance with contract requirements. In the case of Production Investment, an independent audit is generally required of all production expenditure at project completion including details of Tasmanian spend. Audit costs shall be the responsibility of the applicant.

2.5 GST

Generally, GST is payable on Screen Tasmania's investment and fees. Screen Tasmania requires the applicant to:

- a) Have an Australian Business Number (ABN); and
- b) Register for GST, if required by law.

Screen Tasmania will require the applicant to issue a tax invoice as a precondition to drawdown of Screen Tasmania's funds.

2.6 Screen Tasmania contracting process

Successful applicants across all funding programs will be required to enter into a contract with the Tasmanian Government.

Failure by the applicant to sign and return final agreed execution copies of the contract within 30 days of receipt of the contract will mean that Screen Tasmania is no longer obliged to invest in and or support the project and may retract their offer.

It should be noted that the Tasmanian Government's policy in relation to confidentiality provides that in any contract between the Crown and any other party, confidentiality requirements in relation to the provisions of the contract are not to be included. The restriction on confidentiality applies only to the contract itself, including annexures or schedules but not to the services or products that flow from the performance of the contract. This policy is contained within the Treasurer's Instructions issued under section 23 of the *Financial Management and Audit Act 1990* and section 114 of the *Government Business Enterprises Act 1995* relating to the Confidentiality of Government Contracts. Further details can be found on the Department of Treasury and Finance website: www.treasury.tas.gov.au.

This policy has a direct impact on the Screen Tasmania contracting process in relation to production investment projects. Due to the restriction on confidentiality, Screen Tasmania for example is unable to be party to Screen Australia's Production and Investment Agreement (PIA) and therefore there is a requirement for successful applicants to enter into a separate Screen Tasmania Interparty Agreement (IPA) Delivering to Screen Tasmania.

Within Screen Tasmania contracts (excluding production investments and where appropriate) a standard minimum of six months is allowed for delivery of agreed materials for which program funding is provided.

2.7 Screen Tasmania delivery process

Whilst delivery within a shorter time frame is encouraged, should the applicant be unable to meet the contracted delivery date the procedure is as follows:

- 2.7.1 The applicant must advise the relevant Project Officer at least 14 days before the delivery date

that the delivery date will not be met.

- 2.7.2 Following consultation with the relevant Project Officer an extension period up to a maximum of six months may be granted and a revised agreed delivery date shall be approved in writing by Screen Tasmania. No further extensions shall be given unless the Applicant can prove extenuating circumstances that are acceptable to Screen Tasmania.
- 2.7.3 Failure to deliver by the revised agreed delivery date will result in the applicant forfeiting any outstanding funding and further, Screen Tasmania will take action to have the funds repaid in full or alternatively require that partially completed materials be provided to Screen Tasmania.
- 2.7.4 Screen Tasmania reserves the right to not accept any further funding applications from an applicant who has failed to deliver until delivery on the late project is fully acquitted.

2.8 Required Tasmanian Spend

Where Screen Tasmania invests equity in production under the 2.1 Production Investment Fund, the terms are as follows:

- Excluding one-off documentaries but including drama documentaries, for every dollar invested it is required that there is a four dollar spend in Tasmania.
- For one off documentaries not including drama documentaries, it is required that for every dollar invested it is required that there is a three dollar spend in Tasmania; or
- Where the one-off documentary is a Tasmanian production or involves a genuine creative or financial partnership with a Tasmanian and is required to shoot outside of Tasmania, a minimum of 30 per cent of the total budget is to be spent in Tasmania.
- Tasmanian spend includes freight, catering, facilities, local equipment hire, Tasmanian cast and crew wages and superannuation, cast and crew travel and accommodation including per diems and airfares but excludes non-Tasmanian cast and crew wages, superannuation, fringes and 50 per cent of airfares.

In the instance where there is a failure on the part of a production company to meet their obligations under the Production Investment Agreement and/or Interparty Deed, Screen Tasmania will follow due process as set out in the [2.1 Production and Investment Fund Guidelines](#).

