



Terms of Trade

Effective 3 February 2025

Introduction.....	2
Budget.....	4
Finance Plan.....	5
Recoupment.....	7
Film Closing Process.....	8

This document sets out the terms under which Te Tumu Whakaata Taonga The New Zealand Film Commission (the NZFC) engages with producers on the funding of their feature films. It is important you read and understand this document before you apply for feature film production funding and feature film post-production funding.



Introduction

Te Tumu Whakaata Taonga The New Zealand Film Commission (the **NZFC, we or us**) invests in films as part of our contribution to a successful screen industry. We have a responsibility to invest the public funding that we receive wisely, which is why we require filmmakers to meet certain key terms.

These Terms of Trade explain our key terms for providing discretionary feature film production funding and post-production funding through a recoupable equity investment (**NZFC Investment**). We also have specific guidelines that explain your eligibility for NZFC Investment for feature films (the **Feature Film Production Investment Guidelines**) and feature film post-production investment (the **Feature Film Post Production Investment Guidelines**). Please read these Terms of Trade along with the Feature Film Production Investment Guidelines and/or Feature Film Post Production Investment Guidelines (as appropriate). These guidelines aim to help you submit a strong application and, if successful, assist you with the closing process.

Should your application for NZFC Investment be successful, you will need to sign a funding agreement with us (the **NZFC Investment Agreement**). The NZFC Investment Agreement will reflect these Terms of Trade and any project-specific conditions for NZFC equity investment.

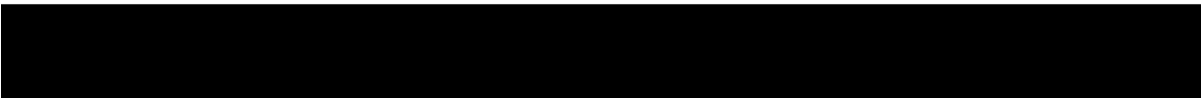

We may vary the Terms of Trade and the Feature Film Production Investment Guidelines at any time. Upon receipt of an application, the Terms of Trade and Feature Film Production Investment Guidelines that are current at the time of receiving the application will apply.

From time to time, and in our sole discretion, the NZFC may agree to waive some of our Terms of Trade. If a specific term is waived, it's because the evaluation of the particular film project and its specific nature, or where the application is for a post-production funding, meet exceptional circumstances (otherwise everyone expects changes). When we waive a term for a particular project, this will not set a precedent for any future projects.

Please note: These Terms of Trade do not apply to any funding that the NZFC provides as a grant. They also do not apply to our actions in our capacity as:

- the administrator of the New Zealand Screen Production Rebate (**NZSPR**); and/or
- the competent authority for the purposes of certifying official co-productions.

When working with us on your NZFC Investment application and during the closing process, you must:

- act consistently with the [Code of Conduct](#), as will we;
 - consider and, where relevant, incorporate into your application, principles and objectives that are consistent with our [Te Rautaki Māori strategy as included in our SOI](#); and
 - consider and incorporate into your application diversity and inclusion principles that are consistent with our [Diversity and Inclusion Strategy](#).
- 
- 

When assessing your application for NZFC Investment, we may take into account the track record of you and your team, including any overspend, delayed delivery, non-delivery, non-payment of cast, crew or other service providers, reporting and keeping us informed of any material change of circumstances.

By submitting an application to us, you acknowledge that you agree to these Terms of Trade and the relevant Guidelines (except to the extent varied or waived by us) and our Code of Conduct.

For any enquiries, please contact our Funding Team at production@nzfilm.co.nz

Budget

NZFC Development Grants

NZFC provides development funding as a grant. You will need to include NZFC development funding in your film budget as a separate line item and this funding can be treated as “producer equity” in the finance plan, being an equity investment by the producer (or its assignee).

