



## SOUTHERN CROSS AUSTEREO STANDARD ADVERTISING TERMS AND CONDITIONS

### 1. DEFINITIONS

The definitions set out below apply in the Agreement.

**Advertising** means communication of any Advertising Material during advertising airtime on any SCA radio station or television station (or an NBN television station, as applicable), publishing of any Advertising Material on any SCA websites (or any websites, as applicable), or any sponsorship, promotion or other activity to promote the Client or its products.

**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 SCA (or NBN, as applicable) under the Agreement.

**Accredited Advertising Agency** means any advertising agency accredited by SCA that at all times has a minimum of five Clients and no individual Client at any time provides more than 50% of the billings of the Accredited Advertising Agency for the prior twelve (12) month.

**Agreement** means this document together with any schedules or attachments, including any SCA Proposal, Sales Schedule, Broadcast Confirmation, Broadcast Agreement, Production Quote or similar document.

**Campaign** means the advertising campaign undertaken by the Client as stipulated by the Agreement.

**Client** means any party to the Agreement who advertises with SCA and, except where expressly excluded, includes Accredited Advertising Agencies.

**Commercial Credit Account** means the credit terms that have been agreed in writing between the Client and SCA based on the credit application completed by the Client and submitted to SCA;

**Fee** means the amount to be invoiced by SCA (or NBN, as applicable) and payable by the Client as set out in the Agreement.

**NBN** means NBN Pty Limited ABN 68 000 232 486.

**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);

**SCA** means Southern Cross Austereo Pty Ltd ABN 78 109 243 110.

**SCA Materials** means Advertising Material created by SCA (or NBN, as applicable) or its employees, contractors or agents.

**Termination Date** means the date on which the Campaign concludes;

**Zone Times** means, give or take 15 minutes either way of the scheduled spot, Zone 1 (1800 – 2230) and Daytime (0600 – 1800).

## **2. ADVERTISING SERVICES**

### **2.1 Agreement to advertise**

The Client agrees to advertise with SCA and SCA agrees to provide Advertising to the Client on the terms set out in the Agreement.

### **2.2 Agency for NBN**

SCA acts as agent for NBN in relation to the marketing and selling of Advertising for broadcast by NBN on its television stations. NBN holds the benefit of, and may exercise directly against the Client, all of the rights of SCA under the Agreement in relation to Advertising for broadcast on NBN's television stations. These rights include, without limitation, the right for NBN to invoice the Client for, and to receive payment from the Client of, all Fees for Advertising for broadcast by NBN on its television stations and the rights under clauses 2.1, 3.1, 3.2(b), 4 to 9 inclusive, 10.2, 10.3, 11.2(c), 11.3 and 13.

### **2.3 Campaigns**

Each new Campaign represents a new contract between the parties governed by the Agreement. SCA is under no obligation to accept any request by the Client for a new Campaign.

## **3. FEES AND PAYMENT**

### **3.1 Fee**

In consideration for the Client's Rights, the Client will pay the Fee to SCA in accordance with the Agreement.

### **3.2 Invoicing and payment**

(a) The Client, excluding Accredited Advertising Agencies, will pay the Fee in full:

(i) on the last business day of the month following the date of invoice or adjustment, if the Client has an approved Commercial Credit Account with SCA or as otherwise stipulated by the Client's Commercial Credit Account terms; or

(ii) five business days before the first day of the scheduled Advertising, if the Client does not have an approved Commercial Credit Account with SCA or the Client's Commercial Credit Account limit has been reached.

(b) Where the Client is an Accredited Advertising Agency, the Client will pay the Fee in full within 45 days after the date of SCA's invoice or adjustment.

### **3.3 Variation of Advertising**

The Client must pay the Fee for any Advertising notwithstanding that SCA has exercised its right to vary the format or placement of Advertising in accordance with the Agreement.

**3.4 Agency rebate**

If the Accredited Advertising Agency is not in breach of the Agreement, it will be entitled to a rebate of up to 10% of the Fee (or as otherwise agreed between the parties). A rebate will not apply to Advertising placed by the Accredited Advertising Agency on behalf of Clients which have advertised in the preceding 12 months (other than advertising placed by the Accredited Advertising Agency) or who are currently advertising or have booked future Advertising with SCA.