3 Crediting Screen Tasmania

Screen Tasmania requires acknowledgement of its support, for example by way of a credit on the film and its publicity materials. Guidelines for logo usage can be accessed [here](#). Credit requirements vary according to the nature of the support.

Further queries should be directed to Screen Tasmania's Communications and Marketing Manager.

4 Indigenous content

Where there is Indigenous content or participation in any production, Screen Tasmania requires that the producer complies with the following:

- i. Screen Australia's protocols, including those relating 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' on the Screen Australia website at:
http://www.screenaustralia.gov.au/funding/business/Indigenous_Content.aspx
- ii. Guidelines outlined in The Tasmanian Arts Advisory Board's Respecting Cultures Initiative:
http://www.arts.tas.gov.au/resources/publications/respecting_cultures

Productions that involve Tasmanian Aboriginal content, producers are required to engage a recognised Tasmanian Aboriginal consultant at both development and production stages. The consultant must be:

- Recognised as Australian Aboriginal or Torres Strait Islander descent;
- identifies as an Aboriginal or Torres Strait Islander descent;
- is accepted as such by the community in which he or she lives or has lived; and
- is recognised by The Tasmanian Office of Aboriginal affairs.

The Tasmanian Office of Aboriginal Affairs (OAA) in the Department of Premier and Cabinet is responsible for assessing eligibility under the Policy.

A copy of the Policy can be downloaded at:

http://www.dpac.tas.gov.au/divisions/cdd/oaa/eligibility_policy

The consultant shall be employed by the Producer at standard industry rates and is required to advise Screen Tasmania in writing that they have complied with the relevant indigenous protocols.

5 Terms of funding and gross receipts

5.1 Grant

Screen Tasmania provides funding in the form of a non-recoupable grant to eligible legal entities that apply for funding under several of Screen Tasmania's funding programs and initiatives. Screen Tasmania's contribution to a project by way of a grant does not have to be repaid other than in the case of breach of contract.

In relation to the non-recoupable grants provided for support as part of the Industry and Enterprise Development Program, Tasmanian applicants only are eligible to apply. Funding as part of the Festival and Events Program is also usually provided by way of a grant and both Tasmanian and non-Tasmanian applicants may apply providing there is demonstrable benefit to the Tasmanian industry.

5.2 Project Development funding

Screen Tasmania provides project development funding to assist with the development of digital content, feature films and series television across a range of genres (including comedy, drama, factual and light entertainment, format TV and animation) as well as documentaries. Project Development funding is provided in the form of an investment and is only available to Tasmanian practitioners or companies unless non-Tasmanian practitioners or companies can demonstrate they are in a genuine creative or financial partnership with a Tasmanian practitioner or resident production company.

If a project has received project development funding from Screen Tasmania and then proceeds into production in Tasmania, on the commencement of principal photography, the producer will reimburse all of the development funds plus a 10 per cent premium charge.

If a project which has received development investment and is to be produced entirely outside of Tasmania, on the commencement of principal photography, the producer will reimburse all of the development funds plus a 25 per cent premium charge.

Tasmanian production companies will be entitled to rollover their project development funds plus the premium if requested and provided that their project goes into production in Tasmania. If the majority of the production does not go ahead in Tasmania then we will require that the development investment plus the 25 per cent premium charge be repaid in full to Screen Tasmania.

Non-Tasmanian production companies may also apply for a rollover of their project development funds plus the premium into the production provided that the project goes into production in Tasmania.

The amount Screen Tasmania will fund depends on available funding, the terms of the particular program and the quality of the application.

Information on funding caps and eligibility for each funding program is available under the relevant guidelines in Project Development on the Screen Tasmania website: www.screent Tasmania.com.

Funding provided as a development investment will typically be paid in two drawdowns:

- a) 70 per cent of the value of Screen Tasmania's Development Investment on execution of the Development Investment Agreement;
- b) 30 per cent on delivery of the development materials.

