



## SOUTHERN CROSS AUSTEREO STANDARD ADVERTISING TERMS AND CONDITIONS

### 1. INTRODUCTION

- 1.1 Southern Cross Austereo Pty Ltd ABN 78 109 243 110 (**Southern Cross Austereo**) is the owner and operator of television, radio and internet media outlets throughout Australia.
- 1.2 The Applicant agrees to advertise with Southern Cross Austereo and its subsidiaries and/or related bodies corporate (as those terms are defined in the *Corporations Act 2001 (Cth)*) (each a **Southern Cross Austereo Entity**) on the terms set out in this Agreement (as defined by Clause 2).

### 2. DEFINITIONS

- 2.1 **Advertising** means the advertising airtime on any Southern Cross Austereo radio station or television station and/or publishing of any Advertising Material on the Southern Cross Austereo websites and/or sponsorship/promotion and/or other activity;
- 2.2 **Advertising Material** means any written, audio or audio visual material and all corresponding intellectual property rights created for the purpose of producing an advertisement for broadcast by Southern Cross Austereo under this Agreement;
- 2.3 **Accredited Advertising Agency** means any advertising agency accredited by Southern Cross Austereo that at all times has a minimum of five (5) Applicants and no individual Applicant at any time provides more than 50% of the billings of the Accredited Advertising Agency for the prior twelve (12) months;
- 2.4 **Agreement** means this document together with any schedules and/or attachments including but not limited to any Southern Cross Austereo Proposal, Sales Schedule, Broadcast Confirmation, Broadcast Agreement, Production Quote or similar.
- 2.5 **Applicant** means any party to this Agreement who advertises with Southern Cross Austereo and for the purposes of this Agreement, except where expressly excluded, includes Accredited Advertising Agencies;
- 2.6 **Campaign** means the advertising campaign undertaken by the Applicant as stipulated by the Agreement;
- 2.7 **Commercial Credit Account** means the credit terms that have been agreed in writing between the Applicant and Southern Cross Austereo based on the credit application completed by the Applicant and submitted to Southern Cross Austereo;
- 2.8 **Fee** means the amount to be invoiced by Southern Cross Austereo and payable by the Applicant as set out in any schedules and/or attachments, including any Southern Cross Austereo Proposal, Sales Schedule, Broadcast Confirmation, Broadcast Agreement, Production Quote or similar.
- 2.9 **Session Times** means, give or take 15 minutes either side of the scheduled spot, Breakfast (0525 – 0900), Morning (0900 – 1200), Afternoon (1200 – 1500), Drive (1500 – 1900), Evening (1900 – 2200), Late Evening (2200 – 2400) and Mid Dawn (0000 – 0525);
- 2.10 **Termination Date** means the date on which the Campaign concludes;
- 2.11 **Zone Times** means, give or take 15 minutes either way of the scheduled spot, Zone 1 (1800 – 2230) and Daytime (0600 – 1800).

### 3. SERVICES AND PAYMENT

- 3.1 Southern Cross Austereo will provide the Advertising to the Applicant under the Agreement.
- 3.2 Each new Campaign represents a new contract between the parties governed by this Agreement. Southern Cross Austereo is under no obligation to accept any request by the Applicant for a new Campaign.
- 3.3 The Applicant, excluding Accredited Advertising Agencies, agrees to pay all Fees relating to the Advertising:
  - (a) on the last business day of the month following the date of invoice or adjustment, if the Applicant has an approved Commercial Credit Account with Southern Cross Austereo or as otherwise stipulated by the Applicant's Commercial Credit Account terms; or
  - (b) 5 business days before the first day of the scheduled Advertising, if the Applicant does not have an approved Commercial Credit Account with Southern Cross Austereo or the Applicant's Commercial Credit Account limit has been reached.
- 3.4 Where the Applicant is an Accredited Advertising Agency, the Applicant agrees to pay all fees relating to the Advertising in full before the expiration of forty-five (45) days from the date stated on an invoice remitted to the Applicant by SCA.
- 3.5 Without limiting any other rights available to Southern Cross Austereo in the event that the Applicant fails to comply with clauses 3.3 or 3.4 (whichever is applicable), Southern Cross Austereo may in its absolute discretion:
  - (a) terminate this Agreement and the Applicant's Commercial Credit Account (if any) and immediately seek recovery of all monies owed by the Applicant from the Applicant and/or the guarantor (if any);
  - (b) suspend or refuse to broadcast any Advertising scheduled for the Applicant;
  - (c) by notice in writing suspend or cancel the Accredited Advertising Agency's registration as an accredited advertising agent;
  - (d) recover from the Applicant all costs relating to any action taken to recover monies from the Applicant (such costs will include but are not limited to a two percent (2%) administration fee and any legal costs and disbursements on a full indemnity basis);
  - (e) charge interest at four percent (4%) above the rate prescribed pursuant to the *Penalty Interest Rates Act (VIC)*.Any failure by Southern Cross Austereo to charge any of the fees set out in clause 3.5 above does not constitute a waiver of its right to do so in the future.
- 3.6 The Applicant acknowledges that it must pay the Fee for any Advertising notwithstanding that Southern Cross Austereo has exercised its right to vary the format or placement of Advertising in accordance with clause 6.6 or 10.
- 3.7 If the Accredited Advertising Agency is not in breach of this Agreement it will be entitled to a rebate of up to 10% on the amount charged for that Advertising (or as otherwise agreed between the parties). A rebate will not apply to Advertising placed by the Accredited Advertising Agency on behalf of Applicants which have advertised in the preceding twelve (12) months (other than advertising placed by the Accredited Advertising Agency) or who are currently advertising or have booked future Advertising with Southern Cross Austereo.