This equity investment will have a recoupment right in the waterfall, but it must not:

- be recouped ahead of NZFC equity investment;
- have a premium; and
- be included in the calculation of ‘non-NZ government production funding’ for the purposes of determining whether the feature film is eligible for the NZSPR.

Bond / Completion Guarantor Requirements

We require an independent completion guarantee (or ‘bond’) for a film in which we have an equity investment of NZD\$500,000 or more, and/or the film budget is NZD\$1 million or more.

In considering a request to waive the requirement for a bond, we will take into account factors such as the project’s financial structure, scale, risk profile (e.g. non-NZSPR films, documentaries), and the producer’s and wider team’s track record.

Insurance

We require that your film project has and maintains insurance cover that is in proportion to the risks and the budget of the film.

For films (including documentaries) with budgets of **NZD\$1 million or more**, comprehensive insurance cover is required, as follows.

- General film production package
- Key Elements insurance cover (if applicable)
- Public liability (during film production)
- Statutory liability (during film production)
- Errors and Omissions (E&O) cover, including title clearance and coverage for plagiarism and defamation – with a term and amounts (deductibles, claim aggregates) that satisfy the requirements of your sales agent and/or distributor. We generally require that E&O cover starts from the first day of principal photography or delivery of the film, and, in either case, continues for at least three years after the earliest delivery date (with an option to renew for one year).

For films (including documentaries) with budgets of **less than NZD\$1 million**, a scaled-down schedule of insurances that is appropriate and proportional to the risk and the budget is required, as agreed with us.

Each certificate for insurance cover must include:

- the NZFC as a loss payee or additional insured, as follows: “*The New Zealand Film Commission and its officers, agents, directors, employees, successors and assignees*”. This requirement does not apply to a certificate for statutory liability insurance cover.
- a condition that provides that the policy or cover will not be changed without prior written notice to the NZFC, as follows: “*This policy shall not be cancelled, terminated or modified during the period of coverage unless thirty (30) days’ prior written notice is given to the New Zealand Film Commission*”.

Budget Underspend

It is a general requirement that any underspend of the film’s budget to be allocated 50% to the producer and 50% to the recoupment waterfall. This may differ if a NZSPR lender or gap financier is involved.

Test Screening

It is a general requirement that a comprehensive test screening is held. The cut, purpose and timing will be determined by mutual agreement between the producer and NZFC. We will cover the reasonable costs of any test screening but you will need to factor the cost of the DCP into the film budget. Please see our [FAQs](#) for more details.

Delivery Items

On the completion and delivery of your film, you will need to deliver to us a set of delivery materials. Please see [here](#) for a list of our delivery materials. You will need to include the cost of creating these delivery materials in the film budget.

All costs for delivery items required by your distributor/sales agent/broadcaster will also need to be included in the film budget (except for any items they agree to pay for).

As part of delivery, you are required to submit a copy of the film to Ngā Taonga for archiving purposes. Please see our [FAQs](#) for more details.

Finance Plan

Production funding is provided by way of an equity investment, which means the NZFC will have a financial stake in the film and a recoupment and profit position in return for the investment. Our equity investment, along with any other NZ government investment (eg NZSPR), must not exceed 90% of the total financing for the film.

You will need to obtain our approval to the terms of all finance provided by parties who are not

party to the NZFC Investment Agreement, including private investors. We reserve the right to review the terms of finance provided by parties who are a party to the NZFC Investment Agreement.

Private Investment

We require that the full amount of any private investor equity investment or loan is received in full into the production account or a secure independent escrow account prior to or on financial close of the film. If a private investor does not agree to this term, you will need to provide evidence of a viable underwrite for any amount that will not be paid by that private investor by/on close, on terms to be approved by us in advance (in our sole discretion).

You will need to budget for the costs associated with the set-up and administration of any escrow account.

Gap Finance

We require that the full amount of any gap finance is received in full into the production account or a secure independent escrow account prior to or on financial close of the film. You will need to budget for the costs associated with the set-up and administration of any escrow account.