**3.5 Consequences of non-payment**

Without limiting any other rights available to SCA if the Client fails to pay any Fee when due, SCA may in its absolute discretion:

- (a) terminate the Agreement and the Client's Commercial Credit Account (if any) and immediately seek recovery from the Client of all moneys owed by the Client and the guarantor (if any);
- (b) suspend or refuse to broadcast any Advertising scheduled for the Client;
- (c) by notice in writing suspend or cancel the Accredited Advertising Agency's registration as an accredited advertising agent;
- (d) recover from the Client all costs relating to any action taken to recover monies from the Client (such costs will include but are not limited to a 2% administration fee and any legal costs and disbursements on a full indemnity basis);
- (e) charge interest at 4% per annum above the rate prescribed pursuant to the Penalty Interest Rates Act (VIC).

Any failure by SCA to charge any of the fees set out above does not constitute a waiver of its right to do so in the future.

**4. OWNERSHIP OF INTELLECTUAL PROPERTY**

**4.1 SCA Materials**

The Client acknowledges and agrees that:

- (a) all rights, title, interest and intellectual property rights in any SCA Materials not specifically granted to the Client in writing vest with SCA;
- (b) it must not use any SCA Materials for any purpose other than advertising through SCA and the SCA Materials must be kept strictly confidential by the Client; and
- (c) at the end of a Campaign:
  - (i) SCA may require delivery by the Client of any material containing SCA Materials; and
  - (ii) the Client may only continue to use the SCA Materials with the prior written consent of SCA which may be subject to the payment of a licence fee.

**4.2 Client's warranty**

The Client warrants that any Advertising Materials created or provided by the Client or its employees, contractors or agents are owned or licensed by the Client and that their use, broadcast or communication by SCA in accordance with the Agreement will not breach the intellectual property or other rights of any third party.

**4.3 Third party authorisations**

The Client is responsible for obtaining, and must obtain, all third party authorisations, consents, approvals or permissions necessary or desirable for the use, broadcast or communication by SCA of all Advertising Material including SCA Materials.

**5. CONTENT OF ADVERTISEMENTS**

The Client must ensure that the content of the Advertising Materials, including SCA Materials, does not result in a breach of any applicable law by the Client or by SCA (as broadcaster or publisher 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. COMMUNICATION OF ADVERTISING**

**6.1 Availability and placement of advertisements**

- (a) Advertising will be booked subject to availability within the Session Times and Zone Times agreed between SCA and the Client.
- (b) If the Client requests and SCA agrees to:
  - (i) narrow the Session Times or Zone Times; or
  - (ii) specific placement of commercials within a specific commercial break,the Client will pay a further 20% loading fee in addition to the amount otherwise specified.

**6.2 Rates**

- (a) Unless otherwise indicated in writing, rates for Advertising are based on 30 second commercials (**30 second rate**). Rates for other commercial lengths will be calculated as follows:
  - (i) if the commercial length is 5 seconds, 0.40 multiplied by the 30 second rate;
  - (ii) if the commercial length is 10 seconds, 0.66 multiplied by the 30 second rate;
  - (iii) if the commercial length is 15 seconds, 0.75 multiplied by the 30 second rate;

- (iv) if the commercial length is 45 seconds, 1.5 multiplied by the 30 second rate;
  - (v) if the commercial length is 60 seconds, 2 multiplied by the 30 second rate;  
and
  - (vi) if the commercial length is 90 seconds, 3 multiplied by the 30 second rate.
- (b) Other commercial lengths not referred to in clause 6.4 will be considered on application and rates will be determined at SCA's absolute discretion.

### **6.3 Make goods**

If, as determined by both parties acting reasonably, any Advertising airs:

- (a) airs incorrectly;
- (b) airs out of a scheduled Session Time or Zone Time; or
- (c) is not broadcast,

SCA will, subject to availability, "make good" the Advertising in a scheduled Session Time or Zone Time, agreed by the Client, not adjacent to any competitor product. The Client has three months from the date the discrepancy is notified to the Client to claim a make good.

### **6.4 Format and placement**

Subject to the Agreement, SCA will use its reasonable endeavours to publish or broadcast Advertising in the format submitted by the Client and in accordance with the Client's placement instructions. However, the Client acknowledges that SCA reserves the right, in its absolute discretion, to vary the placement or formatting of any Advertising submitted by the Client to SCA or developed for the Client by SCA.

## **7. RELEASE AND INDEMNITY**

### **7.1 Relating to Advertising**

The Client continually releases and indemnifies SCA 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 SCA;  
or
- (b) any representation or omission made by or on behalf of SCA inducing the Client to advertise with SCA and the Client is deemed to have accepted the Agreement with full knowledge that the Advertising would not necessarily meet desired outcomes or objectives;
- (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 Breach of the Agreement by Client**

The Client will indemnify and keep indemnified SCA 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 Client of any provision of the Agreement.