5.3 Production investment

Screen Tasmania's production investment funding is provided in the form of an equity investment.

For finance provided by way of recoupable investment, Screen Tasmania will participate in gross receipts commensurate with its investment. Recoupment is calculated on a pro-rata pari-passu basis with other investors.

Screen Tasmania invests in productions where the Tasmanian production company has an equity position in the production or where there is demonstrable significant economic and cultural benefit to the state.

Screen Tasmania requires that the producer provides evidence of how the production budget is to be cash-flowed where the producer offset forms part of the finance plan.

Funding provided as a production investment will be cash flowed on terms to be negotiated on a case by case basis.

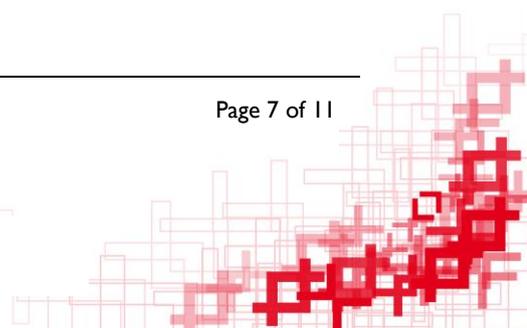
5.4 Recoupment

Generally Screen Tasmania will not subordinate its recoupment right to other equity investors other than the producer.

Should the project go into profit then Screen Tasmania shall share in profits in accordance with the PIA or Interparty Agreement.

Profit participation is a matter for negotiation between the producer and Screen Tasmania.

In relation to offset projects, the recoupment entitlement will be calculated as if the total value of the producer offset cash flowed into production (less funding costs) is contributed towards the production budget and the applicant has equity in the production equal to the value of the producer offset.



In relation to third party grants secured by the producer, Screen Tasmania shall assess if they are to be included as Producer's Equity on a case by case basis.

5.5 Screen rights

The applicant is entitled to all revenue from screen rights. It is mandatory for successful production funding recipients to sign up with screen rights organisations.

5.6 Reversion and disbursements

Screen Tasmania shall revert its recoupment rights in all projects after five years but usually shall maintain one per cent copyright ownership in perpetuity. Screen Tasmania requires annual reporting on sales and exploitation of the project for research and analysis purposes for seven years.

The producer is ultimately responsible for the collection, disbursement and reporting of all gross receipts.

Screen Tasmania has no financial interest in any 'Export Market Development Grant' that the applicant may be entitled to as a result of the production.

6 Rights for development and production funding

6.1 Underlying rights/chain of title

The producer must be able to demonstrate clear chain of title in their project. This will usually involve providing a series of documents which establish that the producer owns or controls all necessary underlying 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 producer must be able to demonstrate a secure option on the work, renewable for an appropriate period and on terms agreeable to Screen Tasmania. Other examples may include agreements for writers, script editors, producers and/or directors (as applicable).

All relevant chain of title documents should be provided to Screen Tasmania at the commencement of contracting.

6.2 Copyright interest

Screen Tasmania requires a one per cent copyright interest in all projects for which it provides development or production funding.

Screen Tasmania holds copyright interest in perpetuity in projects in which it has invested production funding.

6.3 Promotional material

Screen Tasmania requires the right to use the project and promotional materials (in whole or in part) for its corporate and promotional purposes.



6.4 Approval rights

Screen Tasmania requires approval rights as set out in the project's Production Investment Agreement (PIA) and Screen Tasmania Interparty Deed.

6.5 Exploitation

In the case of all recoupable funding, Screen Tasmania requires prior approval of every agreement granting a licence (or an option to acquire a licence) to make a Sequel, Spin-off, or Remake. A Sequel includes a project based on the format of the original project. This approval right applies regardless of the identity of the licensing entity (for example, the licence to make the Sequel, Spin-off or Remake which requires Screen Tasmania's prior approval may be offered by the original producer or a marketing licensee such as a sales agent or distributor, and the marketing licensee may be related to the original producer or an arms' length entity).