#### **4. OWNERSHIP OF INTELLECTUAL PROPERTY**

- 4.1 In relation to Advertising Material created by Southern Cross Austereo or its employees, contractors or agents (**SCA Materials**) the Applicant acknowledges and agrees that:
- (a) all rights, title, interest and intellectual property rights in any SCA Materials not specifically granted to the Applicant in writing vest with Southern Cross Austereo;
  - (b) it must not use any SCA Materials for any purpose other than advertising through Southern Cross Austereo and the SCA Materials must be kept strictly confidential by the Applicant; and
  - (c) at the end of the Campaign:
    - i. Southern Cross Austereo may require delivery by the Applicant of any material containing SCA Materials; and
    - ii. the Applicant may only continue to use the SCA Materials with the prior written consent of Southern Cross Austereo which may be subject to the payment of a licence fee.
- 4.2 The Applicant warrants that any Advertising Materials created or provided by the Applicant or its employees, contractors or agent are owned or licensed by the Applicant and that the use and/or broadcast by Southern Cross Austereo will not breach the intellectual property or other rights of any third party.
- 4.3 The Applicant is responsible for obtaining, and must obtain, all third party authorisations, consents, approvals or permissions necessary or desirable for the broadcast by Southern Cross Austereo of all Advertising Material including SCA Materials.

#### **5. CONTENT OF ADVERTISEMENTS**

- 5.1 The Applicant must ensure that the content of the Advertising Materials, including SCA Materials, does not result in a breach of any applicable law by the Applicant or by Southern Cross Austereo (as broadcaster of the advertisements). In this context, "applicable law" includes (but is not limited to) the *Broadcasting Services Act 1992* (Cth) (**BSA**) and all relevant standards and codes of practice determined or registered under the BSA, the *Competition and Consumer Act 2010* (Cth) (**CCA**), the *Copyright Act 1968* (Cth), the *Trade Marks Act 1995* (Cth) relevant defamation laws in all Australian jurisdictions and all industry codes of practice that apply to the content of advertisements.

#### **6. BROADCAST OF ADVERTISING**

- 6.1 Advertising will be booked subject to availability within the Session Times and Zone Times as agreed between Southern Cross Austereo and the Applicant.
- 6.2 If the Applicant requests and Southern Cross Austereo agrees to:
- (a) narrow the Session Times or Zone Times; or
  - (b) specific placement of commercials within a specific commercial break,
- the Applicant will pay a further 20% loading fee in addition to the amount otherwise specified.
- 6.3 Unless otherwise indicated in writing, rates for Advertising are based on 30 second commercials (the "30 second rate"). Rates for other commercial lengths will be calculated as follows:
- (a) if the commercial length is 5 seconds, 0.40 multiplied by the 30 second rate;
  - (b) if the commercial length is 10 seconds, 0.66 multiplied by the 30 second rate;
  - (c) if the commercial length is 15 seconds, 0.75 multiplied by the 30 second rate;
  - (d) if the commercial length is 45 seconds, 1.5 multiplied by the 30 second rate;
  - (e) if the commercial length is 60 seconds, 2 multiplied by the 30 second rate; and
  - (f) if the commercial length is 90 seconds, 3 multiplied by the 30 second rate.
- 6.4 Other commercial lengths not referred to in clause 6.4 will be considered on application and rates will be determined at Southern Cross Austereo's absolute discretion.
- 6.5 If, as determined by both parties acting reasonably, any Advertising:
- (a) airs incorrectly;
  - (b) out of a scheduled Session Time or Zone Time; or
  - (c) is not broadcast,
- Southern Cross Austereo will, subject to availability, "make good" the Advertising in a scheduled Session Time or Zone Time, agreed by the Applicant, not adjacent to any competitor product. The Applicant has 3 months from the date the discrepancy is notified to the Applicant to claim a make good.
- 6.6 Subject to this Agreement, Southern Cross Austereo will use its reasonable endeavours to publish and/or broadcast Advertising in the format submitted by the Applicant and in accordance with the Applicant's placement instructions. However, the Applicant acknowledges that Southern Cross Austereo reserves the right, in its absolute discretion, to vary the placement or formatting of any Advertising submitted by the Applicant to Southern Cross Austereo or developed for the Applicant by Southern Cross Austereo.

