

Booking Terms and Conditions

These are the Booking Terms which apply for Film Outreach Australia Pty Ltd ABN 77 619 809 773 (FOA, we, us and our), by you (You, Your)'.

This document outlines Film Outreach Australia (FOA) Terms and Conditions. FOA may vary these Terms and Conditions at any time. FOA will post the varied Terms and Conditions on its website. By booking a Film Program with FOA, you are agreeing to FOA 's terms and conditions.

1. Film Program

The Film Program comprises the provision of publicity and related materials and a copy of the film or films described in the Booking Form for the Film Program for screening by you at the approved Venue on the approved Screening Date(s) as described in the Booking Form and in accordance with these Terms.

2. Duration

- 2.1 The Film Program will be provided and available to you for the period indicated in the Booking Form.
- 2.2 These Terms will apply to the entire duration of the Film Program and certain provisions will continue to apply after the expiration of the Film Program, as specified in these Terms.
- 2.3 At the expiration of the Film Program you must:
 - (a) remove and responsibly destroy all publicity and promotional material related to the Film Program (subject to you being entitled to retain one copy for your internal use); and
 - (b) arrange for the safe return of all copies of the film(s) that were provided to you in the manner in which we advise by the date or within the timeframe specified for return of screening materials as described in the Booking Form.

3. Booking subject to facilities and equipment

- 3.1 Prior to confirming your Booking, we must be satisfied that you have the necessary and appropriate facilities and equipment to screen the Film Program. You will be asked to provide this information in the Booking Form.
- 3.2 Given it is your sole responsibility to screen the film, we recommend that you speak with any person having sufficient knowledge and familiarity ('Technician') with the facilities and equipment with which you intend to screen the Film Program prior to lodging your Booking Form.
- 3.3 In order to obtain confirmation or clarification, we may speak or otherwise communicate directly with your nominated Technician. You will be required to provide details for such person and consent to our communication with them.

- 3.4 If we determine that you do not have the necessary or appropriate facilities or equipment, we may decide, in our sole discretion, not to approve your Booking. In these circumstances, the Film Program may be offered to you at an alternative time after you have acquired the necessary and appropriate facilities and/or equipment.
- 3.5 If we do not approve your Booking pursuant to this clause, any payment that you have made to us will be refunded less any Cancellation Fee that may be applicable which amount will represent a genuine estimate of our costs or expenses up to the date of cancellation.

4. Cancellation after approval

- 4.1 Your Booking commences immediately on your execution of this Agreement, and work will immediately commence in providing you the Film Program. As such, if you cancel your Booking after the date of this Agreement, a Cancellation Fee may apply to cover the genuine estimate of our expenses up to the date of your cancellation, subject to this Agreement.
- 4.2 The amount of any Cancellation Fee will be notified to you following your cancellation and will be dependent on various factors, including when cancellation occurred, when the Film Program was due to be screened and how much work has been undertaken prior to cancellation.
- 4.3 Film Outreach shall not be responsible for cancellation resulting from causes beyond its reasonable control, including but not limited to: acts of God, equipment failure, war, acts of terrorism, riot, epidemics, floods, fires, unusually severe weather conditions, accidents or other contingencies the non-occurrence of which was a basic assumption on which the booking was made.

5. Fees and payment

- 5.1 If any portion of the Fees for the Film Program are calculated based on the number of patrons who attend any screening held by you, you will be required to provide details of such attendance and any other details in a Box Office Report within the timeframes specified in the Booking Form, within the timeframe specified in the Booking Form. The total Fees applicable to such screening will be notified to you and payable within the timeframe specified in the Payment Terms in the Booking Form.
- 5.2 You are not entitled to reduce, to withhold or deduct for any reason any monies payable to us pursuant to these Terms.
- 5.3 If any payment is not received on its due date, we may, in our sole discretion, determine to change our payment terms for any future Film

Program that you request including requiring the payment of a bond or payments in advance of the provision of the Film Program.

Interest

- (c) If any payment that is due pursuant to this Agreement remains unpaid in full or in part after thirty (30) days from its due date, we may charge interest on the outstanding balance, which will be applied to the amount outstanding and calculated daily at the standard Reserve Bank of Australia cash rate plus 5%.
- (d) Interest may be charged pursuant to the above clause on any outstanding amount from the thirtieth (30th) day after the date of the outstanding invoice until payment in full of such outstanding invoice (including all interest) is received by us.