Related Party Investment

A related party is a party (and that party's companies, family members and associates) that is receiving a financial or other benefit (other than a recoupment and profit position for its equity investment) from the production budget or the production activity, including fees or in-kind payments.

An investor in the film who is a related party (as described above) is:

1. not able to recoup its investment or (unless otherwise agreed with us) be repaid its loan ahead of our equity investment (**No Preferential Position**); and
2. not entitled to any premium on its equity investment or interest on its loan (**No Premium**).

To avoid any doubt, the restrictions above will not apply to the payment of related party loans that are cash flowing the NZSPR, because those loans are paid from the NZSPR proceeds and are not paid to the waterfall.

Despite the No Preferential Position, "Above-the-Line" and "Production Company Overhead" (PCO) reinvestments, holdbacks, or deferrals by a party that would otherwise be considered a related party (as described above) can recoup ahead of our equity investment, but are not entitled to any premium.



Reinvestments and holdbacks

You may include in your finance plan production company overhead or similar, whether by way of reinvestments, holdbacks or deferrals. However, any such overhead or fees must be consistent with common industry practice and your finance plan must be viable.

Market Money

You must arrange to cash flow to the production any portion of the minimum guarantee or sales advance that is not being paid on execution of the sales agency or distribution agreement or on financial close. You will need to obtain our approval to the party/parties who will cash flow any portion of a minimum guarantee or sales advance, and the terms on which they will do so.

We may agree (in our sole discretion) to minimum guarantees or sales advances being paid in tranches and not cash flowed. As an example, we may agree to this where the distributor or sales agent is known to us, or where the total amount of the minimum guarantee or sales advance is less than NZD\$50,000.

New Zealand Screen Production Rebate (NZSPR)

We require that the amount of NZSPR that will be cash flowed to the production budget must be no less than 90% of the projected value of the NZSPR, as determined by an auditor's opinion. You will need to obtain our approval to the party/parties who will cash flow any portion of the NZSPR, and the terms on which they will do so.

Recoupment

Non-NZSPR Films

For films that are not accessing the NZSPR, we will give the producer a 50% corridor of our recoupment position.

Once all parties have recouped their investment and the film is in net profit, income must be shared as follows:

- 50% to the producer; and
- 50% to the investors pro-rata pari passu, in proportion to their respective equity investments (not including premiums).

Your recoupment schedule must reflect this.

NZSPR Films

For NZSPR films, we recognise that the producer must be entitled to receive a share of the net



receipts from the film that is generally commensurate with the expected value of the NZSPR. The producer's NZSPR equity will be equivalent to the value of the final NZSPR paid in respect of the film. We agree that the producer may:

- receive film income equal to the producer's NZSPR equity pro-rata alongside our equity, and;
- have a pro-rata share of the investors' 50% share of net profit (reflecting the producer's NZSPR equity, in addition to the separate producer share of net profit).

NZSPR Overage

NZSPR overage is any amount remaining after repayment of any loan(s) (including any fee holdbacks or deferrals) used to cash flow the NZSPR, including any financing and legal fees or interest relating to the loan(s). If there is a NZSPR Overage, the SPV (as the NZSPR applicant) will be entitled to receive payment of the NZSPR Overage.

Collection

We require that either we or an independent, professional, third-party collection agent are appointed to collect and distribute all income in relation to the film.

Where we are appointed, our Collection Terms will apply to our services as collection agent. A copy is available on request from our Legal and Business Affairs team. We can act as collection agent worldwide, or just in relation to New Zealand and Australia.


Where an independent, professional, third-party collection agent will be appointed (worldwide, or for the world excluding New Zealand and Australia), you will need to obtain our approval to the collection agent and its terms. We must be a party to the collection agreement.