**8. LIMITATION OF LIABILITY**

**8.1 Statutory Guarantees**

Nothing in the Agreement purports to limit or exclude the Client's rights under the CCA (the **Statutory Guarantees**). Except for the Statutory Guarantees, SCA (including its respective officers, employees and agents) is not liable to the Client for any loss, damage cost or expense suffered or incurred by the Client (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 Client by SCA.

**8.2 Limit of liability**

To the maximum extent permitted by section 64A of the CCA, SCA limits its liability, at its discretion to the re-supply of the advertising services; or the payment of the cost of having the advertising services supplied again.

**8.3 Exclusion of other liability**

To the maximum extent permitted by law, SCA excludes all other liability for any costs, expenses, losses and damages suffered or incurred by the Client in connection with the Agreement and any Advertising published or broadcast by SCA whether that liability arises in contract, tort (including by SCA's negligence) or statute. Without limitation, SCA 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 the Agreement or any Advertising published or broadcast by SCA (even if SCA was aware of the possibility of such losses or if such losses were otherwise foreseeable).

**9. NO REPRESENTATIONS**

Except for the Statutory Guarantees, SCA disclaims and excludes all warranties, representations and claims in relation to the potential benefits of the Advertising provided to the Client under the Agreement and the Client acknowledges that it has not relied on any such representations.

**10. CANCELLATION OF ADVERTISEMENTS**

**10.1 Cancellation by Client**

Unless otherwise indicated in writing, the Client may cancel Advertising by giving the relevant SCA Sales Account Executive 30 days' written notice before the scheduled start date of any Advertising.

**10.2 SCA's rights**

SCA may reject, cancel, amend (if in SCA's opinion such change is necessary to comply with any applicable law), refuse, change position or postpone publication or broadcast of the Advertising for any reason at its discretion.

**10.3 Rescheduling of Advertising**

- (a) SCA agrees to use its best endeavours to reschedule Advertising cancelled fewer than 30 days but more than seven Business Day before the scheduled start date to another time during the Campaign. Rescheduled Advertising will be subject to availability at the time of the booking.
- (b) SCA reserves the right to charge the Client the Fee, either in part or in full, and the Client agrees to pay the Fee invoiced for Advertising cancelled other than in accordance with clause 10.1.

**11. EXPIRATION AND TERMINATION OF AGREEMENT**

**11.1 Expiry**

Unless terminated earlier pursuant to clause 11.2, the Agreement will expire on the Termination Date and any further Advertising and corresponding rates will be subject to renegotiation.

**11.2 Early termination**

SCA may terminate the Agreement by serving a notice on the Client if:

- (a) the Client commits a breach of any term of the Agreement and fails to remedy such breach within 14 days after being served with a notice by SCA specifying the nature of the breach;
- (b) the Client at any time commits any act of bankruptcy or insolvency or ceases or threatens to cease carrying on the Client's business;
- (c) SCA at any time ceases to own or operate all or any of the SCA 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 Inactivity by Client**

SCA reserves the right to cancel or suspend the Client at any time if the Client has not placed Advertising with SCA for a period exceeding 14 months.

**12. ONGOING DISCLOSURE**

The Client must immediately notify SCA in writing of any material change in any information provided to SCA in relation to the Agreement or an application for a Commercial Credit Account.

**13. FORCE MAJEURE**

A failure by SCA to discharge its obligations under the Agreement because of reasons beyond its reasonable control will not constitute a breach of the Agreement by SCA.

**14. GOVERNING LAW**

The Agreement is governed by and subject to the laws of the State of Victoria and the Commonwealth of Australia.

**15. WHOLE AGREEMENT**

The 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**

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

**17. PRIVACY**

SCA's privacy policy is incorporated in and forms part of the Agreement. The privacy policy is at [www.southerncrossaustereo.com.au](http://www.southerncrossaustereo.com.au).

**18. GST**

- (a) Unless otherwise stated, all amounts payable under the Agreement are exclusive of GST.
- (b) If GST is payable on any supply under the 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 Client undertakes to pay SCA 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**

SCA may sell, assign, declare a trust over or otherwise deal with its rights under the Agreement without being required to obtain the Client's consent.

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

The Client may not exercise any rights of set-off or counterclaim in relation to any amounts payable by it under the Agreement.