6. What we provide

- 6.1 We will provide you with access to publicity and promotion materials via a URL together with recommendations for the best practice
- 6.2 It is your sole responsibility to print any physical materials, arrange for the placement of such materials and such other promotion of the Film Program as you see fit. You will be responsible for any costs associated with the printing of materials and promotion of the Film Program. You must also ensure that you obtain all appropriate permission or approval prior to the placement of publicity or promotional materials.
- 6.3 Prior to your first Screening Date we will deliver to you a copy of the Film Program in an appropriate format. You are solely responsible for the safe-keeping, care and maintenance of any physical copy of the Film Program delivered to you during all times that you hold or control such materials.
- 6.4 If during the period of your Booking, any damage occurs in relation to the physical materials provided by us for screening, you must notify us as soon as possible. You will bear the cost of any replacement materials that need to be prepared and, if we agree to provide you with such replacement materials, the cost of delivery of such replacement materials and your agreement to any conditions that we consider appropriate for the duration of your Booking.
- 6.5 You must not allow any person to have access to, copy, duplicate, distribute, screen, borrow or hire any screening materials provided to you comprising the Film Program.
- 6.6 We may embed or in any way include our branding or other intellectual property in any screening materials for the purpose of promotion of our business and you must not alter, obscure, delete, cover or otherwise remove any such branding or intellectual property in any circumstances. You may not include any of your own or any third party branding or other intellectual property on any screening materials without our express prior permission.

7. What we require from you

- 7.1 You are solely responsible for accessing the online publicity materials and taking such steps as you deem appropriate to promote the Film Program. If you have any difficulty accessing the publicity materials or otherwise using the URL that we will provide to you, you should immediately contact us for assistance.
- 7.2 If you are unable to promote the Film Program for as long as you wish because of any delay or issues in accessing the publicity materials, no extension of your Booking will be available unless otherwise expressly agreed by us.
- 7.3 If the Booking Form specifies that a Box Office Report is required in relation to the screening of the Film Program, you must prepare and deliver a Box Office Report to us within the timeframes specified in the Booking Form.

8. No representation of expected outcome

- a. We do not represent or warrant that you will achieve any particular result or attendance for any Film Program that you book. You must rely on your own skill, experience, judgment and opinion to determine whether the Film Program is appropriate for you and you do not rely on any conversation, discussion or perceived representation or opinion made by us in making such decision.
- b. You release us and hold us harmless from any and all loss, cost, expense, claim or inconvenience arising as a result of your promotion and/or screening of the Film Program.
- c. We will provide to you our recommendations regarding the promotion and screening of the Film Program however it is your sole responsibility to determine when and where the Film Program will be screened and to ensure that any venue has the capacity and availability to properly service the Film Program. We will not be involved in negotiating, booking or otherwise communicating with your venue or other providers in respect of your Film Program other than in exceptional circumstances as determined by us.

9. Intellectual Property

- a. You acknowledge and agree that you will obtain no rights in our Intellectual Property nor the Intellectual Property rights of any third party, which will at all times during your Booking and after its expiration or termination remain our sole property or the sole property of the relevant third party.
- b. To the extent that you acquire any right, title or interest in or in relation to the Intellectual Property of us or any third party, you agree to immediately and automatically assign to the original Intellectual Property owner absolutely your entire right, title and interest in such Intellectual Property.

10. Confidential Information

- a. Non-disclosure
Each Party will:

- i. keep the Confidential Information of the other Party confidential in the same manner as its holds its Confidential Information of like kind but in no event shall the recipient exercise less than reasonable care in maintaining the confidence of such information and shall not disclose it or make it available directly or indirectly to any third party (subject to disclosure permitted under this Agreement or as otherwise permitted or required by law); and
 - ii. use the Confidential Information of the other Party solely for the purpose of performing its obligations under this Agreement.
- b. Need to Know
Each party may only disclose the Confidential Information of the other party to its officers, employees and permitted subcontractors who:
 - i. have a need to know the Confidential Information (and only to the extent that each has a need to know); and
 - ii. have undertaken to maintain the confidentiality of the Confidential Information in accordance with this clause.

11. Termination

Early termination by either Party

Either Party may terminate this Agreement and the Booking at any time by providing written notice to the other Party by email if:

- a. that other Party breaches a material term of this Agreement (including payment terms) and such breach is not rectified within 7 days of notice of such breach;
- b. a receiver, receiver and manager, an official manager, a controller, a liquidator, a provisional liquidator, an administrator or other like person is appointed for the whole or substantially the whole of that other Party's assets, undertaking or business;
- c. that other Party becomes insolvent;
- d. that other Party behaves in a way that brings, or has the potential to bring, the name, reputation and goodwill of the first Party into disrepute; or
- e. that other Party exposes the first Party or any of its officers, agents, employees or representatives to any inappropriate or improper behaviour, including condescending, discriminating or offensive language or conduct, harassment and bullying.
- (f) No Cancellation Fee will apply or otherwise be payable in relation to the early termination of this Agreement under clause 11.

12. General provisions

- a. Goods and Services Tax

- i. All Fees are exclusive of GST unless otherwise expressly advised.
- b. If a payment by a Party under this agreement Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that Party, then the payment must be inclusive of any GST payable and will be reduced by the amount of any input tax credit to which that Party is entitled for that loss, cost or expense. That Party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.
- c. Continued Rights
The expiry or termination of this Agreement will not affect or limit any accrued rights of the Parties.
- d. Acceptance Without Execution
You will be deemed to accept these Terms without execution of this document, if you provide us with any payment, approval or authority to proceed with the Booking, whether verbally or in writing, at any time after receipt by the Customer of these Terms.