Closing Process

Overview

If the NZFC Board approves a NZFC Investment in a film, we will give the applicant a conditional offer. This offer is usually valid for approximately four months, and the specific offer period will be set out in our offer. The conditions of an offer are unique to each project and must be met before we can start the closing process with you. If these conditions aren't met within the specified offer period, and unless we agree to extend, our offer will expire.

Once these conditions are met (or waived), and all elements of the finance plan are confirmed, we can start the closing process with you. This process can take between eight weeks to three



months depending on the complexity of your financing and the number of parties involved. You should allow enough time for this phase in your production schedule and avoid an overlap with pre-production activities of more than two weeks. We can advise you what a reasonable timeframe for closing your film project is.

The main agreement for closing is the NZFC Investment Agreement. If other financiers are providing significant financing for your film, they will likely need to be part of this agreement. This ensures that all key financiers, including us, agree to provide their funding according to the project's cash flow and drawdown schedule. You will need to inform other key financiers about this requirement.

Once a NZFC Investment Agreement is signed, it will supersede these Terms of Trade.

We may request to review and approve other contracts relating to the financing and production of the film to which we're not a party.

Special Purpose Vehicle (SPV) Production Company

Upon receipt of a conditional funding offer letter, you will need to set up a limited liability company (often referred to as a 'special purpose vehicle' or 'SPV') whose sole activity is the production of the film. This does not need to be in place during the application process.

The SPV must be:

- registered on the New Zealand Companies Register;
- trading in New Zealand; and
- have its central management and control in New Zealand.



The SPV will be the party to the NZFC Investment Agreement (and all other related production agreements for the film).

All underlying film rights, including copyright and liabilities relating to the film, must be assigned to the SPV.

The main individual producer that we are dealing with must be a director of the SPV and cannot be replaced during production and for two years following completion and delivery of the film without our prior written approval.

NZFC payment instalments

We will generally pay our equity investment in the following instalments:

- 20% on financial close
 - 30% on commencement of principal photography
 - 20% on commencement of post-production
- 
- 

- 20% on rough cut
- 10% on locked cut, however we will hold back \$10,000 of this last instalment until completion of delivery of the film.

To receive payment, you will need to submit a valid tax invoice for the instalment and the agreed necessary reporting material.

Instalments may vary for low-budget projects and documentaries. In all instances, we will not pay out more than 50% of our total investment over the first two payments, which includes any pre-closing advances.

Your drawdown schedule must include NZD\$10,000 of our investment as delivery holdback. We will pay this amount once you have delivered all agreed delivery materials and provided a satisfactory final cost report and balance sheet. Please see [here](#) for a list of our delivery materials.

Pre-Closing Advances

We may offer up to NZD\$300,000 plus GST (for feature films) or up to NZD\$150,000 plus GST (for documentaries) in the form of a pre-closing advance (this does not include any NZFC development funds). Any amount will be offered at our sole discretion and as an advance on our equity investment rather than a loan, so will not incur any interest or premium.

Note that pre-closing advances are designed to assist you to cash flow early pre-production costs ahead of production financing. These advances are not designed to finance actual production shooting costs, or a substantial portion of company overheads or producer fees.

For us to make a pre-closing advance, we must be confident that there are no impediments to closing and the following documents must already be in place:

- our conditional offer letter has been counter-signed by the applicant and returned to us;
- the conditions of the offer have been met, or waived by us (in writing);
- you have given us the most up to date proposed production budget, cash flow and draw down schedule; and
- the SPV and separate production bank account have been established.

Chain of Title and Legal Opinion

The SPV must have all underlying rights necessary to make and exploit the film. In your application, you'll need to provide a summary of the chain of title for your project, including the expiry dates for any rights or options.

If your application is successful, a condition of our offer will be that a chain of title legal opinion is provided prior to the start of close. At a minimum, this opinion must:

- be prepared by the independent production lawyer who is engaged to advise the SPV;
- include a statement to the effect that we are entitled to rely on the lawyer's opinion of its assessment of the chain of title. In lieu of that statement, a separate reliance letter to the same effect may be given;
- include a statement to the effect that the chain of title is free of any defects; and
- list all documents on which the opinion is based, including the title of each document, the parties and date of signature.