In the case of all recoupable production funding of documentary, TV drama and feature films, where the right to make a sequel, spin-off or remake (including a program based on the format of the original program) is optioned or acquired, the following principles apply:

- a) If the sequel, spin-off or remake is to be produced by the original producer or a Related Entity (see glossary for a definition of Related Entity), whether in Australia or elsewhere, Screen Tasmania requires the right to receive a fee in the production budget of each and every Sequel, Spin-off or Remake on the equivalent terms as outlined in Screen Australia's terms for Sequels, Spinoff and Remakes. http://www.screenaustralia.gov.au/getmedia/c416ee05-b071-438c-b689-33837801db7c/Terms_of_Trade.pdf
- b) In the case of recoupable funding of games, requirements relating to sequels, spin-offs or remakes will be included in the project's funding agreement.

7 Completion guarantee

Generally, Screen Tasmania requires the appointment of a completion guarantor for production investment projects. However, Screen Tasmania may waive the requirement for a completion guarantor in relation to productions in which it invests if some or all of the following conditions are satisfied:

- a) The total budget for the project is under \$500 000.
- b) The production team is experienced.
- c) The producer can assure Screen Tasmania they have the required funds, insurances and/or an arrangement with a broadcaster or distributor that ensures any unforeseen overages can be covered to deliver a satisfactory product to the market.

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- d) The nature of the subject matter being proposed means there is limited risk in the project being completed on time and on budget.
 - e) The nature of the project means key creatives and/or core subject matter can be replaced with alternatives if necessary.
 - f) If required by Screen Tasmania a qualified and approved consultant is employed at the production company's expense to oversee Screen Tasmania's interests in the production in terms of budget expenditure.

Regardless of the above, Screen Tasmania retains the right to require a completion guarantor if it identifies any risk it believes will be alleviated by having a completion guarantor.

8 Delivery materials for Screen Tasmania

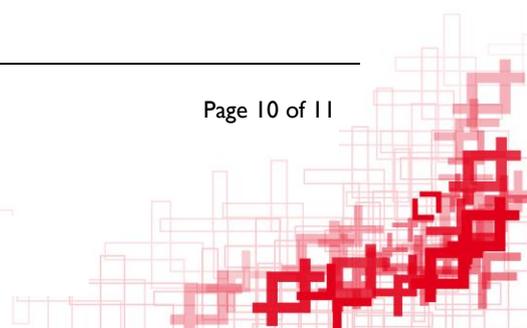
In relation to project development funding, Screen Tasmania will determine the delivery materials for each development project depending on the stage of work and the funds provided.

As a condition of production funding, the producer must deliver the following delivery materials to Screen Tasmania:

- a) Four DVD copies of the film.
- b) If and when the film is commercially released on home video, two DVD copies of the film and two BlueRay (or if not released on BlueRay, the highest resolution format available) copies of the Film for our promotional, preview and archival purposes.
- c) One electronic press kit and written publicity pack for the film.
- d) One complete crew contact list for the film.
- e) One copy of the master set of production stills from the film to be supplied on USB or similar.
- f) If applicable, one copy of the film's posters for Australia, to be supplied as soon as available.
- g) If applicable one copy of the soundtrack of the film on CD, to be supplied as soon as available.
- h) One copy of any other marketing materials, to be supplied as soon as available.

Screen Tasmania requires marketing reports to be provided annually for the first five years after the delivery of the project and on disbursement of gross receipts when those gross receipts are more than \$5 000.

Producers must lodge master materials as required with National Film and Sound Archive (NFSA).



Producers must register master materials as required with:

- International Standard Audiovisual Number; and
- Screenrights.

For further information and enquiries regarding doing business with Screen Tasmania, please contact our Business Manager on telephone (03) 6165 5070 or email:

andrew.mcphail@screen.tas.gov.au.