13. Definitions and interpretation

13.1 Definitions

In this Agreement, unless the context requires another meaning:

- a. "Agreement"
means this document, together with any attachments.
- b. "Booking"
means your agreement to promote and screen the Film Program on the Screening Date(s) at your specified Venue.
- c. "Booking Form"
means the form attached as Attachment A and entitled Booking Form which includes, among other details, the details of the Film Program, Screening Date(s), Venue and Payment Terms.
- d. "Box Office Report"
means a report to be prepared by you and provided to us including details of the Screening Date(s), number of attendees and amount charged per attendee and which is to be delivered to us within the timeframe specified in the Booking Form.
- e. "Business Day"
means a day (other than a Saturday, Sunday or public holiday) on which the banks are open for general banking business in Sydney.
- f. "Cancellation Fee"
means the fee which may be applicable in the event of cancellation of the Film Program prior to its expiration and in accordance with this Agreement which fee will represent a true

estimate of the loss, cost or expense to us arising from such cancellation.

- g. “Claim”
Includes, in relation to a person, any claim in respect of any damage, loss, cost, expense or liability incurred by the person or a claim, demand, action, proceeding or judgment made against the person, however arising and whether present or future, fixed or unascertained, actual or contingent.
- h. “Confidential Information”
means any proprietary information or material belonging to you, us or any third party involved with the Booking, including, without limitation, all data and information relating to you, us or any such third party and our respective operations, facilities, personnel, positions, assets, services, clients, sales and transactions whether or not such information is provided to a party before or after the commencement of your Booking.
- i. “Fees”
means those fees applicable to the delivery of the Film Program in the amounts and payable on the dates described in the Booking Form.
- j. “Film Program”
means all available publicity and promotional materials related to the films described in the Film Program in the Booking Form including provision of a copy of the relevant films for screening by you.
- k. “GST”
means a goods and services tax, consumption tax, value-added tax, retail turnover tax or a tax of a similar nature.
- l. “Intellectual Property”
means all rights, whether registrable, registered or unregistered in any patent, trade mark, trade name, business name, company name, copyright, registered design or other design right or circuit layout right, or any applications for, or rights to obtain or acquire, any such rights.
- m. “Payment Terms”
means the Fees payable from time to time during the Booking period in relation to the Film Program in the amounts and on the dates described in the Booking Form.
- n. “Screening Date”
means the approved date or dates on which the film(s) comprised in the Film Program are intended to be screened at the approved Venue.

- o. "Terms"
means these terms governing your Booking.
- p. "Venue"
means the approved venue at which the Film Program is to be screened as described in the Booking Form.

14. General Provisions

a. Assignment

This Agreement (including any attachments):

- i. shall ensure for the benefit of and be binding upon the Parties hereto and their respective successors and assigns; and
- ii. may not be assigned by any Party without the prior written consent of all of the Parties.

b. Issue of notices

All notices to be issued under this Agreement are to be issued in writing and in accordance with these provisions unless expressly specified otherwise.

c. Receipt of Notice

Except in the following circumstances, a communication takes effect when received:-

- i. in the case of a letter sent by pre-paid ordinary post, on the 3rd day after posting;
- ii. in the case of an email, the earlier of either:
 - 1. 24 hours after transmission, provided the sender receives no notification of failed delivery to the recipient; or
 - 2. on receipt by the sender of confirmation of the recipient's answer back code after transmission.

If a Party subsequently communicates another address or email details, the particulars in that communication supersede (where applicable) the particulars set out above.

d. Standard warranties

Each and every Party warrants that:

- i. each has voluntarily entered into this Agreement without any duress;
- ii. other than as set out in this Agreement (including any attachments), no promises, representations or inducement has been made to enter into this Agreement;
- iii. each has had full opportunity and has consulted with their solicitors and received legal advice concerning the nature, effect and extent of this Agreement; and
- iv. each is aware that each of the others is relying on these warranties in this clause d in executing this Agreement.

15. Construction of this Agreement

a. Merger

The rights and obligations of the Parties in respect of agreements, indemnities, covenants and warranties contained in this Agreement are:

- i. continuing agreements, covenants, indemnities and warranties; and
- ii. accordingly, are not merged or extinguished by the partial performance by a Party of their obligations under this Agreement, and will remain in full force and effect until the obligations of all Parties under this Agreement are discharged in full.

b. Governing Law

This Agreement is governed by the law of the State of New South Wales and each of the Parties irrevocably submits to the non-exclusive jurisdiction of the State of New South Wales.

c. Waiver

No waiver by any Party of any default in the strict and literal performance of or compliance with any provision, condition or requirement herein shall be deemed to be:

- i. a waiver of strict and literal performance of and compliance with any other provisions, conditions, or requirement herein, and
- ii. a waiver of or in any other manner release any Party from strict compliance with any provision, condition or requirement in the future.

d. Severability

Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of the prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

e. Entire Agreement

This Agreement (which, for the avoidance of doubt, includes any attachments) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and extinguishes all prior agreements or deeds and understandings between the Parties.

f. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

g. Read down

If any provision of this Agreement is void, voidable, unenforceable or illegal in its terms, but would not be void, voidable, unenforceable or illegal if read down, and it is capable of being read down, that provision is read down accordingly.