#### **7. RELEASE AND INDEMNITY**

- 7.1 The Applicant continually releases and indemnifies Southern Cross Austereo and each of its directors, employees and agents against all liability, losses, costs (on a full indemnity basis), damages, expenses and claims (whether threatened or actual) by any person which arise wholly or partially, or directly or indirectly, from:
- (a) the preparation or broadcasting or publication of the Advertising Materials by Southern Cross Austereo; or
  - (b) any representation or omission made by or on behalf of Southern Cross Austereo inducing the Applicant to advertise with Southern Cross Austereo and the Applicant shall be deemed to have accepted this Agreement with full knowledge that the Advertising would not necessarily meet desired outcomes or objectives; and
  - (c) any sound quality issues or delay in transmission relating to any Advertising; or failure of the world wide web or any telecommunications structure or broadcasting devices, including digital broadcasting devices.
- 7.2 The Applicant will indemnify and keep indemnified Southern Cross Austereo against all claims, demands, proceedings, damages, costs, expenses (including legal expenses), losses or any other liability whatsoever arising directly or indirectly, from or in connection with a breach by the Applicant of any provision of this Agreement.

## **8. LIMITATION OF LIABILITY**

- 8.1 Nothing in this Agreement purports to limit or exclude the Applicant's rights under the CCA (**the Statutory Guarantees**). Except for the Statutory Guarantees, Southern Cross Austereo (including its respective officers, employees and agents) is not liable to the Applicant for any loss, damage cost or expense suffered or incurred by the Applicant (howsoever arising whether for negligence, breach of contract, breach of statutory duty or otherwise) as a result of the preparation or broadcasting or publication of Advertising for the Applicant by Southern Cross Austereo.
- 8.2 To the maximum extent permitted by section 64A of the CCA, Southern Cross Austereo limits its liability, at its discretion to:
- (a) the re-supply of the advertising services; or
  - (b) the payment of the cost of having the advertising services supplied again.
- 8.3 To the extent permitted by law, Southern Cross Austereo excludes all other liability for any costs, expenses, losses and damages suffered or incurred by the Applicant in connection with this Agreement and any Advertising published or broadcast by Southern Cross Austereo whether that liability arises in contract, tort (including by Southern Cross Austereo's negligence) or statute. Without limitation, Southern Cross Austereo will not be liable for any indirect or consequential losses, including loss of profits, loss of revenue and loss of bargain or business opportunity arising out of or in connection with this Agreement or any Advertising published or broadcast by Southern Cross Austereo (even if Southern Cross Austereo was aware of the possibility of such losses or if such losses were otherwise foreseeable).

## **9. REPRESENTATIONS**

- 9.1 Except for the Statutory Guarantees, Southern Cross Austereo disclaims and excludes all warranties, representations and claims in relation to the potential benefits of the Advertising provided to the Applicant under this Agreement and the Applicant acknowledges that it has not relied on any such representations.