During the closing process, we may request to review the documents forming the chain of title, and if so, you'll need to make these available to us for this purpose.

Please see our [Chain of Title Information Sheet](#) for more details.

Cast / Crew Contracts

You must engage all cast members on the Individual Performance Agreement agreed between SPADA and NZ Actors' Equity for New Zealand-based productions. You must procure that producers and crew adhere to the *Blue Book* as published by the Screen Industry Guild (with SPADA and Advertising Producers Aotearoa). We may request to review cast and crew agreements, and if so, you'll need to make these available to us for this purpose.

Credits

You must include the following credits for us:

- In the opening credits before all other credits or logos: our full screen animated logo including any logo soundtrack.
- In the main credits (wherever they appear – whether at the beginning or end of the film): The words “*in association with the New Zealand Film Commission*”.
- In the closing/end credits (in sizes and presentations of equal prominence with other financiers): our logo and/or name, and the logo of the NZ Lottery Grants Board.
- In publicity material (including billing block on paid advertising and packaging of DVDs and videos but excluding certain excluded advertisements as defined in the NZFC Investment Agreement), the words “*in association with the New Zealand Film Commission*”.
- All media releases, publicity materials or electronic press kits provided to media about NZFC-funded films must mention our investment.
- All social media posts about NZFC-funded films must tag our social media

accounts or credit them in the caption. ([Facebook](#), [Instagram](#), [LinkedIn](#), etc).

Please keep in mind the priority of our credits when you're discussing and agreeing credit positions with your other financiers.

Security for our Investment

When we invest in a film project, we have specific requirements to protect our investment. Each project is unique, so additional requirements may apply, but generally our security requirements include:

- an Assignment of Copyright (until completion and delivery)
- a General Security Agreement
- a Bank Account Deed

CHANGELOG: Updated 3rd February to:

GENERAL

- Overall reduction of information to essential terms and requirements associated with application and contracting of equity funding.
- Improved wording for clarity
- Consideration of applicant track record with NZFC
- Moving additional guidance notes and details into a separate FAQ document.
- Updated links.

BUDGET

- COMPLETION BOND – added details on factors in consideration to attachment waivers.
- TEST SCREENING – increased flexibility – details in FAQ.
- DELIVERY ITEMS – reduction of NZFC deliverables, list available on NZFC website.
- ARCHIVING – removal of Te Ahi Kā – added archiving obligations in delivery list.

FINANCE PLAN

- GAP FINANCE – added details
- RELATED PARTY INVESTMENT – added exclusions and definitions.
- REINVESTMENTS AND HOLDBACKS – removal of 30% cap. Reinvestments or holdbacks for ATL and PCO fees can recoup ahead of NZFC.
- MARKET MONEY – details on expected payment timing
- NZSPR – Added a floor amount that must be cash flowed to the project

RECOUPMENT

- Non-NZSPR film – producer corridor increased from 40% to 50%
- NZSPR Overage – changed from being payable to the ANZ waterfall to being payable to NZSPR applicant

FILM CLOSING PROCESS

- Updated wording – expected closing timeframe from six to eight weeks minimum
- Updated wording – expectation on parties to NZFC Investment Agreement
- SPV – Details now included to FAQ
- NZFC payment instalments – expected percentages for payment instalments – decreased the \$30,000 delivery holdback to \$10,000
- PRE-CLOSING ADVANCES – Can now be used to pay a portion of PCO and Producer fees. NZFC development funds awarded to date will not count towards the \$300,000 pre-closing advance (but will still be deducted from NZFC's first payment instalment)
- CHAIN OF TITLE – Updated legal opinion requirements
- COST REPORTING – Removed and details included to FAQ