## **10. WITHDRAWAL/CANCELLATION OF ADVERTISEMENT**

- 10.1 Southern Cross Austereo may reject, cancel, amend (if in Southern Cross Austereo's opinion such change is necessary to comply with the law), refuse, change position or postpone publication or broadcast of the Advertising for any reason at its discretion.
- 10.2 Unless otherwise indicated in writing, the Applicant may cancel Advertising by giving the relevant Southern Cross Austereo Sales Account Executive 30 days' written notice before the scheduled start date of any Advertising. Southern Cross Austereo agrees to use its best endeavours to reschedule Advertising cancelled less than 30 days but more than 7 Business Day prior to the scheduled broadcast or publication to another time during the Campaign.
- 10.3 Rescheduled Advertising will be subject to availability at the time of the booking. Southern Cross Austereo reserves the right to charge the Applicant the Fee, either in part or in full, and the Applicant agrees to pay the Fee invoiced for Advertising cancelled other than in accordance with clause 10.2.

## **11. EXPIRATION AND TERMINATION OF AGREEMENT**

- 11.1 Unless terminated earlier pursuant to clause 11.2, this Agreement will expire on the Termination Date and any further Advertising and corresponding rates will be subject to renegotiation.
- 11.2 Southern Cross Austereo may terminate this Agreement by serving a notice on the Applicant if:
- (a) the Applicant commits a breach of any term of this Agreement and fails to remedy such breach within fourteen (14) days after being served with a notice by Southern Cross Austereo specifying the nature of the breach;
  - (b) the Applicant at any time commits any act of bankruptcy or insolvency or ceases or threatens to cease carrying on the Applicant's business;
  - (c) Southern Cross Austereo at any time ceased to own or operate all or any of the Southern Cross Austereo radio stations or television stations; or
  - (d) any event of force majeure set out in clause 13 continues for a period longer than 15 Business Days.
- 11.3 Southern Cross Austereo reserves the right to cancel or suspend an Applicant at any time if that Applicant has not placed Advertising with Southern Cross Austereo for a period exceeding fourteen (14) months.

## **12. ONGOING DISCLOSURE**

- 12.1 The Applicant must immediately notify Southern Cross Austereo in writing of any material change in any information provided to Southern Cross Austereo in relation to this Agreement or an application for a Commercial Credit Account.

## **13. FORCE MAJEURE**

- 13.1 A failure by Southern Cross Austereo to discharge its obligations under this Agreement because of reasons beyond its reasonable control will not constitute a breach of this Agreement by Southern Cross Austereo.

## **14. GOVERNING LAW**

- 14.1 The parties acknowledge and agree that this Agreement is governed by and subject to the laws of the State of Victoria and the Commonwealth of Australia.

## **15. WHOLE AGREEMENT**

- 15.1 This Agreement together with any application for commercial credit embodies the whole agreement between the parties and, subject to the express terms contained in any written order or written acceptance thereof, all previous dealings, representations and arrangements are hereby excluded and deemed void.

## **16. SEVERANCE**

- 16.1 Should any part of this Agreement be held to be void or unlawful, this Agreement will be read and enforced as if the void or unlawful provisions have been deleted.

**17. PRIVACY**

17.1 Southern Cross Austereo is committed to the protection of personal information and meeting the standards set out in the Privacy Act 1988 (Cth) (the Privacy Act) and the Australian Privacy Principles (APPs). Our privacy policy can be viewed at [www.southerncrossaustereo.com.au](http://www.southerncrossaustereo.com.au). For all privacy inquiries and complaints, please contact Southern Cross Austereo's Privacy Officer by mail at GPO Box 22 Sydney NSW 2001, email at [privacy@sca.com.au](mailto:privacy@sca.com.au) or phone on (02) 8437 9481. The Applicant consents to the use and disclosure of information by each Southern Cross Austereo Entity in accordance with the privacy policy, and as contemplated under this Agreement (including in connection with any transaction under clause 19).

**18. GST**

18.1 Unless otherwise stated, all amounts payable under this Agreement are exclusive of GST.

18.2 If GST is payable on any supply under this Agreement, the parties agree that the amount payable for the supply (excluding non-monetary consideration) will be considered exclusive of GST. Unless the parties otherwise agree in writing, the Applicant undertakes to pay Southern Cross Austereo the amount of such GST in addition to the amount payable for that supply at the time the amount is payable or at such later time when the amount of the GST becomes known. All terms contained in this paragraph are as defined in the A New Tax System (Goods and Services Tax) Act 1999, as amended.

**19. ASSIGNMENT**

Each Southern Cross Austereo Entity may sell, assign, declare a trust over or otherwise deal with its rights under this Agreement without being required to obtain the Applicant's consent.

**20. NO SET-OFF OR COUNTERCLAIM**

The Applicant agrees that it will not exercise any rights of set-off or counterclaim in relation to any amounts payable by it under this Agreement.